LEGISLATIVE COUNCIL

Wednesday 13 April 1994

The PRESIDENT (Hon. Peter Dunn) took the Chair at 2.15 p.m. and read prayers.

LEGISLATIVE REVIEW COMMITTEE

The Hon. R.D. LAWSON: I table the tenth report of the Legislative Review Committee.

UNIVERSITY OF SOUTH AUSTRALIA

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to table a copy of a ministerial statement made by the Minister for Employment, Training and Further Education in another place today on the subject of University of South Australia, Salisbury campus.

Leave granted.

QUESTION TIME

EDUCATION FUNDING

The Hon. C.J. SUMNER: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question on the subject of ministerial confusion.

Leave granted.

The Hon. C.J. SUMNER: Yesterday in the Chamber I asked a question of the Minister about discussions to cut 1 800 permanent teachers from the South Australian teaching work force. I said:

> The Government has been negotiating with the South Australian Institute of Teachers for a cut of 1 800 permanent teachers from the Education Department's work force. These negotiations also involve the cessation of the four year right of return for country teachers and the scrapping of agreements limiting the number of contract teachers which were entered into as part of the curriculum guarantee.

I then asked the Minister whether the department had commenced those discussions. The Minister attempted to divert the question by saying that I had claimed that the Government had taken a decision in relation to cutting back 1 800 permanent teachers. In other words, he attempted to divert attention by using the tactic of answering a different question from that which was asked.

On the actual question of whether there were discussions or negotiations, the Minister obviously did not know what his department was doing. I cannot believe that the Minister knew about the discussions and negotiations and deliberately misled the Council. Nevertheless, whether deliberately or not, he clearly did mislead the Council. When asked if the department was negotiating, he denied it on several occasions. 'We have not started negotiations,' he said. It is now clear that the Minister was in error. It is quite clear that the department had entered into negotiations and discussions which, I remind the Council, was the question asked of the Minister.

In an article in the SAIT journal of today's date the Vice-President, Ken Drury, states:

> Since December the South Australian Institute of Teachers' team and a team from the Department of Education and Children's Services have been meeting and conducting discussions on a without prejudice basis. So far there have been three such meetings, the most recent on 29 March.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: That is your problem. It is clear from this that discussions had begun between the department and SAIT contrary to what the Minister advised the Council yesterday. The negotiations related to the three issues mentioned by me, namely, a cut of 1 800 permanent teachers; the cessation of the four year right of return for country teachers; and the scrapping of agreements already entered into limiting the number of contract teachers. Those issues are all referred to in Mr Drury's article. My questions to the Minister are as follows:

1. Did the Minister know of the discussions and negotiations between his department and SAIT over the issues I have mentioned?

2. If he did know, why did he inform the Council yesterday that there were no negotiations or discussions?

3. If he did not know, what steps has he taken to ensure that he is on top of the issues within his portfolio in the future?

The Hon. R.I. LUCAS: My answer to the series of questions is exactly the same as the answer yesterday, and that is because the answers I gave yesterday were statements of fact in three parts. This Government has not taken a decision to cut 1 800 teachers from schools. As Minister I have not taken a decision to cut 1 800 teachers from schools. I have not authorised and my department is not negotiating with the Institute of Teachers to cut—

The Hon. C.J. Sumner: Having discussions.

The Hon. R.I. LUCAS: It is not having discussions with the Institute of Teachers to cut 1 800 teachers from schools, full stop. It is a statement of fact. That is the answer I gave to the shadow Minister of Education yesterday and that is the same—

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

The Hon. R.I. LUCAS: It is not wrong. Mr Drury may claim what he claims. The statements of fact are—

The Hon. C.J. Sumner: You are saying that there were no meetings between the department and SAIT.

The PRESIDENT: Order!

The Hon. R.I. LUCAS: The statements of fact are that my department is not negotiating with the Institute of Teachers to cut 1 800 teachers from schools. I do not know how many times I have to indicate that to the shadow Minister for Education. He is a slow learner, I know, but I do not know how many times I have to indicate to the shadow Minister that my department is not negotiating with the Institute of Teachers about the cutting of 1 800 teachers from schools. I can say it in a thousand different ways but I cannot say it any more simply than that for the shadow Minister for Education or more clearly than that.

The Hon. K.T. Griffin: You don't have to be a lawyer to understand it.

The Hon. R.I. LUCAS: And you do not have to be a lawyer to understand it, that is right. My department is not negotiating with the Institute of Teachers for the cut of 1 800 teachers from our schools. And, for anybody, Mr Drury included, to suggest otherwise is an incorrect statement.

An honourable member: It is drawing a long bow.

The Hon. R.I. LUCAS: It is not drawing a long bow: it is just wrong. There is no negotiation in relation to that. I have spoken to the officers who met with the Institute of Teachers on 29 March, or whatever the date was, and they have indicated to me that they produced no proposals and no written documentation to that meeting. In fact, the meeting spent most of the time supposedly on a confidential and

without prejudice basis with the Institute of Teachers. I have to say that it is an interesting notion of a confidential and without prejudice basis, but the discussions related to a document produced by the Institute of Teachers in relation to the Government's policy on teacher staffing changes in relation to the 10 year limit of placement policy and a variety of other issues.

The Institute of Teachers produced a document, and I am advised that the notes that were available to and compiled by officers in my department who attended the meeting certainly confirm their recollection that substantially it was in relation to the document produced by the Institute of Teachers. The officers who attended that meeting indicated clearly and unequivocally to me yesterday afternoon that there was no suggestion by any of them that they were negotiating a cut of 1 800 teachers in schools. Of course, they would have had no authority to do that, even if they were, and they have indicated that they were not. Again, I can state it no more simply: we have not taken a decision to cut 1 800 teachers. My department is not negotiating with the Institute of Teachers about a cut of 1 800 teachers within our schools.

The Hon. C.J. SUMNER: As a supplementary question, given that a team from the South Australian Institute of Teachers and representatives of the Minister's department met and conducted discussions on a without prejudice basis—

The Hon. R.I. Lucas: And confidentially.

The Hon. C.J. SUMNER: Well, that is your problem—on at least three separate occasions since the election, the last occasion being on 29 March, will the Minister advise the Council of the issues that were raised in those discussions and, in particular, will he deny that the issues of cutting 1 800 permanent teachers, the cessation of the four-year right of return for country teachers and the scrapping of agreements limiting the numbers of teachers were some of the subjects of those discussions? Do you deny it?

The Hon. R.I. LUCAS: The shadow Minister for Education is struggling. He has obviously got the members of the media here on the statement that—

An honourable member: False pretences.

The Hon. R.I. LUCAS: Yes, false pretences. He has told the media, 'Come along this afternoon. I have a big story for you. It is a quiet news day and I have a big story for you. We will have the Minister on toast because he does not know what is going on in his own department.' I can assure the shadow Minister for Education that I am well aware of what is going on in relation to these important issues.

The Hon. C.J. Sumner: You didn't know yesterday.

The Hon. R.I. LUCAS: The answer that I gave yesterday is on the record.

The Hon. C.J. Sumner: It is totally misleading.

The Hon. R.I. LUCAS: It is not misleading; I have given exactly the same answer today. So, on false pretences, the shadow Minister for Education has got the media here on a beat-up, 'We will have the Minister on toast this afternoon,' on the basis that in some way there has been some misleading of the Council or, indeed, that the Minister does not know what is going on within the department. Let us make it clear again, because—

The Hon. C.J. Sumner: Answer the supplementary question.

The Hon. R.I. LUCAS: I will answer your supplementary question again. The shadow Minister has asked—

The Hon. C.J. Sumner interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: The shadow Minister has asked exactly the same question: do I deny that one of the issues that was being discussed was a cut of 1 800 teachers in schools?

The Hon. C.J. Sumner: I mentioned three issues.

The Hon. R.I. LUCAS: I will now say this very slowly for the shadow Minister for Education.

The Hon. C.J. Sumner: Three issues.

The Hon. R.I. LUCAS: I will say this very slowly for the shadow Minister for Education.

The Hon. C.J. Sumner: It is obvious you are not going to answer the questions.

The PRESIDENT: Order! You were heard in silence. I expect the Minister to be able to give his response in silence.

The Hon. R.I. LUCAS: I do not think the shadow Minister wants the answer because he does not like it. He has got the media here on the basis that there is some sort of issue going, and he does not like the answer. The answer, very slowly for the shadow Minister for Education—

The Hon. C.J. Sumner: There are three issues.

The Hon. R.I. LUCAS: Are you going to wait?

The Hon. C.J. Sumner: Answer those three matters: they were not the subject of discussion?

The Hon. R.I. LUCAS: Are you going to listen?

The Hon. C.J. Sumner: Were they the subject of discussion?

The Hon. R.I. LUCAS: Are you going to listen?

The Hon. C.J. Sumner interjecting:

The PRESIDENT: Order! We are not in the kitchen.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: Are you going to listen?

The Hon. C.J. Sumner interjecting:

The PRESIDENT: Order! The Minister.

The Hon. R.I. LUCAS: I will say it very slowly for the shadow Minister for Education so that it might sink in. The answer to the first—

The Hon. C.J. Sumner: It is not my problem; it is yours.

The Hon. R.I. LUCAS: The answer to the first question is that, no, there was no discussion.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: I have already answered that today, but I will say it again: there was no discussion or negotiation with the Institute of Teachers to cut 1 800 teachers from our schools here in South Australia.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: Now the shadow Minister wants to change his question. He says that was not the question.

The Hon. C.J. Sumner: Was that issue the subject of discussion?

The Hon. R.I. LUCAS: I said to you, no—

The Hon. C.J. Sumner interjecting:

The PRESIDENT: Order!

The Hon. C.J. Sumner: Yes or no?

The Hon. R.I. LUCAS: I have just answered it. I have just said to you that there was no discussion or negotiation at that the meeting, or at any other meeting, about the cut of 1 800 teachers from our schools.

The Hon. C.J. Sumner: You are calling Mr Drury a liar, are you?

The Hon. R.I. LUCAS: Have you got the answer to your question?

The Hon. C.J. Sumner: Are you calling Mr Drury a liar?

The Hon. R.I. LUCAS: Mr Drury has not made a correct statement in relation to that matter. He has not made a correct statement. He is wrong.

The Hon. C.J. Sumner: Drury's wrong?

The Hon. R.I. LUCAS: Drury's wrong. I said that earlier.

The Hon. C.J. Sumner: Drury's wrong. We are slowly getting there.

The Hon. R.I. LUCAS: Has that finally sunk in?

The Hon. C.J. Sumner: It is like drawing teeth, Mr President.

The PRESIDENT: Order!

An honourable member: He never asked the question.

The Hon. R.I. LUCAS: He asked the question and he has the answers. In relation to the other issues, the discussions that have been going on with the Institute of Teachers have been in relation to the policy of this Government to do a number of things regarding teacher staffing. We have a teacher staffing policy which is a result of 10 years of Labor Government ineptitude in our schools.

An honourable member: Eleven years.

The Hon. R.I. LUCAS: Eleven years of Labor Government ineptitude in our schools. Some of our very best teachers—

Members interjecting:

The Hon. R.I. LUCAS: I know that it seemed decades longer for the teachers and the students. We have a Labor Government's teacher staffing policy in our schools which includes, for example, the limited 10-year placement policy, which basically says that at the end of 10 years, no matter how good a teacher you are in a particular school, no matter what sort of record you have in relation to student performance in a particular school, and no matter how essential you are to the performance of the subjects and studies at a particular school, you will be dumped out on the scrap heap and told to go and teach somewhere else.

Even worse than that, if, for example, you have a senior chemistry teacher being paid $4 000 or $5 000 more than the highest paid classroom teacher because he or she was perhaps one of the best chemistry teachers in the State, the Labor Government not only says to that chemistry teacher, 'We will dump you out of that school and put you in another school,' but also, in some cases, 'We will not even get you to teach chemistry: we will get you to conduct health education classes, junior science classes and we will in fact get you to take relief lessons for sick teachers or teachers who are absent on various forms of leave.'

That is the sort of teacher staffing policy that this shadow Minister for Education supported for 11 or 12 years in Government. It is a teacher staffing policy which treated our best teachers like garbage and which has basically left our students in many of our schools being disadvantaged.

We said we were going to get rid of that scheme. We also said that we would like to see principals having a slightly greater say in the selection of their staff, because the former Labor Government's teacher staffing policy provided that, if you had a teacher who was absolutely essential to the program—

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: You asked me what has been discussed and I am explaining it to you.

The Hon. C.J. Sumner: Four years.

The Hon. R.I. LUCAS: No, you asked the question; listen to the answer.

The Hon. C.J. Sumner: Well, answer it.

The Hon. R.I. LUCAS: You will get the answer in large lumps. You have asked the question, and you will get the answer in large lumps.

Members interjecting:

The Hon. R.I. LUCAS: These are the issues that are going to be discussed; these are the issues that are being discussed. Mr President, what I have said and what the Liberal Government has said—

The Hon. C.J. Sumner: What about the four year right of return?

The Hon. R.I. LUCAS: We will get to that.

The PRESIDENT: Order!

The Hon. R.I. LUCAS: The Liberal Government has said that we would like to see principals having a slightly greater say in the selection of their staff. We have the situation at the moment where, if you have in your school a teacher who is absolutely essential to the programs of the particular school, and if that teacher is dumped on the 10-year limited placement scheme and sent to teach something else somewhere else, the principals of schools have very little say in the selection of a replacement teacher with similar expertise to continue the particular programs.

So, if you have a particular teacher with expertise in programs for assisting gifted and talented students and you lose that particular teacher, under the Labor Government's policy principals had a very small say in relation to the selection of a replacement staff member who had the expertise in teaching gifted and talented students and who could offer something to that particular school. We are saying that we ought to have a teacher staffing policy which gives the principal a greater say in relation to these issues.

There are a variety of other goals which we had in our education policy document and which related to the teacher staffing policies of our schools. We have said to the Institute of Teachers that we want to commence discussions on a confidential and without prejudice basis about all of these issues regarding developing a new teacher staffing policy.

The Hon. C.J. Sumner interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: As to a new teacher staffing policy, a whole range of issues exists in addition to the limited placement tenure policy and in addition to giving principals a greater say. There is the question of the country incentives policy to try to attract experienced teachers to country areas. The Labor Government's policy failed in relation to that. There will be discussions in relation to the country incentives policy and an issue I raised in the last 10 days about the five over four policy or the Ontario policy where teachers, if they work at a certain percentage of their salary, might be able to take a year's leave of absence at a reduced salary and at no additional cost to the department as perhaps another incentive to attract them to country areas. The department has already been talking and will continue to talk about the problems of staffing country areas. To answer the second and third questions—

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: I advise the Hon. Ron Roberts that we will not wind up on this at all. The shadow Minister wants to know what was being discussed and he will find out.

Members interjecting:

The Hon. R.I. LUCAS: As to the four year right of return and the percentage of contract teachers and anything like that, these are all issues that the institute has agreed can and should be discussed within the context of this round of discussions.

Members interjecting:

The Hon. R.I. LUCAS: No, it has not. The institute has not agreed to that and neither have we.

The Hon. C.J. Sumner: You were talking about it.

The Hon. R.I. LUCAS: No, we are not talking about it. I have just said to you that we are not negotiating. All these issues will need to be discussed in relation to developing a teacher staffing policy. It is correct to say that the department is authorised to discuss with the institute all of these issues that relate to developing a sensible, effective and efficient teacher staffing policy.

The Hon. C.J. Sumner: Including the level of permanency?

The Hon. R.I. LUCAS: Including the number of contract teachers—

The Hon. C.J. Sumner: Including the level of permanency?

The Hon. R.I. LUCAS: If you are talking about the number of contract teachers, yes.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: Yes. I have just said to you that on all those issues the department has been involved, and I have said so publicly previously. All these issues need to be discussed. We cannot just pick off one without looking at the others: they all relate to each other.

The Hon. C.J. Sumner: Including the question of permanency?

The Hon. R.I. LUCAS: No, including the question of the number of contract teachers, the question of the percentage of contract teachers and the agreement that the shadow Education Minister's Party entered into with the institute at the time of the curriculum guarantee: all of those issues need to be discussed in the context of developing a teacher staffing policy. As to questions 2 and 3, the department's officers are authorised to discuss those sorts of issues with the institute. Departmental officers do not go in with a predetermined policy position on those areas. They are there to discuss with the institute how we can develop a better teacher staffing policy, certainly one that is a lot better than the appalling policy that the Labor Government inflicted on schools over the past 11 or 12 years.

The Hon. C.J. Sumner: You could have said all of that yesterday.

The Hon. R.I. LUCAS: You did not ask me the second and third questions yesterday.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: The shadow Minister has been interested in the 1 800 teachers. He has now got an answer; he got one yesterday and he has got the same answer today that he was incorrect and wrong.

Members interjecting:

The Hon. R.I. LUCAS: Mr Drury was wrong and the shadow Minister for Education was wrong in this regard. That is the simple answer. I am happy to continue to respond to these questions. We intend to continue to develop a position on behalf of the department and the new Government as to what we will do. Obviously, we will have to seek further explanation from the leadership of the institute about how it interprets confidential and without prejudice discussions. I have to say that is an interesting way of interpreting confidential and without prejudice discussions, by having the Vice President writing about it in the institute journal and doing radio interviews about it.

The Hon. C.J. Sumner: It's called freedom of information.

The Hon. R.I. LUCAS: The institute has raised a number of things about its membership in the confidential and without prejudice discussions which it might prefer not to be on the public record.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: I do not know; you ask them. They may well prefer that they not be on the public record as well. It is an interesting interpretation of the notion of confidential and without prejudice discussion, and I will certainly be seeking some interpretation from the leadership of the institute as to how they intend to continue—

Members interjecting:

The Hon. R.I. LUCAS: With Claire McCarty, yes.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: Mr President, I will not be tempted into taking up the interjections. However, we will be seeking some discussion and some explanation from the institute as to how in the future it will interpret the notion of confidential and without prejudice discussions on the teacher staffing policy and, dependent on that explanation, the department and I will have to consider further our options in relation to the development of a new teacher staffing policy for our schools.

NATIONAL PARKS

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister representing the Minister for the Environment and Natural Resources a question about national parks.

Leave granted.

The Hon. CAROLYN PICKLES: Yesterday in another place the Minister for the Environment and Natural Resources tabled a document 'The Review into the Management of the National Parks and Wildlife Act Final Report, 1994'. I have publicly stated that in principle I support many of the recommendations contained in this report. In fact, I place on the record that this review into the management of the National Parks and Wildlife Act reserves was announced by the then Minister of Environment and Natural Resources, Hon. Kym Mayes, in January 1993, that the review committee presented a draft report to the Minister in December 1993 and that this is a subsequent reworking of the report that went to the former Minister of Environment and Natural Resources.

Some eminent people were on the committee: Mr David Moyle was the Chair, and there were people from the department and the conservation movement; so there was a broad cross-section of people who are interested and expert in the areas of the environment. It has had considerable support generally by the conservation movement as a good process for moving forward, and perhaps if there is a criticism of this document it might be that it is based more on realism than idealism.

Considerable media attention has been drawn to various sections of the report, and in particular the review recommended some revenue raising potential of levies in some areas which they outlined on page 202 of the report, including, for example, a four-wheel drive registration environmental surcharge. The report notes that Victoria has successfully implemented a registration surcharge on four-wheel drive vehicles. The recommendations are that an investigation into the Victorian system be undertaken with a view to its possible adoption in South Australia and that revenue so collected should contribute to the management of reserves impacted by recreational vehicles and management of public access routes in pastoral lands. Given the Liberal Party's pre-

election promise of no new taxes, can the Minister rule out any tax increases if this recommendation is implemented?

The Hon. DIANA LAIDLAW: I will convey that question to the Minister in another place and bring back a reply.

GULF ST VINCENT

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Primary Industries, a question about Gulf St Vincent research.

Leave granted.

The Hon. R.R. ROBERTS: The Gulf St Vincent prawn fishery was closed some three years ago on the recommendation of the select committee of the Lower House because of the drastic decline in catches. One of the recommendations of that committee was that scientific monitoring and research should be conducted to assist the stocks and the rate of recovery of the fishery so that consequential total catch strategies and individual catch quotas could be set before the fishery was open. After some initial trouble, this was done, and the results of that research were made available to the Gulf St Vincent prawn management committee, the Fisheries Department and the Minister. This information was also freely available to fishermen.

Following a recent survey of the fishery early this month, a decision was made to allow 13 nights' fishing. I am told that the scientific advice at that time was that two nights' fishing could be possible in selected areas of the gulf, and possibly fishing in Investigator Strait. I am advised now that an embargo has been placed on the results of the surveys. Therefore, my questions are: Has an embargo been placed on the scientific results of the survey and the reports of the Department of Fisheries? If not, will this information be supplied to all the fishermen on request and, if not, why not?

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

PARLIAMENTARY SECRETARY

The Hon. M.S. FELEPPA: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services, representing the Premier, a question in relation to the appointment of the Hon. Mr Stefani to the position of Parliamentary Secretary.

Leave granted.

The Hon. M.S. FELEPPA: I raise this question with great reluctance because much has been said, and also not to cause any more uneasiness to my colleague, the Hon. Julian Stefani. My colleague—

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order!

The Hon. M.S. FELEPPA: My colleague the Leader of the Opposition has had cause to ask a number of questions already in this place in recent months in relation to the unofficial appointment of the Hon. Mr Stefani to the position of Parliamentary Secretary to the Minister for Multicultural and Ethnic Affairs. From his first question, the Leader of the Opposition made it quite clear that he wished to question whether the appointment has been made properly in accordance with the constitution of South Australia. I must admit that the questions that have been asked have caused me some embarrassment because of the apparent insensitivity of the Government in the manner in which it carried out this hamfisted appointment.

Further, the Premier must have been aware that the appointment of the Hon. Mr Stefani to this token position is simply an insult to the entire ethnic community in South Australia, and I am angry, as well as surprised at my colleague, that he did accept the position considering the circumstances. Following the election of the Liberal Government in December, there was a legitimate expectation that this time around one of the four Liberal members of this Parliament from a non-English speaking background would be properly appointed to a senior position within the executive Government. To this extent, I believe that the Hon. Mr Stefani could have been considered for such a position, but the way he has been appointed, to an almost meaningless position, has infuriated me and many within the ethnic community.

Members interjecting:

The Hon. M.S. FELEPPA: Let me say this to the interjection of Mr Davis. For far too long the ethnic community in this State has been recognised only for its contribution to culture and lifestyle. Is that correct? It should now be recognised for its contribution to the whole society through the appointment of one of its representatives in this Parliament to a senior executive role in Government.

Therefore, my plain question to the Minister representing the Premier is: Will the Premier take into account the feelings of the ethnic communities in South Australia and immediately remedy this curious situation by appointing the Hon. Julian Stefani in a constitutionally correct manner to a senior position within the executive level of the Government?

The Hon. R.I. LUCAS: Well, Mr President, I am deeply hurt and offended that the Hon. Mr Feleppa has in effect cast some aspersions, I guess, on my ethnic origins. As the Hon. Mr Feleppa knows, I come from a non-English speaking background, and he was quite critical of the Liberal Government for not appointing people from a non-English speaking background to senior positions in the Liberal Government. The Hon. Mr Feleppa knows, but he chose not to say in the Chamber—

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: Well, I would have thought that Leader of the Government in the Legislative Council and Minister for Education and Children's Services is certainly not an insignificant position in the Liberal Government. The Hon. Mr Feleppa well knows, as he has discussed it with me, that I was born in Japan. Whilst I only spent a little time there, on any definition I would qualify in the terms of the framing of the question he has put. As I said, I am deeply offended that the Hon. Mr Feleppa has framed his question in that way. I will refer the question to the Premier and bring back a reply but, as I said yesterday to the Leader of the Opposition, the Hon. Mr Stefani has been appointed to a very significant position. He is doing a vast amount of very significant and influential work for not only the ethnic communities in South Australia but for the South Australian community in the particular area in which he has been asked to work by the Liberal Government.

The Hon. C.J. Sumner: Appoint him properly.

The Hon. R.I. LUCAS: The Opposition is talking about questions of process. In the Liberal Party we are talking now about the practical effects of substance as to what is occurring. I am telling all members that the Hon. Mr Stefani has been appointed to a significant position—

The Hon. C.J. Sumner: He hasn't been appointed.

The Hon. R.I. LUCAS: He has been appointed—

The Hon. C.J. Sumner: By whom?

The Hon. R.I. LUCAS: He was appointed by the Premier. He has been appointed to a significant position and is undertaking a significant amount of influential work on behalf of the whole South Australian community but, in particular, members of the ethnic communities in South Australia. In relation to the questions of process of appointment, which seem to be the questions that have riddled the mind of the Leader of the Opposition and others in this Chamber for the past two or three months, I said to the Leader of the Opposition yesterday that an answer was imminent from the Premier in relation to this issue. All I can say to the Leader of the Opposition again is, be patient.

Members interjecting:

The Hon. R.I. LUCAS: I was hoping he would hold his breath, but he did not. He went red and that was the end of it. I ask the Leader of the Opposition to be patient. An answer is imminent from the Premier on this particular question of the process of appointment.

SALISBURY COUNCIL DUMP

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Housing, Urban Development and Local Government Relations, a question about contamination of a Salisbury development site.

Leave granted.

The Hon. M.J. ELLIOTT: St Kilda residents lobbied for years before they succeeded in having the Salisbury council's Coleman's public tip in St Kilda closed in 1986 after operating complaints. The residents now have a new battle on their hands following the council's purchase of an adjoining area, which was the site of a liquid toxic waste dump. The local action group has contacted me with concerns that the Waste Management Commission has allowed the council to keep its licence for the existing site, and now both sites are being used for dumping council garbage.

I understand the Salisbury council was given approval by the State Planning Commission for continued use of the site for waste dumping, after seeking Crown Law advice. The Waste Management Commission then issued a licence for the site, which I am told includes a former liquid waste dump. I have been told that the council has permission to dump domestic waste up to seven metres high on the site but will excavate three metres into the land before dumping, to minimise the visual impact. Several councils in Adelaide's northern area may be using the area to dump their domestic waste before the land is rehabilitated. My questions to the Minister are as follows:

1. Does he know why the planning approval for the dump was granted by the Planning Commission, and does he concur with that consent?

2. Were local residents consulted at any stage, and how many councils will be using that dump site?

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

ARTS BOARDS

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister for the Arts a question about board vacancies.

Leave granted.

The Hon. ANNE LEVY: Considerable concern has been expressed to me about vacancies on various arts boards, which the Minister has not filled, seems to be taking no action to fill, and is providing no response when suggestions are made to her regarding these board vacancies. I can point out that there is a vacancy on the Museum Board, which has existed for five months. A vacancy exists on the State Opera of South Australia Board, which has also existed for five months. These vacancies occurred as resignations during the caretaker Government period. It was obviously most inappropriate at that time to make such appointments without consultation with the then shadow Minister, who yesterday expressed annoyance at having had to be contacted on matters during that period, and certainly I did not contact her regarding those two vacancies, which are still there, five months later.

Vacancies on three country arts boards have existed since early this year, where various members of those country arts boards have resigned. For business or professional reasons, they have moved from one area to another and consequently are no longer eligible to be members of the country arts board to which they were appointed because they no longer live within the areas. One of the country arts boards has three vacancies, another has two, and another has one. Particularly in the case where three vacancies exist it is very difficult to obtain a quorum for a meeting to proceed.

I understand that suggestions have been made to the Minister in relation to filling board vacancies but, I repeat, there has been no response from the Minister, and no appointments have been made. When will the Minister make appointments to these boards and fill these longstanding vacancies so that the various boards can adequately and competently resume the function for which they are appointed by the Government?

The Hon. DIANA LAIDLAW: All boards are adequately and competently filling their functions the present. In respect of the three country arts boards, it was only two weeks ago that I received suggestions from Mr Ken Lloyd. I had sought suggestions from the trust itself in relation to filling board vacancies. The Chair, Marjorie Fitzgerald, had seen me two months earlier about this matter. At that meeting Mr Lloyd undertook, as did the board, to provide me with suggestions. I received those suggestions two weeks ago. I instructed my office to contact various people within those areas to see whether they would be prepared to serve. I also spoke with a couple of members of Parliament and in each instance each of the nominations from Mr Lloyd was fully endorsed.

The Cabinet submission has been prepared, signed and will be considered next week, I understand. I acted expeditiously once I received advice from the trust. So, in terms of saying 'no response', one could accuse others but not me for not responding to this matter. In terms of the Museum Board, I am aware of the vacancy but there has been no call from the board for that vacancy to be filled at this time.

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: No, it does not, but that was certainly part of the discussion I had earlier. That matter is being attended to. In terms of the State Opera, that matter will be considered in the coming week.

The Hon. Anne Levy: Five months later?

The Hon. DIANA LAIDLAW: Yes.

GRAND PRIX BOARD

The Hon. A.J. REDFORD: My question is directed to the Attorney-General, representing the Minister for Tourism. What leave and other entitlements are due to the members and staff of the Grand Prix board and, secondly, will the Minister ensure that all such entitlements are taken as and when they fall due, and that any accrued entitlements are taken as soon as reasonably practical?

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

MOUNT BURR SAWMILL

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Primary Industries, a question on the future of the Mount Burr sawmill.

Leave granted.

The Hon. T.G. ROBERTS: Last week in the South-East a two day strike was held by the Australian Timber Workers Union to bring to the attention of the Minister for Primary Industries a problem connected with the future of the Mount Burr mill.

The Minister made statements on the radio and in the press that he would not talk to the union representatives but he would talk directly to the workers to allay their fears about the future of the mill. I must say that he carried out that promise and duly met the employees at Mount Burr, including the assistant secretary of the union, and some promises were made which confirmed the promises that he had made prior to the election about keeping the Mount Burr mill open.

Job opportunities for people in the South-East as well as in other country areas are limited, and many people are concerned about the future of the Mount Burr mill and the role it will play in Forwood Products' future plans. The answers that the Minister gave cleared up some doubt in relation to the mill's remaining open, but they did not allay the fears of workers and their families in that town about the overall future of the mill in relation to Forwood Products' integrated sawmilling operations. My questions are:

1. When will the forestry review be completed, because that is important in relation to the future of the Mount Burr mill?

2. Will the mill maintain its current role in Forwood Products' plans?

3. Is there any hope for expansion in future?

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

CASEMIX

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Health, a question regarding the draft document entitled, 'Casemix Funding 1994/95: A Hospital Service Improvement Strategy'.

Leave granted.

The Hon. SANDRA KANCK: It is clear from this draft document put out by the Health Commission that at least some of the cost savings on health will be met by home carers and, indeed, the patients themselves either by being discharged too early or by being sent to inappropriate places of care. I quote from the draft document:

There is widespread support for the introduction of casemix funding for South Australian hospitals. Some community groups, while supporting the concept, have expressed concern regarding the potential for inappropriate discharge.

It is recognised, however, that early discharge does not have to have a negative effect particularly if appropriate home support is provided and consideration is given to the needs of carers.

The concern is for those people who might be discharged inappropriately. The Health Commission is committed to the prevention of inappropriate discharge.

During my stay in the Queen Victoria Hospital last week I spoke to a number of doctors and nurses about casemix funding, and all of them expressed concern that patients would be sent home before they were ready. They were particularly concerned about those patients going to homes where there would not be adequate care and support. Also, a social worker, who has been in contact with my office, has expressed concern—a concern which is shared by her colleagues—about what will happen to some people under this system, particularly the elderly. My questions to the Minister are:

1. Who will determine whether a prospective discharged patient has appropriate home support, and on what basis will this be assessed?

2. What steps will be taken to ensure that patient care at home will not cause stress on the household?

3. Under casemix funding will the hospitals allow families to defer discharging patients from the hospital system, as is often the case now, should suitable care not be found either in the home or, in the case of the aged, in a private nursing home that has an acceptable standard of care?

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

MAGISTRATES COURT

In reply to **Hon. ANNE LEVY** (22 March).

The Hon. K.T. GRIFFIN: There are a number of reasons why there are separate facilities in the temporary Adelaide Magistrates Court.

1. It has always been a tradition to ensure the safety of the judiciary by providing them with separate facilities so that they did not have to encounter the possibility of coming into contact with offenders likely to appear before them in the body of the court.

2. In the proposed new Magistrates Court Building the Magistrates toilets will, in fact, be on a floor separate from the registry staff. This is because the design of the building is such that Magistrates occupy different floors to the offices of registry staff. The Magistrates' support staff however, will occupy offices adjacent to Magistrates. They will in fact have the same toilet facilities available to them as the Magistrates.

3. Recent events have shown that even officers of the court (this can include a range of people who have business with the courts) may pose a threat to security and it would seem entirely appropriate for the Courts Administration Authority to ensure the safety of the judiciary by organising separate facilities where possible.

4. It should be noted that if a staff member needs to use the conveniences in any court location then that is available to them.

5. The issue of child care facilities has been addressed but not resolved due to budget constraints and limited resources. To staff any child care centre would necessitate two people: one would need to be in attendance at all times. This problem of child care cannot be restricted to the Central Business District. Busy suburban courts such as those situated at Port Adelaide, Holden Hill, Elizabeth and Christies Beach would also require a similar facility with obvious resource implications.

It should also be noted that the Courts Information and Community Access Service (CICAS) is in attendance each morning and often assist young parents and their children where they can. They are all volunteers who attempt to provide assistance where possible to ease the stress of attendance at court. The honourable member is reminded that occasional child care is provided at a number of locations of the Children's Services Office pre-schools and that young

parents can avail themselves of the services by booking through a number of local pre-schools and community centres.

ADELAIDE FESTIVAL

In reply to **Hon. ANNE LEVY** (10 March).

The Hon. DIANA LAIDLAW:

1. The Adelaide Festival of Arts' advertisement thanking sponsors at the conclusion of the Festival included a reference to the Government of South Australia.

2. I have written to the Chief Executive Officer of Qantas outlining my disappointment that Qantas did not seek to maximise its sponsorship of the Festival to inflight passengers.

As the Festival is a national asset, steps will be taken to encourage Qantas to sponsor, and promote, future Festivals.

HINDMARSH ISLAND BRIDGE

In reply to **Hon. CAROLYN PICKLES** (23 March).

The Hon. DIANA LAIDLAW: I have been advised by the Department of Transport that their traffic counts indicate the ferry to Hindmarsh Island carries approximately 350 000 vehicles per year. The department does not have figures on the number of visitors, excluding residents, that cross to Hindmarsh Island each year.

MULTIMEDIA AGENCY

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister for the Arts a question about the multimedia agency.

Leave granted.

The Hon. ANNE LEVY: Some time late last year representations were made to me by a number of arts organisations which felt that use of the multimedia agency for all their advertisements had the potential to penalise arts organisations and make them worse off rather than better off, which was the intention when the Government appointed the multimedia agency. The request came from a number of arts organisations, and the Cabinet then decided that use of the multimedia agency was not intended to penalise anyone—it was to assist organisations—and that exemptions could be granted where it was detrimental to the organisation.

I understand that the South Australian Country Arts Trust has been granted an exemption from use of the multimedia agency but that no other arts organisations have been granted this exemption. I ask the Minister:

1. Did the making of this exemption involve breaking any contract with Young and Rubicam and, if so, what are the financial consequences either to the Country Arts Trust or to the Government?

2. Why has only the Country Arts Trust been granted an exemption and not any of the other arts organisations which had approached me regarding exemption from use of the multimedia agency?

The Hon. DIANA LAIDLAW: No exemption has been granted to the Country Arts Trust. Liberal Party policy indicated that we would be seeking such an exemption. I inserted that provision in the policy at the Party's request for the same reasons and representations as the honourable member, as Minister, made to her Cabinet. So, no exemption has been granted. Such an exemption would break contractual arrangements with Young and Rubicam entered into by the former Government, and we are not prepared to do that.

In addition, the Young and Rubicam contract expires in June or July this year. The Government has asked that the issue of exemption, which I have indicated to the Treasurer I would wish for all arts organisations, be considered in the light of an overall policy review of how we conduct such matters in future. That review is being conducted through State Supply and the Treasurer has not yet received it.

STIRLING SIGNS

The Hon. R.D. LAWSON: I move:

That the District Council of Stirling by-law No. 42 concerning movable signs, made on 20 December 1993 and laid on the table of this Council on 10 February 1994, be disallowed.

This by-law, as its name suggests, relates to movable signs on streets and footpaths. It includes provisions for the issuing by the District Council of Stirling of licences for movable signs. The by-law also deals with other matters relating to such signs.

Section 370 of the Local Government Act empowers councils to prohibit and to regulate movable signs, and many South Australian councils have exercised this power. However, section 370 of the Local Government Act does not specifically authorise licensing of movable signs. In this respect the section can be contrasted with other provisions which do specifically authorise licensing of certain other matters. This matter was considered—

Members interjecting:

The PRESIDENT: I ask the two members in front of the honourable member to please desist from talking.

The Hon. R.D. LAWSON: This matter was considered by the Legislative Review Committee, which took the view that the by-law was not authorised by section 370 of the Act. That view is one which accords with a legal opinion obtained by the Local Government Association of South Australia.

If it is considered that the licensing of movable signs is an appropriate response to the undoubted problems created by this form of advertising, the committee considers that the Local Government Act should be amended to make specific provision for that licensing. In the meantime, if this motion is carried, the District Council of Stirling will be free to adopt the measures which many other councils have adopted in relation to movable signs but without the offensive provisions relating to licensing. I commend the motion to the House.

The Hon. G. WEATHERILL secured the adjournment of the debate.

MURAT BAY SIGNS

The Hon. R.D. LAWSON: I move:

That the District Council of Murat Bay by-law No. 16 concerning movable signs, made on 12 January 1994 and laid on the table of this Council on 15 February 1994, be disallowed.

The remarks I made a moment ago in support of the motion relating to the disallowance of the District Council of Stirling by-law apply equally to that of the District Council of Murat Bay, a by-law which is in identical terms.

The Hon. G. WEATHERILL secured the adjournment of the debate.

RACISM

The Hon. CAROLYN PICKLES: I move:

1. That this Council condemn the racist activities of certain elements of our community and that it call on all South Australians to join in this condemnation of racism in our society.

2. That a message be sent to the House of Assembly requesting its concurrence thereto.

In moving this motion in these very general terms, I hope that all members in both Houses can support this Parliament's making a strong statement publicly that racism in our community will not be tolerated.

We have in recent weeks seen a lot of publicity about racial violence and racial tensions, and the media has played quite a prominent role in highlighting some of this racism.

The first instance of this behaviour occurred in Rundle Mall, where a group of young males who were dressed in some rather bizarre so-called Nazi uniforms, which displayed symbols of Nazi supremacy, ran amuck in Rundle Mall. Rather than referring to them as an organised political group, one might rather say that they were some elements of thuggery in our society which unfortunately seem to prevail and which use the insignia of Nazism to portray some elements of support for that organisation, and I fail to understand that.

The second incident over a period of weeks has been highlighted by the media, and that was a demonstration that would be taking place by a group called National Action which was demonstrating against the proposed racial vilification legislation in the Federal Parliament. Subsequently, an organisation called the Anti-Racist Alliance also decided to have a demonstration on the same day against the actions of the organisation National Action. Some people may question the wisdom of having a demonstration on the same day, but I am not going to buy into that argument. The Premier, Mr Brown, had a view about that matter with which I do not necessarily agree. I do not have a problem with people, no matter who they are, having a right to express their views in a free society, as long as they do not break the law or commit acts of violence, even though I may abhor what they have to say. However, I believe there is an element in this organisation which has been condemned for acts of violence.

The role of the media in this whole issue of racism is an interesting one and was reported on in a very interesting document that I urge all members to look at. The document to which I refer is the 1991 report of the National Inquiry into Racist Violence in Australia and was prepared by the Human Rights and Equal Opportunity Commission. It noted in its report on the media that:

> People opposed to racism have divergent views about the desirability of using the media to publicise racist attacks. Strong arguments can be made both for and against publicity. Those against publicity argue that it does not achieve positive results and that change can only be achieved through behind the scenes pressure on politicians. They contend that media coverage gives perpetrators of racist violence what they want: a platform to broadcast their views. As one anti-racist group has pointed out:
>
> > It can give [extremist groups] a political legitimacy which is disproportionate to their size and free advertising for membership. Publicity can encourage 'copycat' crimes and may further endanger the victims through reprisal attacks.
>
> Those in favour of publicity believe that it gets results by galvanising public opinion. Media exposure therefore:
>
> > . . . reveals an aspect of our society that should not be concealed, and it is patronising and ultimately undemocratic to attempt to do so. . . It is unfavourable for perpetrators of the violence for it shows that their victims refuse to be silenced by fear. It can be an empowering experience for those who are targeted by showing them they are not alone and providing the impetus for group protective action.
>
> Groups who regularly deal with different sections of the media tend to be fairly cautious:
>
> > We avoid journalists and presenters who appear to want only a 'quick hit' of titillation or controversy and are unwilling to thoroughly investigate the issue. We have learnt to withhold cooperation unless the journalists are prepared to take the time to be briefed about the history and activities of racist and neo-Nazi groups. We know from bitter experience that without this effort they are inevitably ill-prepared to confront the polished performance that the neo-Nazis can produce for public consumption.

The report goes on to note:

> On balance, the evidence would suggest that using the media can be beneficial.

I share that view. Interestingly, this morning on Radio 5AN Dean Jaensch put forward three points on how to deal with racist organisations. First, that we could ban them altogether. I disagree with that point, as does Mr Jaensch, because I do not believe it would stamp out the problem. Also, it involves the violation of freedom of activity and the right to demonstrate and, as long as these organisations observe the law and do not act in a violent manner, I believe that people have the right to demonstrate. I believe that banning such groups would drive them underground and so they would be harder to contact and control.

Mr Jaensch's second proposition is that we can ignore them and hope that they will go away. Perhaps that might be Mr Brown's opinion, although his views were not necessarily explored widely in the media and I hope that, if the motion passes this Council and goes to another place, Mr Brown will put his views on the record and that he will clarify what he really means. I disagree that we should ignore racist elements in our society. The rise of Nazism in Germany was ignored for many years and we can look back on the result of ignoring the emergence of potentially violent and horrific situations that ended in the Second World War, along with the persecution of the Jewish people. In those circumstances, racists unfortunately win by default.

Mr Jaensch's third proposition is that we should confront racists and oppose them publicly, that we should organise anti-racist rallies to demonstrate that in our community there is complete unacceptance of racist attitudes. This is the view that Mr Jaensch supports and it is the one that I agree with. I believe it is not possible to ignore these racist elements. We have to confront them and show them that the majority of the community do not accept such behaviour.

As to the rally on Saturday, unfortunately I was not able to attend but I understand some members in this Chamber did attend and I believe that it was a peaceful demonstration. I am not necessarily saying that I agree with that kind of confrontation, as I believe the confrontation was more in the mind than in reality. People have divergent views about that. Some people believe that demonstrating on the same day is a confrontation and they would probably support attending rallies on a different day. Probably there is agreement of support for an anti-racist rally.

The Hon. A.J. Redford interjecting:

The Hon. CAROLYN PICKLES: I will go on to the subject of the police. I understand that the police behaved in an exemplary manner and were a credit to South Australia. I am glad to see that this was the case. Clearly, in this instance there were no acts of violent demonstration. That is also a credit to the organisers of the anti-racist rally on the other side of the road. Many of those people are known

personally to me and are people who have held these views for many years. They are not views that they just picked up overnight and have run with: they are people in our community who are serious and who will not tolerate this kind of activity. I refer also to the *Advertiser* editorial. I would like to read some extracts to the Council, but I seek leave to have incorporated in *Hansard* without my reading it the entire *Advertiser* editorial.

The PRESIDENT: Is it purely statistical?

The Hon. CAROLYN PICKLES: It is the *Advertiser* editorial.

The PRESIDENT: That is not acceptable for inclusion in *Hansard* without being read.

The Hon. CAROLYN PICKLES: In that case, I will read it to the Council. The Editorial Opinion in the *Advertiser* of 11 April 1994 states:

Spreading poison in the sun

The weekend National Action rally at Prospect was a noisy, expensive media event—expensive because of the police who had to be deployed to keep the peace. As a result of the slogans they mouth and the threatening uniforms, insignia and body decoration they affect, these crude hooligans are being depicted as the foot soldiers of a new right wing extremism.

There are the inevitable comparisons with the Germany of the 1930s and the skinheads of parts of the Europe of the '90s.

This apparently has been given substance by two unrelated events: the assaults by a group of skinheads in Rundle Mall just over a fortnight ago and the fairly strong showing by the Australians Against Further Immigration group at the Bonython Federal by-election. But the utterances and behaviour of those clustered around the National Action banner at Prospect showed they have only one attitude which could even loosely be called political. They are pro-violence. This makes them primarily a police problem, especially when they gather in groups.

But though these local *Romper Stomper* neo-Nazis have nowhere near the same significance as in Europe and, of a different order South Africa, they cannot be dismissed out of hand. While the vast majority of people will find them exceptionally ugly—and be sickened by their taste for that vilest of modern symbols, the swastika—a few will find them pervertedly romantic.

They are the face of alienation, a product, in part, of deep and long recession. Tiny in number in a society of the complexity and ethnic mix of Australia, what they stand for is the worst kind of threat. Their racism—anti-Asian, anti-black, anti-semitic, is as toxic as any preached in the United States, South Africa, the former Yugoslavia and the other homes of hate and fear. This gives the press and media a special role and responsibility, one which the *Advertiser* is the first to acknowledge. These bovver boys should not be given the shock-horror publicity they crave and revel in. But nor should they be ignored to the point where people in authority can complacently complain there is no threat, even that neo-Nazis do not exist here. There already have been anti-Asian and anti-semitic attacks in Australia. These people daub their poison in graffiti across the land.

Ignore them entirely and they will not go away. Treat them as real and show them up for what they are—marginalised, pathetic but a ghastly threat—and their fringe movement can be kept in perspective. This is why the spirited counter-demonstration by the cluster of democratic groups opposed to this kind of thuggery deserves a round of applause: the Premier, Mr Brown, was wrong and myopic in arguing the opposite.

This was not the birth of the Adelaide Reich—far, far from it. But nor can it entirely be dismissed as a shouting match in the sun by a few people in fancy dress and borrowed hatreds. It was small. But it happened. It is important that the rest of the community knows about it and what it stands for. And it was heartening that the inherent decency of South Australia was shown up by the people who went along to tell these misguided thugs how alien they are.

Many members in this place would concur with some of the sentiments contained in the *Advertiser* editorial. It is not often that I agree with the *Advertiser* editorial, but this is one occasion where I do. In this Council we have a number of members who come from a different background and racial society: the Hon. Mr Lucas, as he already mentioned today, has Japanese parentage and was born in Japan; the Hon. Dr Pfitzner is originally from Singapore and has a Chinese background, the Hon. Mr Stefani is from an Italian background, as is the Hon. Mr Feleppa; the Hon. Mr Crothers has an Irish background; the Hon George Weatherill and I are new Australians but born in the United Kingdom; and the Hon. Anne Levy had a French father who was also Jewish.

So, I think that we have a very good sprinkling of a racial and ethnic mix in this place. Some people have come from backgrounds where violence has occurred in the past, and as migrants we have sought a society where this will not occur again. We will not tolerate it. I hope that members can support this motion and that they will take the opportunity to speak and make their views known, so their views can be publicised, and I hope the media will publicise the views of the members in this place so we as leaders in the community can have our views widely spread around without fear of any reprisals. I say that advisedly: I have been told that I can expect some reprisals. I certainly hope that is not the case. I do not fear reprisals and if they occur I will bring the matter back to this place and we can all discuss it later. We have to make a statement that the Parliament of South Australia, representing the people of South Australia, will not tolerate racism or racial violence, and I urge all members in this place to support the motion.

The Hon. M.S. FELEPPA secured the adjournment of the debate.

TRAFFIC CONTROL DEVICES

Order of the Day, Private Business, No. 4: Hon. R.D. Lawson to move:

That the regulations under the Road Traffic Act 1961 concerning The Code (Traffic Control Devices), made on 4 November 1993 and laid on the table of this Council on 10 February 1994, be disallowed.

The Hon. R.D. LAWSON: I move:

That this Order of the Day be discharged.

Order of the Day discharged.

INDUSTRIAL RELATIONS (OUTWORKERS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 23 February. Page 125.)

The Hon. K.T. GRIFFIN (Attorney-General): The Bill seeks to extend the definition of outworkers, who might then become subject to an award, to those who work on processed or packed articles or materials, those who perform any clerical service and those who solicit funds, sell goods or services, carry out advertising or promotional activities by telephone or perform any journalistic service or public relations service. The issue has come up previously, when the previous Government included a number of provisions in its Bill of 1992. The present Government takes the view that the Bill will not be of any assistance to outworkers, and the Bill's approach to these issues is to be superseded by the Government's own industrial relations legislative program.

There is certainly a range of concerns about the extension of the definition of outworkers. I have already referred to those on the last occasion that this subject was debated in November 1992, but it will not hurt to reiterate some of these concerns. A number of charitable organisations solicit for donations on the telephone. I think that at some time or another everyone in this Chamber would have had contact on

the telephone from a person who was canvassing, whether it be to make a donation to an association or to purchase guide dog tea-towels, calendars or a variety of other products or possibly even to buy lottery tickets. Some of these organisations engage their own staff as employees, who come into the premises and make telephone calls from those premises rather than from home, but others are given a batch of names and asked to ring from home. Their telephone costs are reimbursed and they are employed on a contract basis. They are the sorts of persons who would be caught by this legislation, whether they are soliciting funds, offering services, selling goods or simply carrying out advertising or promotional activities. A range of activities undertaken by telephone is caught by this proposed extension to the definition of outworker.

I remember that on the last occasion I spoke on this issue I referred particularly to those who perform journalistic or public relations services. Many freelance journalists work from home, submit their articles in newspapers, magazines and other publications and are paid for the articles they present. I do not think that in any way they could be regarded as employees, but rather, they are independent contractors, and I think many of them would be rather concerned if they learnt that they were regarded as employees rather than as independent freelance journalists. Under this Bill, not only those contributing articles are involved but also it may extend to a press or magazine artist or photographer. A wide range of activity is undertaken on a freelance basis, and whether it be journalism, artistry or photography, it may well be caught by this legislation. Any work of a kind performed in or associated with public relations is to be caught, so a person who is a graphic artist or who is engaged to set up a set for filming or anyone undertaking any function in relation to public relations services is likely to be caught as an outworker where they work on a contract basis.

On a previous occasion and also recently, I have had some discussions with people engaged in public relations activities, and they make the observation that their whole business is focused on providing work in the community away from their own premises, and not necessarily to people who have established office or business premises. That work is on a contract basis to individuals who provide a service. That can have significant ramifications for those businesses as well as for the customers they service.

Those who have read even a little about the technological and electronic age will recognise there is a growing emphasis on people undertaking computing type work, whether it is programming or other work, from home rather than from fixed office premises. There is some concern about those who perform clerical services. The definition of clerical service is very wide, including typing, administrative or the sorts of computer based duties to which I have already referred. This means that a whole range of people may be brought within the definition of 'outworker' and therefore will be liable, not only as the subject of an award which will have its own repercussions and consequences, but also obviously to be the subject of unionisation.

The Government has given a lot of careful consideration to the situation of outworkers, recognising that there are areas of concern in relation to that group of people performing work, and believes that, in its new Industrial and Employee Relations Bill, it will be able to deliver to these people a far more effective and accessible mechanism for dealing with their circumstances or grievances than proposed by this Bill. In fact, the Industrial and Employee Relations Bill will supersede the proposals contained in this Bill and will provide better protections and a simpler system to use.

It is important to refer to a number of those protections. There will be an expanded definition of 'outworker' to include clerical work at home; the establishment of the office of the Employee Ombudsman, which will be accessible to all outworkers; powers of investigation by the employee ombudsman into outworker contracts: legally enforceable rights if the outworker is an employee; and obligations on the employee ombudsman to report annually to the Minister on the conditions under which work is carried out by outworkers. As I have indicated, the Bill that is currently before the Council does little for outworkers but continue a model of interference with people's choice to be a subcontractor and a model for hindering incentive and entrepreneurial effort.

I would assert that the proposal is an outdated response which merely entrenches the rigidities of the present system by locking outworkers into the inflexible award framework. The Bill is outdated and restrictive. I do not think it really deals effectively with the issues for outworkers and it does stand in stark contrast with the flexibility and choice which are central themes in the Government's new legislative program for industrial relations. That Bill, the Industrial and Employee Relations Bill, is presently being debated in the House of Assembly. I would expect that we will receive it, if not this week, early next week, and it will be the subject of debate in this Council. I would think that the preferable course to follow is that, if the honourable member wishes to proceed with a consideration of the position of outworkers, it would be appropriate for her to move an amendment and debate the issue at length on that Bill rather than this private member's Bill.

So, my proposition is that further consideration of this Bill be deferred and that the focus in relation to outworkers, which the honourable member wishes to place upon it, be addressed on the major piece of legislation which we will be considering in the near future. What comes of the debate on outworkers remains to be seen, but certainly it is an issue that can be addressed appropriately at that time. It is for that reason that I wanted to at least put on the record, for the benefit of the Hon. Anne Levy, the view of the Government in relation to this Bill, not formally oppose it at this stage but suggest that it is something which can be addressed in the very near future on a major piece of Government legislation. It is for that reason that I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO) BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Criminal Law (Sentencing) Act 1988, the Director of Public Prosecutions Act 1991, the Jurisdiction of Courts (Cross-vesting) Act 1987, the National Crime Authority (State Provisions) Act 1984, the Subordinate Legislation Act 1978, the Supreme Court Act 1935 and the Wrongs Act 1936. Read a first time.

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

That this Bill be now read a second time.

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

Criminal Law (Sentencing) Act 1988

Recently, the Crown Solicitor has been asked to give advice on a number of matters where there has been a mistake

made by the sentencing judge in imposing a sentence or non parole period. The Crown Solicitor is of the view that the only options are to imply into the sentencing remarks words to give effect to the judge's intention or to take the matter to the Court of Criminal Appeal.

It would seem to be a waste of resources to lodge an appeal where an administrative error has been made in sentencing. Rather it would be preferable if the Act allowed either the Director of Public Prosecutions or the defendant to call the matter back on before the sentencing judge.

Therefore the Bill amends the Act to enable the Director of Public Prosecutions or a defendant to call a matter back on before a sentencing judge where an administrative mistake is discovered in the sentence.

Recent amendments to the *Criminal Law (Sentencing) Act* provide for a court to order the disqualification of a driver's licence or the suspension of a vehicle's registration for the non payment of a court fine relating to the use of a motor vehicle. Following an order by the court, the Registrar of Motor Vehicles is required to issue a notice advising of the disqualification or suspension.

Amendments proposed in the Bill provide for the introduction of fees for the issue of the disqualification or suspension notices. The fees will be set by regulation at $19.

A minor amendment is also made to the definition of "appropriate officer " to reflect the change in name from Clerk of Court to Registrar.

Director of Public Prosecutions Act 1991

By virtue of having primary responsibility for the operation of the system of administration of justice, it is the Attorney-General who is seen as the principal prosecuting authority for contempt of court. It is clear that the Director of Public Prosecutions can institute proceedings for contempt of court by way of information for trial by jury but contempt proceedings are usually instituted by *inter partes* summons under the Supreme Court Rules. It is not clear that the Director of Public Prosecutions has power to institute contempt proceedings in this way.

Since the office of Director of Public Prosecutions was established to insulate criminal prosecution decisions from the day-to-day concerns, political and otherwise, of the Attorney-General, it seems logical to include all types of contempt of court proceedings within the proceedings which the Director is empowered to institute.

Empowering the Director of Public Prosecutions to institute contempt proceedings will not derogate from the Attorney-General's traditional power to institute proceedings, which will subsist concurrently with the power vested in the Director.

Jurisdiction of Courts (Cross-vesting) Act 1987

The *Jurisdiction of Courts (Cross-vesting) Act 1987* established a scheme for cross-vesting of jurisdiction between Federal, State and Territory courts. The Act is complemented by reciprocal legislation in the Commonwealth and each State and Territory. The Australian Capital Territory has recently enacted such reciprocal legislation.

Part 3 of the Bill amends the South Australian principal Act to reflect the fact that the Australian Capital Territory now has its own legislation dealing with cross-vesting.

National Crime Authority (State Provisions) Act 1984

The Chairperson, National Crime Authority, has recommended amendments to the *National Crime Authority (State Provisions) Act* to bring the legislation up-to-date with the Commonwealth *National Crime Authority Act*.

The National Crime Authority has conducted a review of the legislation in each jurisdiction and has identified amendments to the *National Crime Authority Act* that have not been picked up in underpinning legislation. The authority has identified a number of miscellaneous amendments required to the South Australian legislation.

The most significant amendments relate to the insertion of new sections 18A and 18B. Section 18A will provide that a member of the authority issuing a summons or notice may include a notation to the effect that disclosure of information about the summons or notice is prohibited except in certain circumstances. Section 18B creates an offence if disclosure is made contrary to the notation.

The other amendments to the Act are largely of a procedural nature.

Subordinate Legislation Act 1978

Section 10(3) of the *Subordinate Legislation Act* currently provides:

> Except as is expressly provided in any other Act, every regulation shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament is in session, or, if Parliament is not then in session, within fourteen days after the commencement of the next session of Parliament.

A session of Parliament is fixed by the Governor pursuant to section 6(1)*(a)* of the *Constitution Act 1934* and the session continues until Parliament is prorogued. On a number of occasions during a session of Parliament, the Houses of Parliament may be adjourned for periods greater than fourteen days. It is necessary for the House to be sitting to enable a regulation (which includes local government by-laws) to be laid before it. There is no procedure specified in legislation or standing orders which enables regulations to be laid before a House of Parliament other than when the House is actually sitting.

To overcome this problem, it is proposed to amend section 10 to provide that regulations must be laid before the House within six sitting days. Six sitting days corresponds approximately to the present fourteen days.

The Act is silent as to the effect of non-compliance with its provisions, whether because Parliament, although in session, has not sat within the required fourteen days or because regulations have not been forwarded to Parliament to be tabled. The case law is inconclusive as to whether non-compliance with section 10(3) leads to the invalidity of the regulation or by-law.

The legislation should make it clear whether non-compliance invalidates a regulation. There are arguments in favour of providing either that the regulations are invalid or that they are not. If regulations are to be invalid for non-compliance, they may be subject to challenge on the ground that they were not laid before Parliament as required by the *Subordinate Legislation Act*. If regulations are not to be invalid for non-compliance, then there could be regulations on the statute book which the Houses of Parliament have not had the opportunity to scrutinise and disallow.

Differing approaches have been taken in various Australian jurisdictions. The Commonwealth *Acts Interpretation Act*, for example, provides that if any regulations are not laid before each House, they cease to have effect. In New South Wales and Victoria, failure to comply does not affect the validity of the regulations. In Victoria, the Legal and Constitutional Committee may report the failure to both Houses and the regulations can be disallowed after each House passes a resolution to that effect within twelve days after the notice of the resolution.

The Government considers that the Parliament should have the opportunity to scrutinise and disallow all regulations and that the approach adopted in Victoria is an appropriate one. The Legislative Review Committee is a suitable vehicle to monitor the laying of regulations before the Parliament and to report the failure to the Houses of Parliament. To ensure that the Legislative Review Committee's report is dealt with, the amendment provides that notice of a resolution for disallowance should be given within six sitting days after the Legislative Review Committee has reported the failure to lay the regulations before both Houses of Parliament.

Supreme Court Act 1935

Sections 62H and 72 of the *Supreme Court Act 1935* provide for the gazettal and tabling of rules of court. The present provisions provide similarly to section 10 of the *Subordinate Legislation Act 1978* that the rules must be tabled in Parliament within 14 sitting days.

The sections are amended to remove the provisions about gazettal and tabling—the provisions of the *Subordinate Legislation Act* will then apply, as they do to rules of court made under the *District Court Act* and the *Magistrates Court Act*.

Wrongs Act 1936

In a recent decision of the Full Court of the Supreme Court in *Morrison v SGIC*, Bollen J quoted from the judgment of Judge Lee in the District Court drawing attention to a defect in section 35A(4) of the *Wrongs Act*.

In his judgment, Bollen J states that the case reveals what appears to be an oversight by the drafter. He quotes Judge Lee as follows:

> Subsection (4) of section 35A of the *Wrongs Act 1936* abolishes the defence of *volenti non fit injuria* in cases where a presumption of contributory negligence arises under subsection (1)*(j)* of the section. Subsection (1)*(j)* creates a presumption of contributory negligence in cases where the driver is impaired by alcohol and the injured person (not being a minor) is a voluntary passenger and is aware of the impairment. Doubtless, due to an oversight by the draftsman, the qualifying words 'not being a minor' deny to a minor the benefit of subsection (4). The plaintiff was a minor at the time of the accident. This means that the defendant's plea of *volenti non fit injuria* remains one of the issues for determination.

The amendment to section 35A of the *Wrongs Act* ensures that the defence of *volenti non fit injuria* will no longer be available against minors.

I commend this Bill to members. 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

These clauses are formal.

Clause 3: Interpretation

This clause provides that a reference in this Act to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

PART 2
AMENDMENT OF CRIMINAL LAW (SENTENCING) ACT 1988

Clause 4: Insertion of s. 9A

This clause provides for the insertion of proposed section 9A which provides that a court that imposes a sentence on a defendant, or a court of coordinate jurisdiction, may, on application by the Director of Public Prosecutions or the defendant, make such orders as the court is satisfied are required to rectify any error of a technical nature made by the sentencing court in imposing the sentence, or to supply any deficiency or remove any ambiguity in the sentencing order. The Director of Public prosecutions and the defendant are both parties to an application under this proposed section.

Clause 5: Amendment of s. 61A—Driver's licence disqualification for default

This clause amends the principal Act to provide that the cost of issuing a notice of disqualification be added to the amount in respect of which the person is in default. It provides that this may be waived by the appropriate officer in such circumstances as he or she thinks just.

Clause 6: Amendment of s. 61B—Suspension of motor vehicle registration for default by body corporate

This clause amends the principal Act to provide that the cost of issuing a notice of an order suspending registration be added to the amount in respect of which the company is in default. It provides that this may be waived by the appropriate officer in such circumstances as he or she thinks just.

PART 3
AMENDMENT OF DIRECTOR OF PUBLIC PROSECUTIONS ACT 1991

Clause 7: Amendment of s. 7—Powers of Director

This clause gives the Director the additional power to institute civil proceedings for contempt of court.

PART 4
AMENDMENT OF JURISDICTION OF COURTS (CROSS-VESTING) ACT 1987

Clause 8: Amendment of s. 3—Interpretation

This clauses amends section 3 of the principal Act—

- by striking out the definition of "State" and substituting a new definition of "State" to include the Northern Territory and the Australian Capital Territory;
- by striking out the definition of "Territory" and substituting a new definition of "Territory" that does not include the Northern Territory or the Australian Capital Territory.

PART 5
AMENDMENT OF NATIONAL CRIME AUTHORITY (STATE PROVISIONS) ACT

The amendments made to the principal Act in this Part are designed to keep the principal Act consistent (except for slightly different drafting styles between the Commonwealth and this State) with the *National Crime Authority Act 1984* of the Commonwealth ("the Commonwealth Act"). The majority of the amendments proposed are of a minor drafting nature; for example, throughout the Act, any reference to "an acting member" is deleted.

Clause 9: Amendment of s. 5—Functions under State laws

This clause amends section 5 of the principal Act by inserting after subsection (3) proposed subsection (3a) which provides that the Minister may, with the approval of the Inter-Governmental Committee—

- in a notice under subsection (1) referring the matter to the Authority, state that the reference is related to another reference; or
- in a notice in writing to the Authority, state that a reference already made to the Authority by that Minister is related to another reference.

Clause 10: Amendment of s. 6—Performance of functions

This clause amends section 6 of the principal Act by inserting in subsection (1) "or any person or authority (other than a law enforcement agency) who is authorised by or under a law of the Commonwealth or of a State to prosecute the offence" after "agency".

Clause 11: Amendment of s. 9—Co-operation with law enforcement agencies

This clause amends section 9 of the principal Act by inserting proposed subsection (2) which provides that in performing its special functions, the Authority may coordinate its activities with the activities of authorities and persons in other countries performing functions similar to the functions of the Authority.

Clause 12: Amendment of s. 12—Search warrant

Clause 13: Amendment of s. 13—Application by telephone for search warrants

Clause 14: Amendment of s. 15—Order for delivery to Authority of passport of witness

The amendments made by these clauses to the principal Act are of a minor drafting nature and, for the most part, delete references to "a member of the Authority" and substitute references to "a member".

Clause 15: Amendment of s. 16—Hearings

This clause amends section 16 of the principal Act. Subsection (3) is struck out and proposed subsections (3), (3a), (3b), (3c) and (3d) (which provide for the procedure of hearings by members of the Authority) are substituted.

Subsection (7) is struck out and the proposed substituted subsection (7) provides that where a hearing before the Authority is being held, a person (other than a member or a member of the staff of the Authority approved by the Authority) must not be present at the hearing unless the person is entitled to be present by reason of a direction given by the Authority under subsection (5) or by reason of subsection (6).

After subsection (9), proposed subsections (9a) and (9b) are inserted. Proposed subsection (9a) provides that subject to proposed subsection (9b), the Chairperson may, in writing, vary or revoke a direction under subsection (9).

Proposed subsection (9b) provides that the Chairperson may not vary or revoke a direction if to do so might prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been or may be charged with an offence.

Clause 16: Amendment of s. 17—Power to summon witnesses and take evidence

Clause 17: Amendment of s. 18—Power to obtain documents

The amendments made by these clauses to the principal Act are of a minor drafting nature and, for the most part, delete references to "a member of the Authority" and substitute references to "a member".

Clause 18: Insertion of ss. 18A and 18B

This clause provides for the insertion of proposed sections 18A and 18B.

Proposed section 18A provides that the member issuing a summons under section 17 or a notice under section 18 must, or may (as the case may be as provided in proposed subsection (2)), include in it a notation to the effect that disclosure of information about the summons or notice, or any official matter connected with it, is prohibited except in the circumstances, if any, specified in the notation. If a notation is included in the summons or notice, it must be accompanied by a written statement setting out the rights and obligations conferred or imposed by proposed section 18B on the person who was served with the summons or notice. In the circumstances set out in proposed subsection (4), after the Authority has concluded the investigation concerned, any notation that was included under proposed section 18A in any summonses or notices relating to the investigation is cancelled by proposed subsection (4). If a notation made under proposed subsection (1) is inconsistent with a direction given under section 16(9), a notation has no effect to the extent of the inconsistency.

Proposed section 18B provides that a person who is served with a summons or notice containing a notation made under proposed section 18A must not disclose the existence of the summons or notice or any information about it or the existence of, or any information about, any official matter connected with the summons or notice. The penalty for a breach of this proposed subsection is a $2 000 fine or imprisonment for one year.

Proposed subsection (1) does not prevent the person from making a disclosure—

- in accordance with the circumstances, if any, specified in the notation; or
- to a legal practitioner for the purpose of obtaining legal advice or representation relating to the summons, notice or matter; or
- to a legal aid officer for the purpose of obtaining assistance under section 27 of the Commonwealth Act relating to the summons, notice or matter; or
- if the person is a body corporate—to an officer or agent of the body corporate to ensure compliance with the summons or notice; or
- if the person is a legal practitioner, to comply with a legal duty of disclosure arising from his or her professional relationship with a client or to obtain the agreement of another person under section 19(3) to the legal practitioner answering a question or producing a document at a hearing before the Authority.

It is an offence for a person to whom a disclosure has been made under this proposed section to disclose relevant information and the penalty is a fine of $2 000 or imprisonment for one year.

Proposed subsection (4) provides that a person to whom information has been lawfully disclosed may disclose that information—

- if the person is an officer or agent of a body corporate referred to in proposed subsection (2)*(d)*—to another officer or agent of the body corporate for the purpose of ensuring compliance with the summons or notice or to a legal practitioner or legal aid officer;
- if the person is a legal practitioner—to give legal advice, make representations, or obtain assistance under section 27 of the Commonwealth Act, relating to the summons, notice or matter; or
- if the person is a legal aid officer—to obtain legal advice or representation relating to the summons, notice or matter.

Proposed subsection (5) provides that proposed section 18B ceases to apply to a summons or notice after the notation contained in the summons or notice is cancelled by proposed section 18A(4) or 5 years elapse after the issue of the summons or notice, whichever is sooner.

Clause 19: Amendment of s. 19—Failure of witnesses to attend and answer questions

Clause 20: Amendment of s. 20—Warrant for arrest of witness

Clause 21: Amendment of s. 21—Applications to Federal Court of Australia

Clause 22: Amendment of s. 24—Protection of witnesses, etc.

Clause 23: Amendment of s. 25—Contempt of Authority

Clause 24: Amendment of s. 27—Powers of acting members of Authority

Clause 25: Amendment of s. 29—Protection of members, etc.

Clause 26: Amendment of s. 30—Appointment of Judge as member not to affect tenure, etc.

Clause 27: Amendment of s. 31—Secrecy

The remaining amendments made by these 9 clauses to the principal Act are of a minor drafting nature and are to keep the State Act consistent with the Commonwealth Act.

PART 6

AMENDMENT OF SUBORDINATE LEGISLATION ACT 1978

Clause 28: Amendment of s. 10—Making of regulations

This clause strikes out subsections (3) and (4) and substitutes 4 proposed subsections which provide that—

- except as is expressly provided in any other Act, every regulation must be laid before each House of Parliament within six sitting days of that House after it has been made;
- any failure to have a regulation laid before both Houses of Parliament does not affect the operation or effect of that regulation;
- the Legislative Review Committee may report any failure to comply with proposed subsection (3) to each House of Parliament.

Proposed subsection (5a) provides that (subject to this section) where—

- a regulation has been laid before each House of Parliament in accordance with proposed subsection (3); or
- a report has been made in respect of a regulation by the Legislative Review Committee in accordance with proposed subsection (5),

that regulation may be disallowed by resolution of either House of Parliament and will cease to have effect.

Proposed subsection (5b) provides that a resolution is not effective for the purposes of proposed subsection (5a) unless—

- in the case of a regulation that has been laid before the House in accordance with proposed subsection (3)—the resolution is passed in pursuance of a notice of motion given within 14 sitting days after the regulation was laid before the House; or
- in the case of a regulation that has been the subject of a report by the Legislative Review Committee in accordance with proposed subsection (5)—the resolution is passed in pursuance of a notice of motion given within six sitting days after the report of the Legislative Review Committee has been made to the House.

This clause provides for a consequential amendment to subsection (6) by striking out "subsection (4)" and substituting "subsection (5a)".

PART 7

AMENDMENT OF SUPREME COURT ACT 1935

Clause 29: Amendment of s. 62H—Rules of Court

This clause proposes to strike out subsections (5) and (6) of this section and to substitute a subsection which provides that rules of court made under this section take effect from the date of publication in the *Gazette* or some later date specified in the rules.

Clause 30: Amendment of s. 72—Rules of Court

This clause proposes to amend section 72 by striking out subsection (4) (including the sentence following paragraph *(c)*) and substituting

a subsection which provides that rules of court made under this section take effect from the date of publication in the *Gazette* or some later date specified in the rules.

PART 8
AMENDMENT OF WRONGS ACT 1936

Clause 31: Amendment of s. 35A—Motor accidents

This clause amends section 35A of the principal Act by striking out subsection (4) and substituting a new subsection (4) that provides that the defence of *volenti non fit injuria* is not available against the injured person where—

- the injured person was (at the time of the accident) a voluntary passenger in or on a motor vehicle; and
- the driver's ability to drive the motor vehicle was impaired in consequence of the consumption of alcohol or a drug and the injured person was aware, or ought to have been aware, of the impairment.

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

PASSENGER TRANSPORT BILL

Adjourned debate on second reading.

(Continued from 12 April. Page 385.)

The Hon. A.J. REDFORD: I support the Bill. At the outset, I congratulate the Minister on the hard work that she has put into the promulgation of this Bill. Contrary to what the Hon. Barbara Wiese said yesterday, the Minister has embarked upon extensive consultation, and that is continuing. The way in which she has approached this whole process is a great example of what can happen when a new Government is elected with fresh ideas and a fresh approach to dealing with some of our more important problems.

Yesterday the Hon. Barbara Wiese talked about industrial trouble. I remind her that industrial trouble in this area, namely, the 1979 bus strike, led to the demise of the Corcoran Labor Government. In my view, Labor Governments have not learnt anything since that process.

In my professional career I have had some involvement with the Metropolitan Taxi-Cab Board, which has been ably chaired by a former Liberal Transport Minister, Michael Wilson—one of the Labor Government's more enlightened appointments to a board. Mr Wilson was responsible for one of the very few positive transport initiatives that this State has seen in the past 13 or 14 years. In that respect, I refer to the construction of the O-Bahn, which is a great success story of the Tonkin Government.

As Chairman of the Metropolitan Taxi-Cab Board, Mr Wilson has also been quite vociferous in the protection of public standards, the maintenance of high service and the delivery of an efficient and cost effective taxi service. That style of approach in management augurs well for the future of the public transport authority when it eventually comes into place.

The reasons why licensing and accreditation are placed in legislation are manifold, and certainly there are good reasons for continuing a licensing and accreditation process. The advantage of giving someone a licence to enter into an industry enables that person to expend moneys by way of capital investment to ensure that the business of providing public transport is improved. To a large extent that has been effective in the taxi industry, subject to a couple of matters to which I will come later.

Indeed, it was pleasing to see one advantage of the licensing system in this morning's paper, where the Metropolitan Taxi-Cab Board moved to take off the road a driver who had been accused of raping a passenger. Under a completely deregulated system the ability to ensure that unsavoury people are not involved in the industry would be much reduced.

As a lawyer who has been involved in these matters, both for taxi drivers and on behalf of the Metropolitan Taxi-Cab Board, it is always in my mind and in the mind of the board that taxi drivers and operators of public transport have placed in them enormous public trust. We trust them to take our children, parents and spouses from different locations throughout the metropolitan area in the evenings and in the mornings, and we expect them to arrive safely without interference. A strong licensing and accreditation system enables that to occur.

When we had a public transport system with a healthy balance of both private and public infrastructure, we had a number of private operators who provided a service to the public and enabled the Government of the day to assess the ability of both public and private sectors to provide a service and also to assess properly whether or not the public sector was providing that service efficiently and cost effectively.

Unfortunately, during the period of the Dunstan Administration, the private aspect of public transport was taken over, and that caused two things. First, it took away the ability of the Government to assess properly whether or not the public sector was performing efficiently. Secondly, it caused the loss of skill—in particular, management skill—in the operation of public transport. One of the bigger challenges to the new Passenger Transport Board will be to find private operators who have the skill and the means to deliver a proper, efficient and safe transport service to the public. That is a challenge, and I have every confidence in the Minister and the board being able to meet that challenge. I would be surprised if it could be achieved to a great extent in the short term, as there will obviously need to be significant capital investment on the part of any private operator.

Some comments have been made about the board and its size. The legislation sets out a board of three members. I draw attention to the fact that the board is to be directly under the control of the Minister, who is directly accountable to this place. That is a very important and fundamental cornerstone of our Westminster system of government. When one contrasts that with the management structure that was put into place for the State Bank, it has a lot to be said for it.

Another aspect about the board is that it is to be a working board, and people are to be appointed on merit. It is pleasing to see that the Government is moving away from establishing large boards, which tend not to be accountable or involved, based upon finding particular industry, union or interest group representatives who are appointed based upon those interests rather than upon merit and their ability to run a transport system properly. In other words, it is pleasing to see that this Government is moving towards appointing people based on their expertise as opposed to appointing people on the basis of vested interest. That is to be commended, and I am sure that we will see evidence of that in future legislation.

Another matter upon which I can comment is the appeal process, which is constituted by the Administrative Appeals Court and by a single magistrate. My experience as a legal practitioner appearing before boards is that the practice of setting up boards with a legal practitioner, magistrate or judge presiding over them, assisted by a union, industry or Government representative is farcical.

One has only to look at the operation of boards such as the tow truck tribunal and the South Australian Metropolitan Fire Services Promotional Appeal Board to see how they operate.

The lawyer basically runs the proceedings. He takes expert advice from the people who are appointed to that board, but that is all done behind closed doors.

It is my view that a Chairman should be appointed to make the decision and that any discussions with other people who are appointed or who need to be appointed because of their expertise can be achieved by calling them to give evidence and making them the subject of cross-examination. At the end of the day it is all open; it is all seen; and, indeed, it would be much cheaper.

The Hon. C.J. Sumner: It would be extraordinarily expensive.

The Hon. A.J. REDFORD: My experience suggests that it would be much cheaper. The Metropolitan Taxi-Cab Board appeals tribunal is constituted by one magistrate and, in fact, three different magistrates have been involved in that process. The average length of appeals in relation to those cases is about 30 minutes. Most of the appeals are resolved by way of conciliation, and that contrasts starkly with my experience in dealing with boards such as the two I have previously mentioned, where lengthy hearings often run into second and third days with lawyers going on at some length.

I congratulate the Hon. Sandra Kanck on her indication that the Democrats will support the Bill. Certainly, I agree with her sentiments: that the problem over the previous 10 years is that there has been a cessation of regular services, causing a loss of public confidence and a loss of use of the public transport system, and we have entered a vicious cycle whereby the loss of patronage has caused loss of services.

However, I take issue with a couple of points that the Hon. Sandra Kanck raised. I note again that she is not in the Chamber to hear this. First, she said that she is concerned that the private sector may wish to be involved in profitable services only. I point out to her that that is not necessarily the case, as there are two approaches that can be made in bringing private enterprise into the public transport system.

First, an opportunity may arise for a private transport operator to take over a route that can be operated profitably. If that operator wants that route he or she can pay the Government or the authority for the right to be involved in that service, and we would all understand that. However, in the situation where public transport is not run at a profit opportunities also arise for the Government to pay private operators to operate a public transport service. If that can be done while maintaining a proper standard of service at a proper price, so that people (and increasingly those who are less advantaged in the community) use the public transport system, those opportunities ought to be considered.

For example, there may be an unprofitable service to West Beach which is currently costing the State Transport Authority $1 million a year to operate. The Government may be able to get a private transport operator to run the same quality of service by paying him $900 000. He is incorporated into that same fee charging structure and the public receives the same service at the same standard, and the taxpayer saves a considerable sum of money.

The honourable member also commented about a larger board. I repeat what I said earlier: a larger board does not necessarily mean more accountability or better administration. In fact, it is my experience that the most accountable unit is an individual because he cannot shift responsibility or shift blame. The next most accountable is a body of two and the next most accountable is a body of three. So, it is my view that a board of three people, provided that it is subjected to proper scrutiny, can operate well, particularly if it is a working board and its members are appointed on the basis of their expertise.

I am not sure whether the Hon. Sandra Kanck thinks that there will be a substantial increase to the board, but she indicated that she was going to ensure that the members of the board would use public transport. I hope she was not suggesting that the board by itself would increase the patronage to enable the public transport system to be saved.

Yesterday the Hon. Ms Wiese spoke at length about this matter. I have not had the opportunity to analyse what she said in detail, but I have a number of comments in relation to her views. The Hon. Ms Wiese had some two and a half pages of questions that she felt were unanswered in relation to the future operation of the public transport sector. I remind the honourable member that the former legislation, if taken alone, had a similar number of unanswered questions.

The nature of the questions that the honourable member wanted answered are certainly not the subject of legislation currently and, unless we want a completely unworkable piece of legislation, they should not be the subject of legislation in the future.

The Hon. Ms Wiese is probably going through some form of withdrawal. I know that she was involved in the Government for a number of years, but I remind her that she is no longer involved in the Government: she is in Opposition, and occasionally matters have to be left to the governing Party to enable it to get on and run the State, and hopefully in a much better fashion than we have seen over the past 11 years.

The Hon. Ms Wiese stated that the Minister was adopting a crash-through approach, but I have yet to see any evidence of that. I have not seen any strikes, and there has been no marching in the streets. Healthy and extensive public consultation has taken place, as a result of which the Minister has made changes to drafts of legislation. But the Hon. Ms Wiese wants it both ways: she says there has been no consultation, yet the evidence of that consultation is the hundred-odd amendments that were made by the Minister as a result of that consultation. However, when her attention is drawn to that she then accuses the Minister of not doing her homework.

The Hon. Diana Laidlaw: It's hard to win.

The Hon. A.J. REDFORD: It is hard to win. With all due respect to the Hon. Ms Wiese, that does not stack up, and it is certainly without any logic. Then she talks about protecting hire cars and the hire car industry, which was one of the most poorly and ridiculously administered areas of the former Government. The former Minister of Transport (and I refer here to Mr Blevins, because we had a number of them during the former Labor Government), on the face of it, had some hidden agenda that he was going to get rid of the regulation of the taxi industry by having a free and open hire car industry. So, in order to do it through the back door and avoid Parliament—and the previous Government was good at avoiding Parliament and not subjecting itself to Parliament accountability—it gave that responsibility to a completely different Government department, namely, the Registrar of Motor Vehicles. So, we had the Registrar of Motor Vehicles giving out licences for hire cars, and we had the Taxi-Cab Board giving out licences for hire cars and for taxis.

The people in the industry are in business and are not stupid. They would go shopping. One year the Taxi-Cab Board licence fee was less than the fee charged by the Motor Vehicles Department and then they would go to the board. If the board increased its fee, they would all go under the department's legislation to be registered. They were going

backwards and forwards, but it created enormous problems. It created ill-will within with the taxi industry; it created ill-will in the Metropolitan Taxi-Cab Board; and it created a complete lack of accountability by certain hire car drivers and one only need look at a number of recent disciplinary cases to see that certain elements within the hire car industry were unsatisfactory but there was nothing that could be done to prevent their operation.

It is pleasing to see that the Minister has effectively addressed that issue. I have absolutely no doubt that the taxi industry will welcome that initiative. The Hon. Barbara Wiese went on to claim that there is an assault on jobs and conditions. I have gone through the legislation and read it a number of times. I have asked about it and, frankly, I cannot see from where the assault on jobs and conditions has come. The only assault on jobs and conditions occurring in this State is as a result of poor economic conditions promulgated by the Federal Labor Government and poor administration left to the Liberal Government to fix by the previous Labor Administration. That has been a far greater assault on jobs and conditions than anything promulgated in this place by this legislation.

The honourable member also talked about the problems overseas and the privatisation issue. She claimed that privatisation in the United Kingdom was first promulgated about eight years ago. I suppose dilatoriness on the part of the previous Government does give us some advantages, because it enables us to enter into this area without making the same mistakes that the United Kingdom has made in that area. The honourable member also claims that the savings will benefit the taxpayer and not the transport user. In some respects, they are probably the same people, transport users and taxpayers but, if these savings come to pass (and one hopes that they will), then I am sure that with the improvement of the State budget—although there is much work to be done—transport users will ultimately benefit.

Finally, I wish to draw to the Council's attention a comment by the Hon. Barbara Wiese in her speech on the Bill, when she said this:

> I found that within our public transport organisation over the years there was a much greater willingness to look closely at cost saving measures within the organisation.

She then went on to say:

> A stronger threat that competition may be introduced has meant that measures that would have been ruled out of court and absolutely rejected by the work force and the trade unions that represented them, say, 10 years ago, in the past few years have been entertained by the work force and the changes have progressively been made.

That is an abominable admission on the part of the previous Minister and the previous Administration. They are saying that they failed to implement any changes over the past 10 years and that it is only when they threatened to implement change that the people affected—I assume the honourable member refers to the STA employees—decided to become reasonable.

What the honourable member is saying is that the previous Government sat on its hands for most of the 10 years and then, when it suddenly decided that it might have a competitive public transport system, the union decided to cooperate. It took them nine years to realise that one needs to become competitive. If unions are dealt with reasonably—but not as the previous Government dealt with unions, that is, sycophantically—they will cooperate. In fact, that is what is likely to happen under the current Administration, particularly under this Minister. I commend the legislation to the Council. It augers in a new period in public transport service for the people of South Australia and certainly shows that this Government is willing to make decisions, whether they be difficult or easy decisions, to ensure the people of South Australia benefit.

The Hon. DIANA LAIDLAW (Minister for Transport): In closing the debate after the Bill has been in this Council for about seven weeks—

The Hon. C.J. Sumner interjecting:

The Hon. DIANA LAIDLAW: I thank all honourable members who have contributed to the debate and I hope that the shadow Attorney-General will make a more constructive contribution than we have seen to date in respect of this Bill. There have been positive contributions to this debate and I thank all members for their detailed consideration of this important legislation. Also, I record my thanks to Parliamentary Counsel for the work undertaken in respect of this Bill. The consultation involved has been phenomenal and has been appreciated by representatives of industry. The Government understands that there has been considerable discussion with the Australian Democrats.

It is clear from all who have contributed to this Bill that we all share a concern to see a better public transport system, certainly one that has more frequent services and one that reverses the decline in passenger transport numbers that has been experienced in the last decade. I hope that in the Committee stage there will be a genuine willingness by all members to allow the Government to get on with the task of reforming public transport. The Government places the highest priority on the need to revitalise public transport services in this State—not just in the metropolitan area but throughout the State.

We have designated public/passenger transport as one of four basic areas of Government responsibility in terms of service delivery. Those four areas are public transport, health, education and personal and public safety. The strength of our commitment in terms of these areas of service delivery, and in particular for public transport, is proved by the fact that we have introduced this Bill as a matter of priority. It was introduced in the first week of the first session of the new Parliament, on 17 February, some seven weeks ago.

As is usual with such major pieces of legislation, the Bill provides a framework for the major changes that are necessary to win back public confidence in public transport and to win new customers and generate repeat business. It sets up an institutional structure and outlines broad directions, but the Bill does not go into specific details in many areas. As I said, it is not common for such major pieces of legislation to do such things.

I would point out that the Government is not prepared to continue the practice of the former Government, which cut services to passengers in order to cut the costs to taxpayers. As the Hon. Sandra Kanck noted, 'cutting services can only encourage people to use the private car', and this is just what has happened in the past few years. The STA has lost 30.3 million passengers in that period of time. That is not a record that any business would be proud of, and certainly any that had such a record would be out of business. The Government is not proposing to put the STA out of business. What it is proposing is to challenge the monopoly it currently holds, to restructure it and to continue to have a public transport operating arm.

The Hon. Barbara Wiese suggested that I rarely if ever refer to the fact that more and more people are buying and

using cars and what influence this has had on STA passenger levels. I refute that statement, but I also challenge all who use such arguments—such as the Hon. Ms Wiese—to help to justify STA's declining patronage levels, to ask themselves why in South Australia our rate of vehicle ownership remains consistently higher than the national average and why, in the Adelaide area alone, the private motor vehicle accounts for more than 93 per cent of daily passenger journeys. Why are they doing that? It is because public transport has not been meeting the needs of people in such instances, and therefore they have resorted to this high use and purchase of private vehicles.

The Hon. C.J. Sumner interjecting:

The Hon. DIANA LAIDLAW: The shadow Attorney interjects; certainly if as I do he bothered to speak to people who no longer use public transport, to people who are involved with organisations such as conservation groups, People for Public Transport and the like, they would all tell him that one of the reasons why people have resorted to the private car is that the STA has not met the needs and objectives and expectations of people who would and could use a public vehicle.

The Hon. C.J. Sumner interjecting:

The Hon. DIANA LAIDLAW: If you listened, you would know that I am repeating what those in the conservation movement and People for Public Transport say—people who take more intense interest in this area of public transport usage than does the shadow Attorney-General. People want and would use public transport if they perceived that it was safe, ran frequently and was convenient and clean. That has certainly proved to be the case in other cities where governments have invested in such reforms and initiatives. As the Minister for Transport, I am not prepared to look at further imposts or restrictions on motorists until I can say with confidence that the public transport system provides a service which people want to use and to which people can refer with pride. That is not the case at the present time.

The Hon. C.J. Sumner: Which cities are you talking about?

The Hon. DIANA LAIDLAW: Well, you just have to look at the investments in Brisbane and at how clean the railway system is in Perth. I am not sure if you have travelled on it recently, but it is absolutely spotless. New initiatives taken on that system have not been vandalised, it is properly policed, there is not the fare evasion and it is clean, regular and reliable. That has been referred to by other members in this debate. Where there is a commitment to public transport, people will use it. Those initiatives in Brisbane were undertaken by the former conservative Government.

The Bill establishes a framework for long overdue reforms to improve the coordination of the delivery, licensing and inspection arrangements for owners and operators of passenger transport vehicles. The reforms are modelled on the Fielding report of 1988. That report, commissioned by the former Government and entitled 'Public Transport in Metropolitan Adelaide in the 1990s', recommended that the current bureaucratic confusion be clarified by repealing both the State Transport Act and the Metropolitan Taxi-Cab Act by establishing a single authority responsible for organising an integrated network of public transport services, by separating service provision from Government policy-making and financial control functions and by encouraging a range of operators in addition to the STA.

That is what Professor Fielding recommended to the former Government in 1988. The Government today is simply building on that outline. We regret that six years have been wasted since Professor Fielding introduced his major report. I was bemused yesterday to hear the Hon. Barbara Wiese indicate in her contribution that both she and the former Minister, Frank Blevins, had, with very few exceptions, adopted in principle the Fielding Commission report recommendations. She went on to say:

> In the years that followed, almost every one of Professor Fielding's recommendations was acted upon.

That is absolute rubbish, when I have just referred to the major recommendations outlined by Fielding. When one compares those recommendations with the system we have today it is quite apparent that the former Government did not, as claimed by the Hon. Barbara Wiese, act upon almost every one of Professor Fielding's recommendations. The former Government really only tinkered at the edges. However, it did develop a structure for changes that are now outlined in this Bill. So, in truth, in the organisational changes, the restructuring within the STA itself, the new work units established and the devolving of responsibility to depots, the former Government essentially set up the STA to be transformed to TransAdelaide, as we would wish, and prepare it for competitive tendering, as the Government now proposes.

I am pleased, however, to note that on behalf of the Opposition the Hon. Barbara Wiese has agreed to and endorsed measures in the Bill to address some of the anomalies in the regulation system that have emerged, particularly since the deregulation of the hire car industry. Members opposite support this aspect of the Bill. According to the Hon. Barbara Wiese, they also support the proposal that one authority should be responsible for the regulation of those sectors of the public transport industry. They agree that the Metropolitan Taxi-Cab Board should be abolished and its powers assumed by a new authority. I welcome that support.

After that positive start by the Hon. Barbara Wiese I was disappointed that she resorted to the fear and falsehoods that the Labor Party used in relation to public transport during the last State election. The Government is not promoting wholesale deregulation. The Hon. Barbara Wiese, as other members opposite also sought to do, provided in her own words 'horrific examples' of deregulation in other countries. It is true that there have been some terrible examples of reforms to public transport where authorities in those countries have proceeded down the track of wholesale deregulation. Therefore, in my second reading speech and on every public occasion, whenever I speak on this matter on behalf of the Government, I have rejected deregulation for the passenger vehicle industry, and that includes taxis.

I have rejected on behalf of the Government schemes that have operated outside London for the reform of the bus system, and also schemes that have operated in the bus and taxi sectors in New Zealand. I have rejected them on behalf of the Government because none of them had the focus, nor did they realise what we are focusing on and aim to achieve, and that is a customer friendly service, one that is safe, reliable, clean, affordable and efficient. We aim to achieve those goals, and we know we can only do so by having a tightly controlled system. In fact, the Bill promotes in the public interest much tighter controls than operate at present and much higher standards of service delivery than apply at present.

One aspect of these higher standards is the introduction of codes of practice to be incorporated in regulations. I have been accused of having some hidden agenda in this area. It

is true, I think, from the perceptions of members opposite, that they are beating up this issue of codes of practice to be much greater than it actually is. We have worked hard with industry groups to develop these codes of practice, and we have done so because we want to introduce a much greater sense of self responsibility within the industry within the framework of tighter Government control and expectations of standards. So, codes of practice to date have been prepared for and with taxi drivers, for and with taxi operators, and also in relation to general passenger drivers, bus operators and small passenger vehicle operators. In addition, there will be a code of conduct for the board. So that these measures are not seen as scary, as has been promoted, I would like to read into *Hansard* the proposed code of practice for general passenger drivers. It reads:

> Bus drivers will:
> 1. Treat customers with politeness and honesty.
> 2. Observe laws related to safe driving.
> 3. Not take drugs as a means of overcoming fatigue and ensure that their body concentrations of any prescribed drugs and alcohol are within the law.
> 4. Strictly observe legal requirements applicable to driving hours and rest periods.
> 5. Drive defensively in the interests of general public safety.
> 6. Be sensibly and safely dressed when dealing with customers in a manner which will advance the image of the passenger transport industry.
> 7. Recognise that it is unlawful to refuse service to someone or to treat someone differently or unfairly because of their age, race, disability, marital status, sex or pregnancy.

There is hardly anything onerous or forbidding in that code of practice. It simply makes good sense in public safety terms and it certainly makes good sense in business terms. I recognise in terms of that draft code of practice for general passenger drivers that it may be desirable at this stage to consult with the union movement. I am certainly happy to do so, and I will be arranging for such discussions to take place from this afternoon, if that is what the unions would wish.

In relation to the trade union movement, I was interested to note the comment in his second reading speech by the Hon. Mario Feleppa:

> The trade union movement does not see that the Government has a mandate to implement the radical content of the Bill.

He also went onto say that the Liberal Party did not include the proposals for such changes in its election campaign. With all due respect to the honourable member, because I do have considerable respect for him, both statements are without foundation. They certainly have no basis in fact. The trade union movement, and in particular the secretaries and many members that they represent, were involved in the design of the passenger transport strategy that the Liberal Party released in January 1993, about 12 months before the election.

At the time of the release of the strategy it received guarded endorsement—and I did not expect full endorsement by any means, because there were challenges in the strategy—by Mr John Crossing, Secretary of the ARU. The day following its release, I arranged to meet with Mr Frank Pearce, Mr Rex Phillips and Mr Crossing to go through in detail and answer their questions on the Bill. In an article headed 'Union boss: Make transport private' in the *Sunday Mail* of 20 June, the following statement appears:

> The powerful public transport union has backed privatisation of bus and train services in a bid to revive a haemorrhaging public transport industry.

The writer, Mr John Church, comments:

> In an astounding attack on the State Government, the PTU, which represents 3 400 South Australian workers, blasted the performance of public transport policies over the past decade. State Secretary, Mr John Crossing, said service and staff cuts had taken the human face out of a morale stripped system where workers were getting around like zombies. He said the union, an amalgamation of railway workers, bus and train drivers, was prepared to talk about commercialising certain routes and services.

The article goes on to say:

> The move comes after a Liberal transport document and subsequent leaked [Labor] Cabinet minutes supported commercialising public transport to varying degrees.

Mr Crossing is quoted as saying:

> We would look at privatisation but not in an *ad hoc* form.

In reply to that, I certainly stress that the Bill before us is not promoting privatisation in the terms of sale of assets. It is promoting competitive tendering and it is certainly an integrated package of reform. Further, this article in the *Sunday Mail*, referring to Mr Crossing said:

> Drastic long term changes were needed to revive the system which cost taxpayers $136 million last year. 'If nothing is done, reductions will continue until the whole thing comes down in a screaming heap', he said. The public and the [Labor] Government must also accept that a major overhaul strategy with funds wisely spent was needed or the system will haemorrhage to death. 'So far, all we have seen are dramatic cuts in areas which are not in the best interests of the system.'

I would have suggested to any reasonable member in this place that that was, if not fulsome endorsement of the program and strategy being advanced by the Liberal Party at the time, which is the basis of the Bill today, certainly very encouraging endorsement of the reforms that we have outlined in this Bill.

Mr Crossing, in that same article, went on to say that he had a number of concerns about public safety and maintaining jobs, and these would be the primary concerns for the union. At that time I stressed to Mr Crossing, and I do so again as I have in recent months, that those two issues of public safety and maintaining jobs have been addressed right from the start in the Liberal Party's package of reforms for public transport. They were addressed in the strategy that we released in January 1993. That strategy indicated that no employee would face forced retrenchment. It also indicated that priority would be put on safety in terms of the transit police, where operations would be transferred to the Commissioner of Police.

Belatedly, the former Government started that process and today we find that that has been progressively introduced to stunning and positive effect. I also have been discussing with the union—and I mentioned in this place yesterday—that we are looking at some form of guards on the system. I am not prepared to make further commitments to that initiative until there is the passage of this Bill and the cost savings that will arise from this Bill have been determined, but certainly the unions are aware of that commitment. We continue to talk and I believe those discussions will be on-going.

Two weeks ago I met with the national union and State representatives here about the issue of what proportion or ratio of work would be and could be provided to TransAdelaide. At that time—and I have made the same statement many times in the past—I indicated that I perceived four types of contractual arrangements with the Passenger Transport Board: there will be commercially viable services; services that require subsidy; competitively tendered contracts; and negotiated contracts. There will also be a combination of those arrangements. We have always indicated publicly and to the union that there will be negotiated contracts with the STA as TransAdelaide.

The ratio or proportion of those negotiated contracts is something that the unions and I are discussing at the present time. As part of those discussions the unions are well aware that we are not introducing radical change in terms of the Victorian example. We are not throwing the whole system open to competitive tendering. We saw the replacement of a public monopoly by a private monopoly in Victoria. I do not think that is to anybody's advantage when we know the benefits to customers will happen because we have introduced a competitive environment with incentives to attract passengers.

It will be competitive tendering and what proportion we will ultimately determine will be introduced on a progressive basis, because it is critical that customer confidence be restored to the system. I have indicated to the unions that I have some sympathy with their concerns. They are negotiating a number of changed practices within the STA as TransAdelaide. They would like to argue for a win-win situation so that they can indicate to their members that there are some guarantees of work in the future. As I said, I always perceived that there would be negotiated contracts.

I am giving that suggestion some positive consideration, although the unions are aware of my view that there must be a strong element of competition to introduce incentives to win back passengers and the savings that are required to introduce new services and many other customer friendly initiatives. In relation to the level of competitive tendering I want to quote interesting comments made by the Hon. Barbara Wiese yesterday. She said:

> Interestingly, the observation has also been made that the simple threat of introducing private sector competition through competitive tendering has been sufficient incentive for publicly owned public transport agencies in some places in the world to become more efficient in service and cost terms. In fact, there are examples where savings brought about by internal efficiencies have produced results comparable with those anticipated through the introduction of private sector competition, and of course with much less disruption to the travelling public and the public sector work force than wholesale change to the system would bring.

She continues:

> I found that within our public transport organisation over the years there was a much greater willingness to look closely at cost saving measures within the organisation. A stronger threat that competition may be introduced—

and this is the former Labor Minister speaking—

> has meant that measures that would have been ruled out of court and absolutely rejected by the work force and the trade union movement that represented them, say, 10 years ago, in the past few years have been entertained by the work force and the changes have progressively been made.That is why this Government will continue to distribute a proportion of work to competitive tendering, because it is only then that we keep everybody associated with the delivery of public transport services enthusiastic and diligent in providing the services that are affordable to both passengers and the taxpayer.

I want to indicate that the Government has continuously negotiated with all parties: unions, industry groups, consumer groups, and conservation groups. That is why after the draft Bill, distributed last December, the Bill contained some 100 amendments when introduced in this place in February. Amendments are not matters I apologise about; they are matters that I am proud of because they reflect the positive initiatives suggested by the community and embraced by the Government.

Another criticism made by the Hon. Barbara Wiese was in relation to the regulations. This is a major Bill and the regulations do require a great amount of administrative time to prepare. Work is being done on that matter and I would be happy to provide a copy of a working paper to the Opposition, if it so wishes. It would be irresponsible in the Government's view, and it would also be a waste of taxpayers' money, if we proceeded with a full set of regulations at this time when we are still waiting for Parliament to consider the Bill. I remember also that in terms of Bills introduced by the former Government, such as the Development Bill, we were provided with copies of regulations, but the regulations that were finally gazetted were so different from those draft regulations that the draft regulations were pretty useless in hindsight. I would be happy in this instance to provide members opposite with a copy of this working paper, if they so wish.

Before I move on to specific matters raised by the Hon. Barbara Wiese, I want to address a criticism made by members opposite that competitive tendering will see the private sector only pursue profitable routes. This is a pretty amazing analysis of the system because members opposite would recognise that the only services that have been offered to the private sector to date by the former Government were those that the STA could not wait to be rid of because they were far from profitable.

The STA has certainly recommended to me a number of services it would like to get out of—they are not profitable services. In fact, there is no profitable or commercially viable route operated by the STA at the present time. It is for that reason we have said that subsidies will be available to any operator winning this contract, if subsidies are indeed required for the operation of that route. We envisage that $100 million of subsidy will continue to be available for the delivery of passenger transport services in this State on an annual basis. $100 million is a lot of money. We envisage savings will be in the order of $34 million. They will be put into a lot of customer friendly initiatives. I have already mentioned a number, such as the reintroduction of guards on trains and increased frequency of service, and I am keen to encourage a number of other innovations in service delivery.

I turn now to a number of the questions asked yesterday by the Hon. Barbara Wiese. I was asked about the tendering timetable. The Government proposes that the Act will be proclaimed on 1 July, that the formal tendering process would start from February 1995 and that there would be four types of services. I mentioned those earlier: negotiated contracts, competitively tendered contracts, and commercial and non-commercial routes. The whole design of this system is to ensure that we have a customer friendly operation. Therefore, the last thing we would do would be to make a drastic change that would be perceived by the public to be contrary to their best needs.

The STA, as TransAdelaide, would have the choice whether to participate in those services. As I indicated earlier, I am having discussions with the unions about the ratio of contracted services that could be guaranteed to TransAdelaide. I would expect any guarantees to be honoured and met by fairly specific guarantees from the trade union movement in terms of service delivery and other matters.

The trade union movement is very important to whether the STA, as TransAdelaide, will be competitive in this environment. I would expect undertakings from the trade union movement, if any undertakings were provided by the Government, and I have some sympathy with making such undertakings.

The Hon. Ms Wiese asked about routes and regions. Consideration is being given to introducing four pilot competitively tendered projects later this year. I would have

liked to introduce them earlier, but the unions have asked that they be put off for some time. I would look at introducing them in about September so that we can have some practice in this area. The STA, private operators and the like can then take an interest. They will be small regions, whether they be these four pilot projects or future contracts. I have determined that that will be so because I want South Australian operators, who are small by nature—taxi drivers and others—to have an opportunity against the might and weight of STA's TransAdelaide to compete in this area and generate business and profitability.

I was asked whether all services will be competitively tendered, but I think I have already addressed that matter. There were also questions about the introduction of competitive tendering and whether it would be staged, and that is certainly the case. There are in the legislation a number of transitional provisions which will be used to make a staged proclamation unnecessary. That was a matter of concern to the Hon. Barbara Wiese. The only staging or progressive introduction would be in terms of the competitive tendering of contracts and the accreditation system using a code of practice.

Questions were asked about structural change within the STA and allowing time for such structural change. It is true that such changes are under way. They have been under way since the former Government started addressing the Fielding report in 1988. There is frequent contact between STA management, unions and the work force, and that gives me confidence that the change will match the tendering timetable.

I was asked whether I agreed that the STA would be disadvantaged *vis-a-vis* the private sector. In some senses at the moment it is. For this reason, the Government will be relieving the STA, transformed as TransAdelaide, of its capital burden and debt. These will be taken over by the Department of Transport, as will leasing arrangements. TransAdelaide would also be relieved of its planning responsibilities, which would go to the Passenger Transport Board.

While there are disadvantages for the STA in comparison with the private sector, there are enormous advantages which should be recognised. Indeed, I have recognised them in terms of the design of the system in the future. The STA has considerable management ability and, as the largest operator, it also has more flexibility in the use of resources than other operators in this State.

I was asked about capital and operating costs. The accounts of the STA demonstrate that increasing costs have been in the capital area. Most of this flows from necessary refurbishment, although some would argue that the refurbishment has now seen the STA provide a gold-plated service in a number of instances. These capital costs restrict flexibility within the STA to some degree. For instance, the large articulated buses, which have been invested in so heavily in recent times, restrict the STA in a whole range of routes and tendering options in future. The STA has also taken a number of infrastructure initiatives which one has to question. I refer to separate air-conditioning units for drivers when they are often not working for passengers. We should recognise that the low floor kneeling buses are fantastic in many instances, but what the outward appearances do not identify is that once anyone has got into this low floor kneeling bus they have to get up a step to get into a seat. In a high floor bus there is no such step to one's seat.

We will be proceeding with the new bus orders, but there have been discussions between the contractor and the STA to change some of the orders so that we can have a different configuration and much wider range of buses ordered in future. This is a matter for the STA, or TransAdelaide, not for me as Minister.

I was asked to clarify the organisational restructuring of the STA. The Hon. Barbara Wiese mentioned that organisational changes had occurred while she was Minister, and that is true. They were designed to make the STA competitive, because she and the STA were anticipating a new era. I do not intend to impose further restructuring. That will be a matter for TransAdelaide as it prepares itself for this new era of competitive tendering.

I was interested in the question whether I agreed that the private sector was lacking in this State, because it indicated some confusion on behalf of the honourable member. At one moment concern is raised that there will be a rip-off by the private sector and the STA will not be able to compete, yet in the next moment it is highlighted that the private sector is not strong, and that there is some concern about that and about the value of competitive tendering in these circumstances.

It is my belief that a range of new operators will be available in this State. I do not want the big interstate operators to come in and swamp the system. Opportunities of partnerships with interstate operators will arise, but again that is not for me to determine. A number of STA employees have indicated that they would be interested in management buy-outs. Joint arrangements may well be made between taxi operators and TransAdelaide to cater for day, night and weekend operations.

I was asked about ownership of key infrastructure such as interchanges. These facilities will be subject to joint use in future. Therefore, ownership, for instance, with TransAdelaide would give it an unfair advantage for the Government operator. The Department of Transport has expertise in the area of asset management, and I would envisage that this key infrastructure would be transferred to it.

The responsibility for signs at bus stops will be shared between State Government, local government and companies. The Passenger Transport Board will have an important role to play in developing these initiatives, and much greater concentration must be placed on signs at bus stops and elsewhere in future so that people have some idea of the arrival time of buses, whether taxis will be using a particular route, how much fares are and where the bus is even going. If you go to a bus stop today you have no idea of where that bus is going, when it is going and how much the trip will cost, and that is hardly user-friendly. That will be one of the major initiatives to be taken in future.

The Hon. Barbara Wiese asked where the $34 million is to be found. I have referred to that in the second reading explanation, but work has been undertaken by the STA staff in relation to identifying savings. I understand a paper to that effect has been forwarded to the union movement. I have not been involved in that exercise; it is none of my business in that sense. However, the STA is confident that its target can be achieved. These savings are not coming from only the pockets of workers—the accusation that is always being made. There are big savings to be made in ownership costs, head office expenses and work practices, and those areas have also been reviewed. However, some of these savings are matters for some sense of commercial confidentiality. Some examples of savings that I am keen to see pursued are a more flexible bus fleet, by replacing orders of full-size buses with

midibuses and minibuses, as this would represent big savings in terms of running costs; the reduction of the car fleet by 25 per cent; and the reduction of mobile phones by 50 per cent.

The overheads within the STA and the way it has managed itself in the past at top management level would befit President Marcos in the Philippines. Those involved in the top management level looked after themselves in the past, but that is not the management practice today. Great savings can be made in relation to the top administration, and they are being made at the present time to help the STA compete, and they—

The Hon. C.J. Sumner: Aren't you looking after yourselves as well?

The Hon. DIANA LAIDLAW: Have you seen the 12th floor of the STA building?

The Hon. C.J. Sumner: Since you moved in?

The Hon. DIANA LAIDLAW: You are welcome to visit it and I will show you how the members of the STA board looked after themselves. I have removed the brandy balloons and the wine, and the space which was occupied by three persons is currently being occupied by seven, soon to be nine, people. The door is now always open, whereas it used in the past to be a security door to the General Manager's office. Some lived—

The Hon. C.J. Sumner: What did your new office cost?

The Hon. DIANA LAIDLAW: I have answered that question, and you can look at *Hansard* if you are interested in it.

The Hon. C.J. Sumner: I am very interested. They tell me it is very opulent.

The Hon. DIANA LAIDLAW: I have inherited in part what the STA board was comfortable with in the past.

The Hon. L.H. Davis interjecting:

The Hon. DIANA LAIDLAW: Yes, I do, but without the brandy balloons, the wine, the televisions and so on. I was asked how the need for a subsidy will be assessed. This question suggests some misunderstanding of the process. The question really is how will the need for the service be assessed. The Passenger Transport Board's focus will enhance its ability to determine needs and the best way in which they should be met.

Two kinds of subsidy arrangements exist in the world today in terms of competitive tendering. The one which is the most common relates to gross costs to operations, so when a service is tendered for companies would indicate what their costs would be, and the Passenger Transport Board would pay that total cost. The board in turn would receive the revenue. In my view that system does not have much incentive built into it to get new passengers, unless we include it with a performance bonus, and that is possible.

I favour the other system, which is not in practice in many places but which could easily be so because the Crouzet system that we have in this State is on net cost. In this system the operator would estimate their revenue, and the extra would be given by the Passenger Transport Board in the form of subsidy to make up the operating cost. Both systems encourage the maximisation of patronage if we include a performance bonus in that gross cost of operation.

In terms of the STA's access to Austrix and possible compensation, Austrix will be available to all operators in South Australia in future. The actual basis of transferring Austrix from the STA to the Passenger Transport Board will be the subject of a service agreement. Austrix and that transfer would be a relatively small part of the overall transfer arrangements. It is also a system which is expensive to operate, and that is not often acknowledged by the former Government. We were always told about possible profits in the future, but there are no profits now.

I was asked what would happen to surplus staff and equipment if TransAdelaide was unsuccessful. I have repeated and repeated that there will be no forced retrenchments from the STA. TransAdelaide has many operating advantages, and I would expect it to make a very strong showing in the competitive tendering stakes as well as in any negotiated contract that we would be arranging for the future.

It is possible, as was suggested by the Hon. Barbara Wiese, that any surplus staff could be offered to other operators because of their knowledge of the system. Other than that, there will be no forced retrenchments and they would be absorbed within Government.

The standards of equipment set by the board will be a contract specification, as will be the requirement for backup vehicles and the like. The board will be setting minimum standards for contract conditions. It will be up to the operators themselves to meet those minimum standards and then the sky is the limit in terms of what they wish to operate. I can assure the Council that those minimum standards will be set at a high level. The whole arrangement is to win people back to public transport and we are not going to do that if there is a perception that there are further cuts or reductions in standards.

A number of questions were asked about the integration of the system, and this is a key element of the reform package. In terms of ticketing, the private buses will have the same Crouzet ticketing system as TransAdelaide. If necessary, the cost will be added into the contract. As to public information, the Passenger Transport Board will provide a centralised source of information, although customers will be able to go to individual companies if they wish, be it taxi companies or whatever. As to passenger transport, I would be keen to see the 210 1000 number retained, and I think that is the present inclination.

The Hon. Barbara Wiese referred to a complaints line, but my preference would be for a comments/complaints line, not just looking at the negatives, in terms of complaints. Such a line would be maintained by the Passenger Transport Board and that would be an important part of monitoring progress and customer response. In terms of monitoring passenger numbers, this will be a requirement of the Passenger Transport Board. There is reference to this in the legislation and further amendments are proposed by the Hon. Sandra Kanck and I will accept those amendments.

The Hon. Barbara Wiese asked a question about auditing accuracy. This will be achieved through the ticketing system, but it has been seen to be defective in some respects in the case of the STA and we will do what the Government has done in the past, that is, implement independent surveys to verify the figures. In terms of auditing accuracy and other assessments, we are keen to introduce a scheme to pay people to travel the system and get their feedback as paying passengers about what they think of the system and where there could be improvements and the like. They would be auditing the system in that way.

As to the questions about legal documentation and responsibility for it, discussions have been held with the Crown Solicitor and certainly a lawyer or lawyers would be involved in the Passenger Transport Board for this purpose. However, we have the benefit of much experience from elsewhere and this will reduce the costs of preparation substantially. In terms of the costs of litigation, this has not

been a big issue elsewhere and, from previous experience and because we have learnt from previous experience, it is likely to be even less of an issue in South Australia.

The Hon. Barbara Wiese wanted to know about a metropolitan-wide fare structure. It will be such a structure, but to assume that fares might reflect profitability in each service once again reflects a misunderstanding and I will not elaborate on that because I have talked at some length about the way that we can subsidise these fares. As to the staffing of the Passenger Transport Board, negotiations and discussions are being held on this matter now and all positions will be advertised. As to fees, the Metropolitan Taxi-Cab Board is self-funding at present and I do not envisage the Passenger Transport Board will be self-funding, but will operate on a cost recovery basis. That matter may be looked at way down the track, but it is certainly not an issue at present.

As to the grandfathering of independent taxi drivers, the Hon. Barbara Wiese asked why that was not in the Bill. This is a transitional feature and is not considered necessary for the Bill. People who have been seeking this grandfathering will find that we can introduce this matter in regulations. I was asked why the power to refuse accreditation in the public interest was deleted from the version of the Bill introduced into the Council. That was an unnecessary provision because that issue is implicit in the legislation itself and it was removed for that purpose. As to why the requirement for the board to consider the public interest in setting down conditions for accreditation was deleted, it was deleted because we added a comprehensive set of objectives to the legislation that addressed the same issue and it was deleted to avoid that duplication. In any case, I would argue that, because that matter is now in the objects, the same issue is expressed in much stronger terms.

I know that the union movement has raised the matter of disciplinary procedures for employees. It is not a matter for legislation but it is a matter for ongoing discussion with the unions. The unions have not been satisfied with the responses that they have received from my office to date, but I will discuss this matter further with them in the near future. I was asked for examples of interim support services that could be provided by the Passenger Transport Board to TransAdelaide. I raised that matter with unions some time ago.

In terms of negotiated contracts, there would be a number of bus, tram and train services that would be provided on this basis. We could also see marketing and customer relations liaison and other such matters dealt with in that way. As I have said, the actual negotiated contracts for the service delivery are what I would see the Passenger Transport Board providing to TransAdelaide. Other unions have raised with me the issue of vehicle service and maintenance standards and the application of Australian Standard 3902. No workshop in South Australia at present meets this standard, and it is not applied by the STA or by anyone else at this stage. Regency Park hopes to meet it and, as I have indicated, the Bill will stipulate minimum standards and we will be aiming for Australian Standard 3902.

The Hon. Barbara Wiese asked whether the codes of practice will be in place before tenders are called. Yes, that is so. Also, possible qualifications to an integrated fare system were raised because, unlike the draft Bill, we have in the current Bill reference to 'where appropriate' in terms of the integrated fare system, and those words were added to take account of the Hallett Cove feeder service that the previous Government established and a new Night Rider service that I am keen to see established in South Australia. It would operate similar to the services in Sydney and Melbourne involving a flat $5 fare. It operates on weekends and takes kids after 12 midnight from various centres in Adelaide express to destinations in the outer suburbs. A telephone is on board and patrons can ring home or ring a taxi and a friend or a taxi can meet the bus.

That is the reason why we have added the words 'where appropriate', because there are some special examples of service which we can provide and which should not and need not be part of that same concessional standard fare arrangement. Sydney has established an executive bus service from the outer suburbs, where copies of the *Financial Review* are available, the latest in the Stock Exchange is available on the bus, people pay considerable sums and they are sped in. I do not think that sort of service should be provided at the concessional rates that we provide to so many of our services today. People in Sydney are paying a premium for that service, and I do not see why they should not pay a premium if such a service operates here.

The last question I was asked was whether I can rule out tendering of rail services. No, I cannot, although I can assure members it is not on the agenda at the present time. But, just as the Hon. Barbara Wiese stated from her own experience, a stronger threat that competition may be introduced has meant that measures that would have been ruled out of court and absolutely rejected by the work force and the trade union movement that represented them, say, 10 years ago, in the past few years have been entertained by the work force, and changes have progressively been made. I want to use the same practice in this regard as the former Government did.

Bill read a second time.

CONSTITUTION (MEMBERS OF PARLIAMENT DISQUALIFICATION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 22 March. Page 233.)

The Hon. C.J. SUMNER (Leader of the Opposition): I support the second reading of this Bill. It is another case of proposals which were under discussion by the former Government but not proceeded with, not in this case because of the election but in fact because of objections from the Hon. Mr Griffin when in Opposition, and I will deal with that again shortly. The genesis for this Bill, which was considered by the former Government in February and March last year, was the High Court case involving the member for Wills, Mr Cleary, when it was determined by the High Court that he was disqualified from being elected to the Federal Parliament because of his status as holding an office of profit under the Crown. In particular, I believe that he was a teacher on leave at the time of his election. That was considered to be an office of profit under the Crown and he was disqualified from holding the seat but subsequently, as members know, he was re-elected.

During that case, issues were also raised relating to other candidates who had citizenship of other countries by virtue of the law of those other countries and, although that did not have any practical effect, the High Court case did mean that we had to address the question of allegiances to foreign powers and foreign citizenship which may have been imposed by overseas governments in the context of this Parliament and in the context of the Constitution Act in this State, the provisions of which are in many respects similar to the

provisions in the Federal Constitution which was the subject of consideration in the Cleary case. As a result of those problems identified in the Cleary case, I wrote to the shadow Attorney-General with a proposition that these issues be dealt with in the South Australian Parliament—two issues in particular; one was the question of citizenship and allegiance in the provisions in our State Constitution and the other was the question of Government contracts, not specifically holding offices of profit under the Crown, but members having contracts with the Government.

They are the two issues that are dealt with in the Bill that is now before the Parliament, although it needs to be pointed out that the proposals that I put to the former shadow Attorney-General were slightly different from those that have found their way into this Bill. To deal with the first issue, that is, the question of citizenship and allegiance, the proposal that I put to the Attorney-General when in Opposition was that all the provisions in our Constitution Act, that is, in sections 17 and 31 of the Constitution Act, dealing with allegiance to foreign powers, should be removed completely and that in their place the Constitution Act and Electoral Act should be amended to provide that Australian citizenship was the qualification for being elected to the South Australian Parliament.

It seemed to me that that was the simplest way out of the matter, that it would dispose of any uncertainties and, provided the member was an Australian citizen, there would be no problems even though a foreign Government might by virtue of the operation of that foreign law deem a resident and citizen of Australia also to be a citizen of that country. So, that was the proposition put forward by me in Government. The present Government's proposal does not go as far as that. It amends slightly the allegiance provisions in the Constitution Act to which I have referred, but it still retains the provision that no member should take any oath or make any declaration or acknowledgment of allegiance, obedience or adherence to any foreign prince or power or do, concur in or adopt any act whereby he may become a subject or citizen of any foreign State or power.

My proposal was that those provisions should be removed. The Government's proposal in this Bill is that they should be retained, but that section 31(d) of the Constitution Act should be deleted. That section provides that, if any member of the House of Assembly becomes entitled to the rights, privileges or immunities of a subject or citizen of any foreign state or power, then the seat of the House of Assembly member shall become vacant. That overcomes the problem of dual citizenship where that citizenship is imposed by a foreign Government. It is interesting that for some reason section 31(d), dealing with the House of Assembly, is not mirrored in section 17 dealing with the Legislative Council membership.

So, the Government's proposal now retains those provisions relating to allegiance, deletes section 31(d) relating to becoming entitled to the rights of a citizen of a foreign power, and provides that the carrying of a passport of another country is not something which will cause the member to vacate their seat. I have no real problems with that particular solution of the Government, although I would have thought it was clearer and cleaner to remove the provisions relating to allegiance completely and just deal with the question of citizenship.

However, the Government has not in fact dealt with the question of citizenship, and I think that is a defect in this Bill. In other words, the proposal I put, namely, to make Australian citizenship the criteria, has not been picked up. So we still have the anachronistic situation in this Parliament whereby those electors who are on the electoral roll of this State by virtue of having been British subjects prior to 1984 are still entitled to stand and be elected to the Parliament of this State. I think we should take this opportunity to correct that anachronism. It is interesting that the Attorney-General, in his second reading explanation, impliedly agrees with my proposition because he says:

> Sections 17 and 31 of the Constitution Act do not prevent a person who holds dual citizenship from becoming a member of Parliament, but once elected, a member must not become a citizen of another country.

So, the basic thrust even in the existing Constitution Act is that, once elected, a member must not become a citizen of another country. Surely, prior to being elected, a member ought not to be a citizen of another country. There are those people in that grandfather situation who are British subjects and therefore on the electoral roll in this State prior to 1984 by virtue of their being British subjects, and who remain there under the grandfathering provisions, even though now the entitlement to be enrolled in South Australia and nationally is Australian citizenship and not the status of being a British subject. So, I think that that matter should be clarified, and I will be moving an amendment to do that.

The only problem will be is if there are any members who were on the electoral roll prior to 1984, and are still on the electoral roll because of the grandfathering clause, and are British subjects but not Australian citizens. I do not know of anyone who is in that category, but I would have thought that the Parliament would consider it appropriate in this day and age at least for people to be Australian citizens before being elected to the Parliament of the State or the nation. I put to the Attorney-General that that matter should be clarified, and I will be moving an amendment to that effect. It might be that to overcome any potential problems of members who are British subjects but not Australian citizens—as I say, I do not know of any—perhaps a provision could be added which meant that that provision did not come into effect for 12 months, and if anyone was in that category—and I am not picking on anyone—they could take out their Australian citizenship in the next 12 months. That is my proposal on that matter.

The second issue was the issue of Government contracts. Again, this was a proposition developed by the previous Government to remove all the clauses in the State Constitution dealing with members' contracts with the Crown. However, having said that, there are some questions that I would like the Attorney-General to look at. In Western Australia, when this happened, the report upon which their changes were based proposed a standing privileges committee. There is no proposition for a privileges committee to deal with this issue in this Chamber, and I raise the question whether there ought to be. Indeed, it is a question that I think the Government or the Parliament should address in the context of the Members of Parliament (Register of Interests) Act in any event. If these issues of conflict of interest and the like are going to come up, if we remove these provisions relating to the prohibition on MPs having contracts with the Crown, should there be some mechanism for the Parliament to deal with instances of conflict that arise? It may be that the Standing Orders Committee of the Council could be designated also a privileges committee for that purpose.

The next question that I wish to raise relates to the proposition from the Attorney-General with which I had some sympathy when looking at this legislation last year, namely,

the view that the Members of Parliament (Register of Interests) Act 1983 is a satisfactory means of dealing with issues of conflict which might arise. The Government's position, as expressed by the Attorney-General in his second reading explanation, is that the Government has considered whether some provisions should be included in the Members of Parliament (Register of Interests) Act 1983 specifically requiring the disclosure of contracts with the Crown, and then he dismisses that as being something which is not necessary or something that might be too difficult. I also took that view in my letter to the Attorney as Opposition shadow Attorney-General in February, when I referred to the Members of Parliament (Register of Interests) Act as being comprehensive and which would require members to disclose any substantial contracts with the Crown.

I am not sure that the Members of Parliament (Register of Interests) Act actually requires that to happen and I will give some examples as to where it may not happen in the future. Therefore, I am now minded to develop an amendment which would require the contracts with the Crown to be declared. I do not think all contracts with the Crown should be declared necessarily, but I think we should look at—and this is what I am putting to the Attorney-General—some formulation, perhaps in the form of an appropriate monetary limit beyond which contracts should be declared.

I say this because I do not believe that the Register of Interests is adequate to deal with the issue. I will give some examples as to why I think that is the case. For instance, the Minister for Health, Dr Armitage, lists under Employment and Business 'private medical practice', and then J.B. Were & Son. I do not know who that is. He just lists 'private medical practice'.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Stockbrokers. Is he employed by stockbrokers as well? There is no company there but I suppose it is conceivable that a doctor could be in private medical practice and enter into some kind of contract with the Crown. Indeed, while on that topic, there are lawyers in the Parliament. It is possible that the Hon. Mr Lawson QC, eminent counsel, appointed by the Queen, might be briefed by Government; I do not know. It could be a bit risky, I suppose, while he is a member of Parliament, particularly if he lost the case; he probably could not come back to the Council. There may be cases like that. The Hon. Mr Redford is in the same category, as am I, of course. Who knows, one could get lucky. And there is the Attorney-General in his former role. Perhaps he might like to explain exactly what he did there but I notice that his declaration of interest says 'legal practitioner self'. I understood that on the letterheads of Baker O'Loughlin he was a consultant or something.

The Hon. K.T. Griffin: No equity interest; that's the difference.

The Hon. C.J. SUMNER: I am not sure about that. You might care to explain it to me in this context.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: It might help me in the future; you never know. The point I am making now is that I did notice that he listed 'legal practitioner self' and had no reference to Baker O'Loughlin as being the firm with which I understood him to have been involved as an associate or in some consultant capacity. I would think frankly that that probably should have been declared. However, it is possible that a medical practitioner or, more likely, a legal practitioner could enter into a contract with the Crown while being a member of the Parliament, and I would think that is perhaps something that ought to be declared.

Going through some of the other declarations of interest one notes, for instance, the Minister for Mines and Energy now lists a company called Banksia as an investment and also I think he lists it as a source of employment and business. I do not know what it does but I assume it grows banksias and sells them. Again, there may be possibilities that a company of that kind could enter into a contract with the Crown. I understand of course that they have now divested themselves of all these companies as a result of an edict from the Premier.

There are also public companies, for instance, such as SANTOS. Mr Dale Baker has shares in SANTOS; Mr Don Ferguson, a former Labor member, had shares in SANTOS. The Hon. Mr Irwin has shares in Western Mining, for instance. I assume that in that case the declaration of shareholdings in a public company is adequate to deal with the contract situation. That is in fact recognised in both the Federal Constitution and the State Constitution, where there is an exemption to the provisions relating to contracts with the Government for contracts where the member is a member of a company that has in the State case more than 20 members and in the Federal case more than 25 members.

I do not think there is a problem with that in the future but there may be a problem with a smaller company, such as the Banksia company of Mr Dale Baker. I see there is another company he is involved in named Energy Resources. I do not know whether that is a public company or a private company of his own.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: I have a couple of other examples of the situation that I would like to relate to the House. I will have to leave that until after dinner.

[Sitting suspended from 6.1 to 7.45 p.m.]

The Hon. C.J. SUMNER: Prior to the dinner break I was dealing with the question whether, with the removal of the provisions prohibiting contracts between members of Parliament and the Government, there are adequate protections from problems of conflict of interest that might arise if in future members of Parliament enter into contracts with the Government. I listed some examples of problems that might arise if these prohibition of contract provisions are deleted from the South Australian Constitution Act.

I felt that disclosure of a shareholding in a large public company, such as Santos or Western Mining, would probably be adequate. If one of those large public companies entered into a contract with the Government, it would be highly unlikely that a member's relatively small shareholding would be seen to have influenced that decision. It might be different if it was a large public company in which the member of Parliament was a significant shareholder with 20, 30 or perhaps 40 per cent, but I do not think that anyone in Parliament is in that category. I assume that if anyone did become a member of Parliament with a large shareholding in a public company it would very soon be known in any event, and I guess that adequate disclosure would occur.

In the normal course of events I do not believe there are likely to be problems with shareholdings in large public companies of the kind listed in the declaration of interests legislation and in the register that is prepared from honourable members' declarations. However, there are other situations where problems could arise. I have mentioned a

medical or legal practitioner. I notice also that the Hon. Mr Davis classifies himself as an investment consultant, a promotions consultant and as a small business operator. I am not quite sure whether talking about employment in business as a small business operator complies with the Act in terms of the disclosure of the interest.

An honourable member interjecting:

The Hon. C.J. SUMNER: It may be his spouse but, being a small business operator, I would have thought it is probably a question—

An honourable member interjecting:

The Hon. C.J. SUMNER: That is right. In that case it should be Ms So and So's or Mr So and So's sandwich shop in order to get proper and adequate disclosure, but that is not the point I am making today. However, he lists himself as a promotions consultant. I suppose that may be his wife as well, but it could be him. I assume his wife is not the investment consultant. But let us for the sake of argument say that the Hon. Mr Davis, not his spouse, is the promotions consultant. I make the point again which I made earlier that it would be useful if members specified whether it was the spouse or the member. I have always done that in my declaration, but others have chosen not to do so, presumably for the sake of confusing everyone.

Assuming that the Hon. Mr Davis is the promotions consultant, for the purposes of the argument, I suppose he could enter into a contract with the Government. That would be prohibited at the moment in certain circumstances, and I will get on to that argument shortly. If we remove these clauses there will be nothing to prohibit those contracts being entered into, and there may be no disclosure of the contracts if the source of income is put down as 'promotions consultant' or 'X firm'. In those circumstances the nature of the contract with the Government would not necessarily have to be declared under the member's register of interests. That is the sort of problem that I am identifying.

There is another possible example with respect to the Hon. Mr Stefani. According to his declaration of interests, he is a director of, and I assume has shareholdings in, Austitalia Investments Pty Limited, Specialised Roofing Systems Pty Limited and Specialised Plumbing Services Pty Limited. It says that his spouse is a director of those companies. I do not know whether the Hon. Mr Stefani has any interest in those companies.

The Hon. J.F. Stefani: I have put it in the register, and I have none. My wife has.

The Hon. C.J. SUMNER: You say that your spouse is a director of those companies.

The Hon. J.F. Stefani: That is right.

The Hon. C.J. SUMNER: With respect to Austitalia Investments Pty Limited, you say that the member receives interest and consulting fees, so you obviously have an interest in that company.

The Hon. J.F. Stefani: I have a loan account. I can lend it money.

The Hon. C.J. SUMNER: You have lent it money?

The Hon. J.F. Stefani: Yes, that is right.

The Hon. C.J. SUMNER: That is all right. I am just trying to identify the interest. I am pleased that the honourable member has come in, because he has been able to clarify the situation for your benefit, Mr President, and that of honourable members. It appears, from what the honourable member is saying by way of interjection, that he has no directorships or shareholdings in those companies and receives no income from them in any way.

However, let us make the assumption, again for the purposes of the argument, that a member was a shareholder or director of a company that entered into contracts with the Government. I assume that Specialised Roofing Systems Pty Limited and Specialised Plumbing Services Pty Limited do that. I understand they are in the building business somewhere, so I assume that from time to time they may enter into contracts with the Government.

The question arises: if we take out these provisions, how do we get adequate disclosure of someone who might be running a company and is still a member of Parliament? It is not a company that is excluded because there are no more than 20 persons in it, but it may enter into contracts with the Government. I should have thought that, with the removal of these provisions, such contracts should be disclosed in the register of interests. It is not enough merely to disclose the name of the company as the company in which the shares or the directorships are held. That, again, raises the problem that I am identifying and seeking to overcome.

I do not know that it necessarily has to be resolved in a very complex way. It could perhaps be dealt with by having a monetary limit on the disclosure that is required, and that could be the subject of discussion if the Attorney-General is minded to agree with my proposition.

The final matter with which I wish to deal is the issue of office of profit under the Crown, which of course was the matter that brought Mr Cleary unstuck in the first place but which is not dealt with in this legislation. The Attorney in his second reading speech has given an explanation for that: he says it is too difficult, it cannot be done and so on. However, in looking at this issue I thought that one matter should be looked at, and perhaps it does raise issues which need to be looked at by the Parliament in relation this question of the office of profit under the Crown, and it related to the register of member's interests form supplied by Mr Meier, the member for Goyder.

Interestingly enough, in his declaration under the heading of 'Employment and Business' Mr Meier has listed the Education Department of South Australia, the Immanuel Lutheran Primary School and the Australian Army. Obviously in relation to two of those organisations listed the question is raised as to whether or not Mr Meier has an office of profit with the Crown, either through the Education Department or through the Australian Army.

An honourable member: It might be a spouse.

The Hon. C.J. SUMNER: It might be a spouse, too. The more I go through this the more I think we should amend it to make it clear. Otherwise it is confusing. You might be wrongly—

The Hon. A.J. Redford: It is a stupid, stupid form.

The Hon. C.J. SUMNER: It probably is, but you should blame the Hon. Mr Griffin and the Liberal Party which, years ago, fought hard and wanted certain things taken out of it and did not want certain things in it. So, do not blame me about the form.

The Hon. K.T. Griffin: It is not my form: it is your form.

The Hon. C.J. SUMNER: No, it is actually the Parliament's form. The Parliament prepares the form.

Members interjecting:

The Hon. C.J. SUMNER: It's true. The Labor Party did not draft the form. The registrars or the clerks of the Parliament—

The Hon. A.J. Redford: The form does not even reflect the legislation.

The Hon. C.J. SUMNER: I think you should talk to the clerks about that—or the President. He is really responsible for it.

An honourable member: They don't have a voice in this place. That's a bit rough.

The PRESIDENT: That is unfair.

The Hon. C.J. SUMNER: The point is that the clerks—and I am not being critical—

The PRESIDENT: They cannot make a response.

The Hon. C.J. SUMNER: I am not blaming the clerks: the Liberal Party is saying the form is crook. Come on; be reasonable.

Members interjecting:

The Hon. C.J. SUMNER: It is not my form: it is a Parliament form, which is prepared by the registrars.

Members interjecting:

The Hon. C.J. SUMNER: That is okay; that is another issue. Why don't you raise it? Why don't you take it up?

The Hon. A.J. Redford: It was raised, privately.

The Hon. C.J. SUMNER: That is good; take it up and raise it with—

An honourable member: It was prescribed by regulation.

The Hon. C.J. SUMNER: Okay. All right, I apologise, Mr President. I would not possibly want to blame someone for something that was my own fault. That would be terrible.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: I do not know how I got sidetracked into this, Mr President, but it certainly was not me. The point the Hon. Mr Redford is making is that the form is no good. It may well not be any good, and if so the honourable member should make representations about the nature of the form and take it up. However, he sidetracked me because I was actually making the argument that I think there is a case for actually identifying what are the interests of the spouse of the member, rather than just leaving it as it is.

The Hon. Diana Laidlaw: Or the children.

The Hon. C.J. SUMNER: Yes, or the children. As I said, when I have filled in my declaration of interests I have put down 'self', 'spouse' or 'children', and that is what should happen. However, returning to what the Hon. Mr Redford said, it was one of the strong arguments that was put up in 1983 when this legislation was put before the House by members of his political colour that you should not have to identify what were the interests of the spouse or the member.

We have become a bit more sophisticated about it all now, and it is a bit more acceptable than it was. In fact, legislation on declaration of interests was defeated by the Liberal Party in the late 1970s, and it was only when enlightened people like the now Leader of the Government and the Minister for Transport came into the Council that some Liberal Party members voted with the Labor Party in 1983 and got a declaration of interest Bill through.

However, at that time a number of arguments were raised about the legislation, and one was whether or not you should separately identify the spouse. There was a strong argument that you should not have to do that. I think that the exercise I am going through obviously establishes that that is perhaps something that could be looked at in future amendments to the Act.

However, whether Mr Meier is married or has children in the Army or what I do not know. I will ask the Attorney-General, and he can resolve the matter for me. I assume that there may be a pension arising out of Mr Meier's employment with the Education Department of South Australia if he was a teacher before. That I do not know.

An honourable member interjecting:

The Hon. C.J. SUMNER: They may all relate to his spouse, in which case there is not a problem, although what she is doing in the Education Department and the Australian Army at the one time I do not know.

The Hon. R.I. Lucas: She might be in the Army Reserve.

The Hon. C.J. SUMNER: She might be in the Army Reserve, and that is the next point I was going to make. The reference to the Education Department being listed as the employer probably does not relate to a pension because it would presumably be listed under one of the other sections as financial benefits or whatever, so I assume that Mr Meier is not actually employed by the Education Department of South Australia and that he does not get a pension from that department. However, if it does relate to him and it is not a pension, clearly Mr Meier would have problems with the office of profit legislation; that is, he would be in trouble with the Constitution Act.

The reference to the Australian Army is actually an interesting point, and I am making a serious point about this because the question is whether or not a member of Parliament could be in the Army Reserve and not run foul of the Constitution Act provisions. We are not dealing with that issue in this Bill, but I am raising it because it comes under the same umbrella of issues: in what circumstances members are disqualified from holding their seats.

One of those situations arises if they hold an office of profit under the Crown. The Federal Constitution on this point, interestingly enough, specifically excludes members who are members of the Navy, Army—

An honourable member: Air Force?

The Hon. C.J. SUMNER: The Air Force is not there, actually. There was no Air Force in 1901, and that is one of the reasons why the Constitution needs updating. However, we cannot convince the Liberal Party to do that, although we have been trying for many years. It refers to the Queen's Army or Navy and then goes on 'or a member of the Naval or military forces.' So, on the face of it a Federal member could not be an Army officer, could not be in the Army Reserve and get paid as Reserve members do, I think, from time to time, and still remain a member of Parliament—except that there is a specific exemption in section 44 of the Australian Constitution which states that you are not disqualified from holding your seat even if you are a member of the Queen's Navy, Army or military forces.

However, with respect to the State Constitution, as far as I can ascertain—and this is one matter the Attorney-General might care to look at—there is no such exemption. That might mean that, if someone is a member of the Army Reserve and goes to camps on the weekend and collects their Army pay, they may not be able to be members of the South Australian Parliament.

The Hon. R.D. Lawson: That is not the Crown in right of the State: it is the Crown in right of the Commonwealth.

The Hon. C.J. SUMNER: That may be true. The Hon. Mr Lawson QC interjects. However, as I understand the case of Cleary, he in fact was a State school teacher. So, presumably the High Court could have disposed of the matter by saying that it applies only to contracts with the Crown in right of the Commonwealth, but it did not find that. In fact they found that he was a school teacher. He was on leave, but technically he was employed, as I understand the argument, within the State of Victoria: he was not employed by the

Commonwealth in any way, yet the court found that he still had an office of profit under the Crown.

The Hon. R.D. Lawson interjecting:

The Hon. C.J. SUMNER: I think the Council will agree with me that that is not relevant to the debate. The honourable member may be right and he may be able to make some kind of argument of that kind but, as I understand that argument in the Cleary case, he was certainly not employed by the Commonwealth Crown but by the State Government and they still found that he ran foul of the Federal Constitution office of profit provisions. There is an argument, and I recollect that a distinguished former Attorney-General—Mr Robin Millhouse, now Justice Millhouse—was in the Army Reserve. Perhaps in all those years he sat here illegally. I would not want to make that allegation, given that he left so long ago and, even if he did leave under a bit of a cloud, it would not be reasonable for me to raise the point at this stage.

However, I merely reflect on that for the point of the argument. I do recollect that he was in the Army Reserve and I presume that he got paid for it when he went on these trips. The serious question is whether it applies again—and I am referring to Mr Meier, whether he is in fact in the Army Reserve, I do not know. But if the Australian Army's reference to 'employment and business' refers to the Army Reserve, it is possible that there is a problem. Again, I do not know. I merely raise it for the attention of the Attorney-General.

In summary, we give support to the Bill in principle. I would like those issues that I have raised relating to contracts with the Government answered by the Attorney-General. I would like him to address the question of citizenship as being the sole criterion for membership of the Council and I would like his views on what form of amendment to the Members of Parliament (Register of Interests) Act he may consider acceptable to overcome what I think is a real problem if these provisions are amended in the way advanced.

The Hon. K.T. Griffin: I will be interested to see your amendment.

The Hon. C.J. SUMNER: Good.

The Hon. R.D. LAWSON: I support the second reading of the Bill. Section 17 of the Constitution Act provides that the seat of a member of this Council is vacated in a number of events which are specified in that section. I will not read them in full, but as members would know they include the taking of an oath of allegiance or the making of any declaration or act of acknowledgment or allegiance to any foreign power or prince. The section also includes events such as becoming bankrupt or taking the benefit of any law relating to insolvent debtors. One might query today whether it is appropriate to disqualify a member who becomes bankrupt: bankruptcy does not necessarily connote moral turpitude or financial irresponsibility. Any member might suffer some insurmountable financial reverse through no fault of himself or herself. That is just an aside, but it tends to suggest that these provisions are ones that ought to be looked at from time to time and are not set in stone, notwithstanding that they are within our Constitution Act.

Section 31 contains comparable provisions relating to the House of Assembly. Something of an anomaly is noted in the Attorney's second reading speech between section 17, dealing with this Council, and section 31, dealing with the House of Assembly. In the House of Assembly provision, section 31(d) is to the following effect:

> If any member of the House of Assembly. . .
>
> (d) becomes entitled to the rights, privileges, or immunities of a subject or citizen of any foreign State or power;

That provision does not apply in relation to this Chamber, members will be pleased to know, but it does arise in relation to the House of Assembly. Clause 2 of the Bill introduces a new subsection (2) to section 17 of the Constitution Act, as follows:

> The seat of a member of the Legislative Council is not vacated because the member acquires or uses a foreign passport or travel document.

I strongly support that measure. It is not clear beyond argument that the seat of a member who under the present arrangements travels on a foreign passport would be vacated. It is not clear whether the same provisions would apply or the same result would follow in that case for a member of the Legislative Council or a member of another place. However, it is clearly arguable that such action, namely, travelling on a foreign passport, could possibly invoke the sanction of these provisions.

I do not favour the drafting device that has been adopted in this instance. That device is to leave the disqualifying events intact in the section, at least in relation to the Legislative Council, and to remove that anomaly in relation to the House of Assembly, but then to insert a declaratory provision at the end, which does not define the events in any positive or illustrative way. It merely declares that certain behaviour is not a disqualifying act.

The Hon. C.J. Sumner: What's wrong with that?

The Hon. R.D. LAWSON: In a case of this kind, one ought to specify specifically and positively the conduct that is prohibited and sought to be addressed and not simply *ad hoc*, and in the way that I will come to in a moment in relation to Government contracts, enumerate a large number of examples—that would not even have occurred to the original drafters of the provision—which might be caught. However, I do support the measure.

The Hon. Anne Levy interjecting:

The Hon. R.D. LAWSON: Because in substance it removes an uncertainty. Moreover, the mere holding or use of a foreign passport is not a matter of itself that adversely impacts upon the capacity of any member to discharge his or her duties as a member of Parliament. I have heard the view that every member of Parliament should be proud to travel on an Australian passport. It is said that to travel on foreign documents is unpatriotic, or at least suggests some ambivalence about this country. I accept that that is a reasonable point of view but, on balance, I suggest that the mere use of such documents could not reasonably be suggested to be a matter so serious as to be visited with the consequences provided for in the existing provisions, and I welcome their removal.

Clause 4 removes sections 49 to 54 of the Constitution Act. These provisions relate to Government contracts, and in my view, they are thoroughly unsatisfactory in a number of respects. First, in the provisions themselves and, secondly, in the manner in which they are expressed. Section 49 provides:

> (1) Any person who. . . holds, or enjoys. . . any contract, agreement, or commission made or entered into with, under, or from any person or persons whatsoever, for or on account of the Government of the State. . . shall be incapable of being elected. . . [any member who] knowingly and willingly furnishes or provides. . . any wares or merchandise to be used or employed in the service of the public.

Think of the width of that: knowingly or willingly furnishes any wares or merchandise to be used or employed. The mere

fact that one sells goods to a third party, who might, unknown to the vendor, be employed in the service of the public, might—and I emphasise 'might' disqualify such a person from being elected or sitting or voting as a member of this Parliament. It is the uncertainty created by provisions of this kind which in my view warrants their removal. Section 50 provides that if any member of Parliament directly or indirectly himself or by some other person whatsoever undertakes or executes such a contract, his seat shall be declared void. Again, this drafting device is used, which previously I suggested was unsatisfactory.

Exemptions are provided under section 51. These exemptions operate against a reasonable interpretation of the earlier provisions, because any reader of section 49 might say, 'Well, these provisions are designed to address the mischief of corrupt conduct in relation to Government contracts by members of Parliament.' The mischief is to prevent corruption or at least the appearance of corruption. However, that construction is quite untenable, because the exemptions provided by this Parliament indicate that the section apparently addresses such matters as making a bet at the TAB, having a housing loan from the State Bank of South Australia, taking out a policy of insurance with the State Government Insurance Commission; matters which by no stretch of the imagination could be suggested might tend to corrupt conduct in public life. So, the effect of the exemptions is to extend the operation of section 49 and similar provisions to the most literal construction, and it is a thoroughly unsatisfactory situation, which has developed over many years.

There are uncertainties within the exemptions themselves, and over the years I have had to advise a number of members of Parliament from more than one Party on the effect of some of these provisions on transactions which they were entering into and which might possibly have given rise to some endangerment of their seat. Take for example section 51(c), which provides that nothing in the previous section should extend to any contract made with a company consisting of more than 20 persons. The Leader of the Opposition referred to this matter of private companies and public companies in his address in the second reading debate. Situations arise where there is a company of 20 persons and then, as a result of some reconstruction, suddenly there are only 16 members of a company, through some reason entirely beyond the control of the member. There might be some takeover or some corporate reorganisation and suddenly the member, having been in the safe position of the contract being with a reasonably substantial company of which he was not the controlling shareholder, is in danger of losing his seat.

The Hon. Anne Levy interjecting:

The Hon. R.D. LAWSON: It is too late. Once the company falls below the prescribed number of members, his seat is vacated by virtue of that fact.

The Hon. K.T. Griffin: You can get around it easily, though, because you could have a company with 21 shareholders, 20 of whom had a share each.

The Hon. R.D. LAWSON: There are all sorts of examples. Why should one have to engage in artificial devices to avoid this? The mischief at which these provisions is directed is corrupt or improper conduct, and one ought not to have to resort to devices of that kind to escape the savage consequences of the provision. Take section 51(g), which exempts the provision of goods or services where the goods or services are supplied on no better terms than those on which they are ordinarily supplied to members of the public. This refers to any contract with the Government or by a person on behalf of the Government. Questions arise as to whether some instrumentality of the State is, in fact, the Government for the purposes of this provision—whether some statutory body could be treated as the Government.

That leads again to uncertainty, and the question of whether or not 'on no better terms than those on which they are ordinarily supplied' is also fraught with uncertainty, because in the very nature of things these goods or services are not necessarily provided on the standard retail rates. It might be a painting contract or a electrical contract for the repair of a country school. There will always be debate and uncertainty as to whether those goods or services were provided on better or worse terms than those available to other people.

In my view, those very short illustrations demonstrate the unsatisfactory nature of the present regime. Provisions of this kind do have unsatisfactory consequences. I would not want to overstate it, but if any prospective member of Parliament, in business, for example, were to examine the present provisions of our Constitution, he or she would be very concerned about the possible effect on their business arrangements or employment arrangements in consequence of these provisions. Provisions of this kind discourage people from becoming members of Parliament. Of course, provisions of this kind do create uncertainties where certainty ought to prevail.

The Leader of the Opposition in principle supports the removal of these provisions but he suggests that perhaps the register of members' interests ought to contain provisions relating to Government contracts. Like the Attorney, I will be interested to see what amendments the Leader of the Opposition comes up with, because it seems to me that any regime based upon Government contracts of this kind is fraught with this difficulty of definition. I will be interested to see whether he is able to produce—

The Hon. C.J. Sumner: Why do you think it was seen as a mischief 100 years ago and now is no longer one, particularly when you don't replace it with some system of disclosure?

The Hon. R.D. LAWSON: As it appears in the second reading explanation, these provisions have been contained in English legislation and the legislation of Australian colonies, now States, for many years.

The Hon. C.J. Sumner: They were put there for a reason.

The Hon. R.D. LAWSON: They were put there for a reason, but when a select committee—not of this Parliament but of another Parliament—examined these provisions, it found that in 100 years there had been no case when it was found that there had been any contravention of these provisions. If you want a provision which prevents the Government from dealing with members of Parliament, then enact that: put the onus on the Government department and not on the member who might through some inadvertence be adversely affected, especially when we have provisions which say 'benefit directly or indirectly'.

The Hon. C.J. Sumner: How do you overcome that problem?

The Hon. R.D. LAWSON: One way of overcoming it, and in my opinion a better way than tinkering with the register of interests, would be to create an offence of corruptly or improperly seeking to influence or participate in the awarding of Government contracts for himself or some other—

The Hon. C.J. Sumner interjecting:

The Hon. R.D. LAWSON: And to provide that the seat of a member who is convicted of such an offence is vacated. That would be a far more—

The Hon. Anne Levy interjecting:

The Hon. R.D. LAWSON: Not a criminal offence. Our Constitution Act provides that if you are convicted of a felony or an infamous offence.

The Hon. C.J. Sumner interjecting:

The Hon. R.D. LAWSON: There is a nice question there as to whether it is an infamous offence. There is no specific provision anywhere that says a conviction for corruptly or improperly seeking to have some contract awarded to a member of Parliament or participating corruptly in a Government contract is an offence which leads to the vacation of the seat. It is not specifically provided for, as members have indicated in interjections.

It may well be that a consequence of the provisions of the Criminal Law Consolidation Act, coupled with provisions of the Constitution Act, have that effect, but I do suggest that that would be—and I am not advocating that particular measure—a more satisfactory way of addressing this problem than the seeking to have put into the register of interests contracts of these indefinable, indirect and uncertain categories. I support the second reading.

The Hon. M.S. FELEPPA: Not having the legal expertise in this field, I suppose I have to limit my remarks to the more basic criteria of the Bill before the Council, that is, to deal with dual citizenship and the use of a foreign passport or travel documents. So, the purpose of clauses 2 and 3 of the Bill is to protect members of Parliament who acquire or use a foreign passport or foreign travel documents from being disqualified from taking their seat in the Parliament. These amendments will be added to sections 17 and 31, as mentioned by previous speakers, as subsection (2), and there will be the deletion of paragraph (d) from section 31 of the South Australian Constitution.

The amendments should have the desired effect, I believe, but they do not add anything to the moral integrity of some members of Parliament who may need to avail themselves of the protection. That is simple. Paragraphs (b) and (c) of both sections 17 and 31 provide that a person cannot take his or her seat in the Parliament if there is established a committed relationship with a foreign power, prince or state. It refers to a committed relationship by one who already has Australian citizenship. None of the other paragraphs says anything at all about the renouncing of foreign citizenship. The renunciation of foreign citizenship comes under the Commonwealth Citizenship Act 1984 which provides:

> . . . does not actively recognise dual citizenship but does make a certain concession. A person can have Australian citizenship plus another citizenship where the other citizenship was acquired before he or she became an Australian citizen. This is due to the operation of section 17 of the Act which takes away Australian citizenship only where the 'other' citizenship is acquired after the position of Australian citizenship is acquired 'purposefully'.

So, it may be construed that, by acquiring a foreign passport or travel documents, one is establishing a relationship with a foreign power or, even indirectly, acquiring foreign citizenship, resulting in dual citizenship. This could well be so if it could be demonstrated, in my view, that the passport or travel documents were purposefully acquired.

The intention of the Bill before the Council is to hold that such documents do not prevent a member of Parliament from taking a seat in Parliament, however the documents may be construed. But as I said at the beginning, there are certain moral as well as legal obligations that devolve upon a person who takes Australian citizenship. The legal obligations are highlighted by the determination of the High Court of Australia in *Sykes v. Cleary*. The part that concerns us, I suppose, dealt with the dual citizenship status of Mr Delacretaz and Mr Kardamitsis. They both held dual citizenship, and their right to nominate to Parliament was in question as it was contended that they were ineligible because they had not renounced fully or sufficiently their own citizenship when becoming naturalised Australian citizens.

In the determination, Justices Gaudron and Deane held that in renouncing foreign citizenship:

> Mr Kardamitsis and Mr Delacretaz had taken all 'reasonable steps' by making oaths of allegiance to Australia when they were naturalised, which included a renunciation of other allegiance, together with their long term commitment to Australia.

Justice Gaudron further said that held allegiance to Australia would not be impaired so long as foreign allegiance was not reasserted. The other five members of the High Court held the majority view that, where a foreign country offers the opportunity for one of their departed citizens to renounce citizenship, reasonable steps would require that action to renounce the former citizenship should be taken when acquiring Australian citizenship. When a foreign country does not offer renunciation of Australian citizenship, then 'reasonable steps' would be:

> . . . sufficient if a person showed proof of seeking revocation from the foreign power, regardless of whether the acknowledgment of allegiance was actually revoked by the foreign power; and that he or she has not taken advantage of any privileges or fulfilled any obligation flowing from the acknowledgment of allegiance, etc.

So, in this latter case, there may be advantages and privileges flowing from holding foreign travel documents or a foreign passport. While the Bill before us is trying to protect the seat of a member of Parliament who makes use of the advantages and privileges, the High Court may rule against the member's citizenship status if called on to do so.

There is a moral obligation that stands behind the legal obligations and exceptions. The moral obligation demands that, if loyalty is to be given to one's natural or adopted country, one should not seek advantages and privileges bestowed by a foreign country but not available to all Australians. If one has had the good fortune to become an Australian citizen, one should, in my view, also be prepared to renounce all other allegiances and be seen by one's actions and documentation to be a loyal citizen. If advantages accrue because, through some odd circumstance, one is entitled to a British, Greek or Swiss passport or travel documents as well as Australian, or Italian, as in my own case, then those advantages should be forgone to show that one is by conviction indeed a loyal Australian.

This should be a moral standard even if one were not politically minded. It should be the standard more so if one is politically minded and ambitious. If we recognise, as in Curzon's Dictionary of Law, that a breach of allegiance to one's country may be seen as treason, even a semblance of disaffection should be avoided by always travelling on an Australian passport and Australian travel documents. This is particularly so for members of Parliament, and I hold that view very strongly. We should be seen and set an example to the rest of the community. Indeed, when I travelled recently, I travelled as previously with Australian documentation. If we were all prepared to make that kind of moral commitment

then there would be no need, in my view, for the legal clauses 2 and 3 of this legislation that we are about to debate.

The Hon. A.J. REDFORD: First, in rising to support this Bill, I would like to congratulate the Attorney-General and the Leader of the Opposition for their contributions to the debate earlier this evening. I do not want to talk about this for very long, except to point out the very practical difficulty that this legislation causes, and, in fact, endorse some of the comments of the Leader of the Opposition in relation to the Register of Interests, with perhaps one word of caution.

I suppose the best way to illustrate that is to cite the difficulty I had upon being elected to this place on 11 December. The relevant provisions were drawn to my attention after my election. Of course, the election of my place was not a matter of certainty until the day of the election, being the sixth member on the Liberal ticket. As a member of a legal firm, we have a partnership agreement that requires certain notice to be given if one leaves the partnership. That is done for good reason: it enables stability within the business operation, and it is a small business operation.

However, I was forced to resign without giving the appropriate notice and that has had, from my position, quite a drastic financial cost. That was my choice and I have to live with that. The other point I wish to raise is the difficulty that the existing legislation raises in determining what one should or should not do. I, in fact, consulted a leading constitutional silk as to my position and his advice to me—

An honourable member interjecting:

The Hon. A.J. REDFORD: No, it was not a member of this place.

The Hon. R.D. Lawson interjecting:

The Hon. A.J. REDFORD: The point has gone straight through to the keeper. I consulted a leading senior counsel and his advice to me was that the provisions as they stood—and the Hon. Mr Lawson has gone through this in some detail—were so uncertain that the risks associated with my being involved in a legal firm in any way would be too risky. He said that for two reasons: first, my former firm was involved in acting for a couple of Government agencies, principally the Metropolitan Taxi Cab Board and the South Australian Metropolitan Fire Service. That could have led to a problem. The second issue, he pointed out, in a partnership arrangement is that a partner may become involved in a Government department in the absence of my knowledge, but by definition I would be liable to forfeit my seat.

It is my view that this legislation should be passed. The question of the Register of Interests is interesting. I must say that I had great difficulty in completing the form because the form did not line up with the legislation. The form is full of blank spaces with no explanation as to what is required. Indeed, it is very easy just to define the property interests of a member in strictly legal terms, and a member of the public or a member of the media who may have a genuine interest in what our pecuniary interests are would not be any the wiser as to those pecuniary interests. One needs only to look at listing, let us say, certificate of title register book volume numbers, which really does not say anything as to the location or the nature of the property that one might own.

The Hon. Anne Levy: You can go to the Lands Titles Office.

The Hon. A.J. REDFORD: Yes, but the public, with all due respect, are entitled to know this information simply and easily and make a judgment. You should not have to—

The Hon. Anne Levy interjecting:

The Hon. A.J. REDFORD: No; hear me out on this. I will give you another simple example. A lot of property is held by way of companies or by way of unit trusts. One can easily search a company but, if that company happens to be a trustee of a family trust or a unit trust and you happen to be a beneficiary, all one needs to do is name that you are the beneficiary of a unit in a specific trust and it is a difficult exercise for anyone to really ascertain the nature and extent of the property interests that one has.

The difficulty, as the Leader of the Opposition mentioned, in looking at the Register of Interests in terms of disclosing contracts is that it sometimes involves a subjective decision as to whether or not you are involved in a contractual relationship with a Government department and whether or not it should or should not be disclosed. And, indeed, one only has to go back to a partnership arrangement or being involved in a substantial family company, where that company might be involved on a contractual basis with a Government department or a Government instrumentality, yet at the same time the member being completely unaware of that arrangement.

It is my view that the comments of the Leader of the Opposition are valid and need to be considered. It is also my view that there are no simple answers to this problem and, at the end of the day, many of the problems will be solved by the commonsense of members of this place. All in all, I endorse this legislation and I congratulate the Attorney in bringing it to this place.

The Hon. ANNE LEVY: I rise briefly to speak on this matter because, under Standing Orders, I should draw attention to any conflict of interest I may have in voting for this legislation. I certainly support the legislation, but I need to draw to the attention of the Council the fact that although I am an Australian citizen, proudly so, and have always travelled on an Australian passport, I am entitled to have a French passport. I am proud of my French heritage and in no way do I wish to decry it. If this legislation is passed, I will then have the ability to apply—

The Hon. C.J. Sumner interjecting:

The Hon. ANNE LEVY: While I could always have applied and obtained a French passport, there might have been problems had I travelled on it.

The Hon. K.T. Griffin: You cannot get a French passport without renouncing all other citizenship.

The Hon. ANNE LEVY: That is not true. I am entitled to a French passport because my father was French. My sister has a French passport and travels on it. With the passing of this legislation I would be able to do the same without in any way endangering my seat in this Parliament. I feel obliged to draw this to the attention of the Council as it could be construed that I have a conflict of interest in voting for this legislation.

The Hon. K.T. Griffin: Potential.

The Hon. ANNE LEVY: A potential conflict of interest in voting for this legislation.

The Hon. CAROLYN PICKLES: As we are having confession time and as the Hon. Ms Levy, who has been a President in this place, has reminded us of the Standing Orders, I should declare to the Parliament that, having been born in the United Kingdom, I am entitled to have a British passport. I am an Australian citizen and have held an Australian passport since I became an Australian citizen in

1979. I make it very clear that in voting for this legislation I, too, have more than a passing interest in it.

The Hon. M.S. FELEPPA: My colleague the Leader of the Opposition has invited me to declare my position.

The Hon. C.J. Sumner interjecting:

The Hon. M.S. FELEPPA: I am making an additional comment.

The PRESIDENT: Order! I think that a personal explanation is the way to do it.

The Hon. M.S. FELEPPA: I accept your instruction, Mr President. Perhaps I may make a personal explanation. My personal position in relation to dual passports is that I am not entitled to have an Italian passport unless I renounce my Australian citizenship. If I go back to Italy when I retire, I will have Italian citizenship automatically after 12 months. However, I have quite firmly stated that I will be buried in this country.

The Hon. T.G. ROBERTS secured the adjournment of the debate.

WORKCOVER CORPORATION BILL

Adjourned debate on second reading.

(Continued from 12 April. Page 390.)

The Hon. T.G. ROBERTS: I oppose the Bill. I do so for a number of reasons and on a number of grounds. The Bill is part of a trifecta of Bills that have been put forward by the Government in the Lower House to change the nature of the WorkCover legislation to enable a number of things to occur. It is one of three Bills, the others being the Occupational Health, Safety and Welfare (Administration) Amendment Bill, which is before us, and the Industrial and Employee Relations Bill, which is in the Lower House at the moment. Although all are separate Bills, they have a part to play in the new Government's legislation on how industrial relations in this State will be formed.

This Bill, as it stands, is a change to the structure and administration of the Workers Rehabilitation and Compensation (Administration) Amendment Bill and the Occupational Health, Safety and Welfare (Administration) Amendment Bill. It also changes the nature of the old Act by changes to the structure of WorkCover which will lead to further changes at a later date and which have been indicated by the Government in another place will lead to a change not just in the nature and culture of the WorkCover Corporation but also to the way in which WorkCover will be administered through occupational health and safety and ultimately how it will impact on certain aspects of those changes.

The major changes have been disguised quite well by the Government in the Lower House. In particular, they have sold it to the community in a more subtle way than that in which the Victorian and Western Australian legislation was sold. I congratulate the Government on that. They will do it by degree, but the same outcomes will probably occur over a longer timeframe and it will be much harder for opposition to be organised to point out to people the implications associated with the changes.

The Hon. R.I. Lucas: Many may even support it.

The Hon. T.G. ROBERTS: I am sure that many will support the changes that are included in the Bills, but they will be of a conservative political spectrum. I do not think that the people who will feel the impact of the legislation will understand it—not so much the WorkCover Corporation Bill itself, because many people in workplaces will not understand the nature and change of the administrative positions that are being signalled inside this Bill—but they will certainly do so when the impacts of the Occupational Health, Safety and Welfare (Administration) Amendment Bill start to be advertised in workplaces and when the Industrial and Employee Relations Bill starts to be debated, and I understand that is being debated in the Lower House now.

The nature of the developed changes within the WorkCover Corporation Bill cannot be separated from the Industrial and Employee Relations Bill and the Occupational Health, Safety and Welfare (Administration) Amendment Bill. The staged development of changing the administrative process within WorkCover sets a program that allows for ministerial and political control of WorkCover itself, and that was absent in the original legislation.

Seven years ago the system that the Labor Government set up was designed basically to pull together all aspects of occupational health, safety, welfare and rehabilitation and put them into an Act under the responsibility of the WorkCover Board and WorkCover itself. That Act was an improvement on the 1971-72 Bill which, for its time, made some good ground in relation to the changes that it made.

In interpreting the 1971-72 Bill as a practising shop steward, I found that the Bill itself afforded a great deal of protection to injured workers but that it had faults and contained an inbuilt liability. It included conflicts in relation to establishing claims, and much time was spent in developing cases. There was a host of court procedures to be endured, and in many cases the due benefits were not afforded to injured workers as perhaps was the case with the WorkCover Bill that was put together in 1986-87.

I congratulate Jack Wright for putting together the original 1971-72 Bill because it was well ahead of legislation in other States in relation to the groundwork that it carried out in establishing many rights for workers. In the climate of industrial democracy at that time it established workplace committees and certainly the framework for a combined effort in relation to accident prevention and some sort of compact between unions, employees and workers in relation to occupational health and safety and accident prevention.

The WorkCover Bill that was put together in 1986-87 tried to solve many of the problems that were associated with the 1971-72 Bill, one of which was the role of the insurance companies in establishing fault. Suggestions were made by the union movement at that stage to trade off common law for a more equitable, no-fault scheme which was easier to administer. Most trade union officials at the time understood that that would be the centrepiece of the trade-off and that that would always remain. Unfortunately, we have in this Bill a watering down of the original intent and the philosophical position that had been established during the time when the trade-offs were made, and unfortunately we have a whittling away of the rights of workers generally.

In his second reading speech, the Minister in another place is certainly signalling that by degree there will be clauses, if passed in this Chamber, that will allow for agents and private participation or contracting participation within WorkCover that almost brings us back to the same problems that we had under the old Bill.

There is no doubt that when the WorkCover Bill was enacted in 1986-87 it had some teething problems. The single insurer, SGIC, did not get its act together in the time frames that the Government, the trade unions and the employers

would have liked. It experienced all sorts of problems from which it found it difficult to extricate itself. However, all those who were involved in the early stages of the formation of the WorkCover Bill saw that the key change was in relation to rehabilitation and prevention, and many people were sold on the philosophical changes that encompassed those issues and were therefore prepared to make some trade-off on common law. Many people now say that that trade-off should not have been made, and perhaps it should have remained as a claim within the 1986-87 WorkCover Bill.

The Liberal Party is making a major mistake in that it fails to recognise that WorkCover accident prevention and rehabilitation is an industrial issue as well as an occupational health and safety issue. It is a part of a package that many large employers, particularly, and some small employers recognise. They take their responsibilities seriously in relation to accident prevention. When an accident occurs they take their responsibilities and follow through with injured workers: they make sure that the treatment during the rehabilitation process is adequate and is maintained; they maintain contact with their injured workers; and they also carry out their responsibilities regarding WorkCover's recommendations in relation to rehabilitation through work back on the job, so that the separation and the trauma that go with an industrial accident is minimised.

Unfortunately, many employers do not carry out that responsibility and, as soon as an injured worker puts in a claim or is absent from work, they tend to distance themselves from that person and to make sure that the isolation of that injured worker is complete by making no contact at all with them and not worrying one jot about rehabilitation.

WorkCover itself, in that 1986-87 period, had to work through those problems, and the only thing we got from the Opposition at the time was criticism about the rates going through the roof and statements that the system itself would have to be changed, overhauled and amended so that the levy rates could be brought into a manageable state to enable us to compete interstate and overseas with our oncosts in labour in terms of competition in international best practice. The problems were starting to emerge at that particular time, and no consideration was given to the teething problems that WorkCover was having in administering a very complicated and integrated scheme involving not only the setting up of the WorkCover administration itself but also the integration of many of its programs with employees and unions. Those education programs had to run.

At that stage unions were running occupational health and safety programs both in workshops and off sites to educate their members as to their responsibilities under the new Act. However, employers were very slow in many cases to educate their members as to their responsibilities in relation to the Act itself, and thereby had those problems to which I alluded: on the one hand, some employers were carrying out their responsibilities and trying to work within the new WorkCover structure and, on the other hand, there were others who were obviously not interested at all in rehabilitation and were just laying workers off and, in some cases, sacking them while they were under treatment programs.

In 1987-89 we had heavy criticism coming from the Opposition; it wanted to set up select committees to make major changes, and it wanted to redraft the whole of the WorkCover Act at that stage. It had no understanding at all as to the changes that were being worked through by the board and the many difficulties that were faced by it. We only heard about the confrontation in relation to the WorkCover Board, but if we looked at the minutes of the board meetings we would find that many decisions were made and employee and union representatives were able to come to terms with many problems that occurred through the WorkCover Act during that period. It was not easy for board members or members of Parliament to analyse exactly what roles the groups that were affected by the WorkCover Act at that stage were to play, and how to get them to work cooperatively, because we are talking about large employer organisations, large union organisations, the medical profession, rehabilitation providers, self insurers, the legal profession and the WorkCover Board itself.

We are talking about fairly large employer and union organisations with cultures of their own which were locked into a psyche of accident prevention which, to them, meant risk management. If it was a risk management program that was going to save money, then many companies put time, energy and effort into accident prevention. Conversely, the unions and employees felt that they did not want to go to work to be maimed, killed or injured. They wanted their workplaces to be as safe as possible to prevent them from being hurt while carrying out their duties.

It is pretty easy for members on their red couches here to pass legislation that impacts on those work areas that are affected by changes to WorkCover and the whole philosophical position around accident prevention and care, but in many cases people believe there is only one 6 o'clock in the day, and that is 6 p.m. But out there people are working three and four shifts: some people go to work in the dark and return home in the dark. Much attention is being made to journey accidents, and the people who are framing the amendments about journey accidents themselves were never, I am sure, seven day 12 hour shift workers.

The Hon. L.H. Davis interjecting:

The Hon. T.G. ROBERTS: The Hon. Mr Davis claims he was—

The Hon. L.H. Davis: I worked at a jam factory.

The Hon. T.G. ROBERTS: I understand that probably one or two members on the Government benches understand what it is like for a worker to be riding a bike as in the old days—but I am not sure that the honourable member goes back that far—going to work in the early hours in the morning and coming back late at night.

The Hon. K.T. Griffin interjecting:

The Hon. T.G. ROBERTS: Yes, but it is a lot different for a shift worker in a metal factory than it is here. The journey accident changes that have been proposed in the Bill are an illustration that the people who are proposing the changes do not understand what the second half of the relationship between labour and capital have to put up with to earn their living.

The Hon. L.H. Davis interjecting:

The Hon. T.G. ROBERTS: The honourable member is probably right. The position of the WorkCover Corporation Bill has been put by the Minister in another place, who stated:

> The justifications are these: first, the current system fails to give proper priority to the joint responsibility of workplace safety.

I fail how to see how the new Act changes that situation at all. The joint responsibility for workplace safety has been a question that has not been answered since the Industrial Revolution. As I said, the chequered history of employers in relation to their responsibilities to accident prevention is the key to keeping costs down in any system, whether it is a

private system or a publicly run system like WorkCover. Prevention is the key and training is the key to prevention.

The programs that were put in place by WorkCover and the trade unions in the period since 1971-72 were underestimated by the conservative elements opposite who recommended the changes. I shake a stick at many of the employers in this. I suspect that they had much to do with the drawing up of the recommendations that we see before us here. I believe that many of the suggested changes, not only to WorkCover but to occupational health and safety and to the Industrial Relations Act, come out of the paybacks now being made by the Liberal Party in respect of the support it enjoyed in the lead up to the most recent election. The paybacks are misplaced.

The only way that South Australia can get its industrial act together is to have a compact with the trade unions about how they proceed in this State. We are not a dynamic industrial State like New South Wales, Victoria or perhaps even as Queensland is now, and I would have thought that the South Australian Government would have looked not at cutting back wages, conditions and services in this State to the competitive levels of our Asian neighbours but at trying to get a harmonious working relationship through its industrial relations system and building in occupational health and safety, WorkCover and industrial training and prevention training programs as part of an integrated industrial relations scheme that had an intelligence base and not one that was based on conflict. The second point the Minister made in another place is as follows:

> The current system fractures the WorkCover Board along philosophical policy lines thereby inhibiting efficient decision making and administration.

I must say that that is life. It does not matter where we go and how we establish our principles and positions concerning conflicts of interest, because the nature of the employee/employer relationship in Australia is one of conflict. People believe that that is the only way they can solve their problems so that, as they argue them around the table, ultimately either they draw a compromise or one side has the numbers, and the philosophical or administrative position is determined in one of those two ways.

What we have proposed here is not a fracture or something that inhibits the decision making process. Basically, we have a winner take all circumstance where the Minister through his position in relation to the structure of the board will make sure that the board makes the decisions that he requires. The principles of why he put the structure together as he did or why he changed the old structure was to maintain some sort of political/ministerial control over the process so that policy is basically taken out of the hands of WorkCover itself and, with the reduction in board size from 14 members to seven members, the Minister will take the power away from the board and place the policy developing process back into his own hands.

That is a clever ruse because it does not mean a lot in relation to how the board operates now. However, if we put it together with the occupational health and safety legislative changes and the Industrial Relations Bill, then we have a philosophical position being drawn by the Government and employers where we do not have a compact between employers and unions and employees. Instead, we have a patronising or a power base based on numbers and it will be a master servant relationship, exactly as it was at the start of the Industrial Revolution. Nothing has changed: talk about back to the future. With the program that has been put before us now, including the other two Bills that I have mentioned, South Australia's industrial relations system will be changed but it will not be changed for the better.

Unfortunately, many people in positions of power within the conservative networks are not watching how the successful countries in the Asian region have been able to get their economies to work. Korea, Taiwan, Japan and other Asian nations have economies growing quite rapidly and they have been able to do it by putting together programs that have a strong Government participation within an industrial development program.

They have aims and objectives, and I think Australia was in a very good position to be able to put together a program that drew together employers and employees in presenting a united front to become an advanced industrial nation with world's best practice and a relationship based on mutual respect between employers and employees. Unfortunately, this Bill and the others before us count that out.

The Minister put together some of his amendments based on some of the information which he picked up on the select committee and which was put together to address changes to the original Act when Labor was in Government. The Hon. Mr Davis sat on that select committee, and a lot of the information packages that were put together and presented to us by employers in relation to journey accidents, stress and other matters leant towards change but had no outcomes. To my mind, the problems associated with stress were not solved. The conflicting evidence that was put before us certainly did not lead us to draw any conclusions on which we could frame legislation.

The Hon. L.H. Davis interjecting:

The Hon. T.G. ROBERTS: I am sure Mr Davis would agree that it was not based on logic; it was based on numbers. There were three people on one side and two on another and—

The Hon. L.H. Davis: And Bob Gregory in the middle not knowing what to do. He got rolled in the Cabinet and rolled by the unions.

The Hon. T.G. ROBERTS: Well, they are your words. The evidence on stress put before us by the medical profession drew no conclusions at all, and in fact there was conflict between people putting forward—

The Hon. L.H. Davis: The evidence on stress within the public sector was overwhelming.

The Hon. T.G. ROBERTS: The evidence on stress in the public sector was not overwhelming. The evidence on the numbers of stress claims was significant, but there was no agreement at all over the evidence on how those stress-related claims were managed. The changing factors within the work force, the management—

The Hon. L.H. Davis interjecting:

The Hon. T.G. ROBERTS: Go and have a look at my contributions. The information given to us certainly showed that the stress claims in the public sector were far greater than in the private sector. One has to have a look and understand exactly what happens not only in the public sector but also in the private sector in relation to the nature of change.

Members interjecting:

The ACTING PRESIDENT (Hon. M. S. Feleppa): Order! I ask that the Hon. Mr Davis and the Hon. Mr Roberts refrain from conducting a conversation across the Chamber.

The Hon. T.G. ROBERTS: Thank you for your protection, Mr Acting President. The problems that the Hon. Mr Davis and others had in relation to stress claims was that it was an emerging new type of claim, and lay people were

having difficulty in trying to analyse aspects of it relating to how stress-related claims could be diagnosed and then managed, and similarities with repetitive strain injures were lining up. When repetitive strain injuries first started to appear, the first defence mechanism for conservatives within the industries concerned was to say that they did not exist and that they would go away. It was mostly women who were getting RSI, although it was not restricted to women but occurred wherever repetitive work was occurring.

First of all, managers did not know how to eliminate it; secondly, when it did occur, the medical profession did not know how to treat it; and thirdly, the insurance companies that were acting on behalf of companies in most cases did not know how to formulate claims for it. It soon emerged that it was a distinctive problem and that it was occurring because of poor layout and poorly designed work stations. I am sure *Hansard* would recognise the problem I am talking about: they now have new machines which are lighter to the touch. In cases where the work site was properly designed, the repetitive strain and carpal tunnel injury were eliminated.

In some cases the problem occurred because of the workload that employers were placing upon employees and in a lot of cases it occurred through ignorance, not because people were putting pressure on workers to work at certain rates. They were not taking adequate breaks, but, after ergonomically designed machinery and chairs and adequate breaks were provided, the problem was eliminated. It also occurred at a time when computers were being brought in, there was a lot of transfer of information from fixed card filing cabinets into computers and a lot of people were working long hours on poorly designed machinery to put that information onto computers.

When stress started to emerge, it had other problems besides managing the problems associated with stress. I think it is incumbent on legislators here to recognise just how quickly society has moved into rapid social and economic change and how stress has impacted on the community, probably on some of us here as individuals, but more so out in the community where, to make sure that to get the economic parameters right for competition internationally and to gear up to protect Australia's standards of living, people have had to very rapidly change their lifestyles and the way in which they work. Certainly, technology has changed and increased the pressures on people out there on a daily level. Transport, communications and information has added to those pressures.

With respect to some of the other changes to WorkCover that were required by the conservatives, some of those changes were brought about again by some of the information that came before the select committee. In the case of the so-called rorts, everybody knew a worker who was being photographed or shadowed or who was swinging the lead and rorting the system. Those of us who have been in industry and commerce for a long time know that there are people in all walks of life who will take advantage of any system. During the time in which we took evidence we were given evidence that there were people who were dropping onto WorkCover, whose claims were not being legitimised correctly either by the legal profession who were doing the treatment for the so-called work-related injures or by the employers themselves not following up the cases properly.

In any case, there were people who got through the system that were not legitimate claimants, and every system has them. But I will say that, in industry, I have come across far more people who are reluctant to put in claims. That might sound strange to people sitting on the Government benches, but there are more workers out there carrying injuries than a lot of people realise, and it is through bad management that they are not picked up. Where good management would recognise that people are carrying work related injuries into their workplaces, in other cases they are not picked up until they deteriorate to a point where they need treatment. It is these cases that balance out those that are taking advantage of the system and those who have work ethics that prevent them from claiming their rights.

I have never seen in the *Advertiser* or any other daily paper columns being run to highlight, particularly in the case of a lot of migrants, people who will not take WorkCover or benefits. There are a lot of people who will not take social security. All we see in the daily press are those people who are rorting the social security system. There are a lot of people too proud to register for WorkCover claims. They carry on with their minor injuries only, because as soon as they become major they can no longer do their jobs as most of them are in physically demanding jobs. As soon as the injury becomes work related, they have trouble claiming.

I have a lot of sympathy for those who have experience with the WorkCover Board in case management. If they ask questions about when the injury first occurred, a lot of people, particularly migrant women and men, have trouble in identifying when the injury first started to appear, and it makes it very hard for them to get their claims established. Fortunately, WorkCover has very experienced case managers now. It is one of the problems it has worked through. It has a history of educating doctors to recognise those sorts of problems. I am not saying in all cases but in some cases the medical profession has now caught up and is able to eliminate, through changes to the WorkCover system by better certification and treatment programs, many of those problems that were obvious at the time we were taking evidence. The point I am making is that many of the changes put forward in legislation now were not only unnecessary then, because there was a program being put forward to work through them, but they are totally unnecessary now because many of those problems have been eliminated.

If you had a look at the time problem solving charts, you would find that, just as each problem started to emerge and legislators started to suggest legislative changes to them, WorkCover was already starting to put together packages of management programs that were eliminating the problems out of the system without legislation, anyway. So, I guess the key to the points that I have just made will fall on deaf ears opposite. The Hon. Mr Davis will still insist that the evidence he took to justify the changes to the WorkCover Corporation is relevant, and that changes to the board are justified. He will say that the changes to the administrative program that allows the Minister to have so much control and say in the development of policy in relation to the WorkCover Corporation are justified. He will say that the occupational health and safety changes associated with the prejudices inbuilt through ignorance—and I will say that because he is not listening—are a part of the armoury that will be put together to make sure that the conservative forces within the State that are advising the Liberal Party, unfortunately, will have their way.

I would like to see the Government raise its head above the local level and look at international best practice in relation to industrial relations. It should knit in occupational health and safety as a key component of its industrial relations legislation and stitch together rehabilitation, compensation, occupational health and safety and welfare in

a way that does not patronise or control, but provides a compact of cooperation. Unfortunately, those components are missing.

In relation to selling the propaganda side of justification to the general community, stitched into the Minister's contribution in the Lower House was his attitude of shaking the big stick at the Legislative Council saying, 'We have a mandate to put these changes through; we have the support of the South Australian people in this case.' However, the Government has been clever in putting to the local press all the stories about rorts that have occurred to justify the changes. The rorts that were claimed in the Lower House in relation to the squash player who was claiming a work related injury in relation to a journey accident were seen to be incorrect, and I suspect there will be one or two others that will hit the press in the next couple of days.

I get a lot of cases given to me in relation to employers' claims about workers rorting the system. In fact, I received one today. I have claims put to me by employees that employers are rorting the system. I have not raised them in this Chamber, although I have spoken to members quietly, when we set up the select committee. I have been given information concerning an employee of a car company who was unfortunately involved in a badly placed drug transaction. He either did not pay his bill or he had been putting strange substances in the substance he was supposed to be selling. I am not quite sure how the altercation came about, but he was set upon by people and he received a hiding. Because he was on a work site during working hours—I am not quite sure whether one of the attackers asked to see the disc brakes of a 1973 Holden—it was seen to have been part of his working duties, and after the original injuries had healed, the claim was extended to cover the circumstances associated with increased drug use.

The claim was made that the increased drug use was used primarily to overcome the pain and stress associated with the original bashing. I am not here to argue the merits of that case. I am not aware of the detail of it, but it is one that would sound a little bit suspect if you were looking at the case and making a balanced judgment on whether an employer would be responsible for that sort of case. But it does illustrate, I think, that there are cases that may not be justified for which WorkCover does pick up the responsibility. There are far more cases of people in industry, commerce or retail trade that do not place claims before WorkCover. There are far more cases I know of in my days as an active union official and shop steward where employers actually sacked employees while on injured lists—

The Hon. R.I. Lucas: What about the Somerset Hotel?

The Hon. T.G. ROBERTS: I think the Somerset Hotel is regarded as a good employer. It employs about 40 employees.

The Hon. R.I. Lucas interjecting:

The Hon. T.G. ROBERTS: I think the incident that the honourable member is talking about did not involve any staff, but I will not be sidetracked.

To sum up, I suspect that the two other Bills that will come before us in the next couple of weeks relating to industrial relations and occupational health and safety will interact into a set of changes that the Liberal Government believes will assist it in providing a package of reforms to sell interstate and overseas that will be worthy of national and international investment. But, it is my tip that unless the Liberal Government is able to put together a package that has a national flavour in relation to how South Australia fits with the Eastern States as a manufacturer and supplier of goods and services, then it is no good just driving down the wages, conditions and WorkCover entitlements in this State to try to provide some sort of Australian/Asian example of getting the parameters right for investment packages here.

I think we should be much cleverer than that; I think we should have allowed time for the improvements made to the last amendments to the WorkCover Act to work themselves out and put together an occupational health and safety Bill that represents a compact between employers and employees and then, hopefully, you would have the trust required between labour and capital that would enable this State to present itself as a unified force to allow those investment decisions to be made in this State. It is my view that unless South Australia can put together an identified package of its own in relation to selling itself then the geographical disadvantages we have will not be overcome and our prospective business investors will be driven away.

The Hon. L.H. DAVIS: If the author Lewis Carroll was alive today I am sure that he would testify that the Hon. Terry Roberts would have been one of his most enthusiastic disciples, because it really has been *Alice in Wonderland* tonight. The Hon. Terry Roberts asks the very valid question about South Australia comparing itself with other States and looking at workers compensation at a national and, indeed, at an international level. Quite right. But what are the facts? He asks the question but he did not provide the answer. He has generously left me with the opportunity to slice his argument apart.

The facts that both he and I shared on that select committee, established in late 1990 and reporting largely unanimously on the major findings in the first quarter of 1992, revealed quite conclusively that workers compensation in South Australia was the most expensive in the nation. As we go to debate tonight the facts are that the workers compensation levy in South Australia is 2.86 per cent. It is almost 1 per cent higher than comparable national schemes. From the time that the workers compensation reform was introduced by the Labor Government of Premier Bannon and took effect in September 1987 to the present time the South Australian levy has been the highest in the nation.

Coupling that with the fact that until the Labor Government was forced to reform public sector superannuation it was not only the highest in the nation but arguably the most generous scheme in the western world; with the fact of the excesses of the State Bank, a lazy $3.1 billion down the drain; with the fact of SGIC, technically bankrupt with hundreds of millions of dollars of losses until rescued from insolvency by the State Government bail out; with the fact of Scrimber's $60 million, and so on, little wonder the life raft, which was thrown to the people of South Australia by this desperate Labor Government, was ignored by the voters at the last election.

The Hon. T.G. Roberts: They hopped into a canoe with no paddle.

The Hon. L.H. DAVIS: They have at least got into a canoe sailing in the right direction. Sure, it has shipped water pretty badly from its previous occupants but at least it has a chance of reaching an island with some prosperity instead of sailing into the darkness over the horizon with the Labor Government. The facts are undeniable: that this workers compensation scheme, which was looked at in great detail by an all Party, all House review over 15 months, reached unanimous findings—

The Hon. R.I. Lucas: Did Terry Roberts agree with you?

The Hon. L.H. DAVIS: The Hon. Terry Roberts was a key player; he was the union man, along with the Hon. Bob Gregory, who was not only the Minister but the Chair of that committee. It brought down findings and on the same day that those findings were brought down the Government introduced a Bill to amend workers compensation and ignored some of the key findings.

The Hon. T.G. Roberts: Who had the numbers?

The Hon. L.H. DAVIS: Quite extraordinary. Who had the numbers? Well, the committee had the numbers. The Hon. Ian Gilfillan went along with the major findings, the Hon. Terry Roberts went along, and I went along. So, we had the numbers in this House.

The Hon. R.I. Lucas: It was a good combination.

The Hon. L.H. DAVIS: An irresistible combination. When the Bill came to this House in March 1992, where was the Hon. Terry Roberts? Where was he? He was looking for a life raft because he had no answer to the fact that the Hon. Bob Gregory, by his action that day, became the instant patron of the schizophrenia society. It was an extraordinary act to table, quite proudly with his signature as Chair of that select committee, the unanimous findings. Certainly, there was a minority report with some additional suggestions from Graham Ingerson, the member for Bragg, and myself, but the substantive recommendations were unanimous. Yet, on that same day, the Hon. Bob Gregory turned tail on the very committee that he had signed off and said he did not want it, he did not believe in it, but he believed in something else. No-one has provided the answer. There are people in this Chamber who know what the answer is. I will not embarrass them by providing the details because we know what the truth is.

Let us look at the first of this package of Bills which seeks to amend the workers compensation legislation. It saddens me to think that that opportunity was passed by in April 1992, when the select committee's recommendations for reform on key matters, which would have lowered the levy rate and made South Australia more competitive, were ignored. It is two years later now. The fact is that our levy rate has climbed from 3 per cent in 1987-88 to 3.24 per cent in 1992-93. It got as high, in fact, as 3.79 per cent in 1990-91 and is now standing at 2.86 per cent.

That levy rate has decreased, as the Hon. Terry Roberts well knows, over the past year certainly because WorkCover administratively has been a very effective statutory authority, albeit hamstrung by the legislation which it operates under. But, more particularly, that levy rate has decreased because of the debacle in the South Australian economy. In the 2½ years to the end of 1993 there was a fall of 10 000 full-time jobs in South Australia. In that very same period there was an increase of 86 000 full-time jobs in Queensland.

In that little summary we can see which State is travelling well and which is not. The fall-off in claims reflected the economic debacle over which the tired Labor Government was presiding in the last few years of its 11 years in office.

This WorkCover Corporation Bill is designed to restructure the board, to fuse the important ingredients of workers compensation and occupational health and safety so that those two measures can be attacked in concert and to address and tighten up on the administration of WorkCover legislation.

This package of measures, if accepted by the Council—and it is a big challenge to all Parties in this place to address this matter seriously—will save an estimated $90 million in levies on employers in South Australia. It is worth remembering that 96 per cent of all employers in South Australia—55 000 out of the 56 000 or 57 000 employers in this State—are small businesses with 20 or fewer employees. These are the people who are being affected by WorkCover. Employers with 15 or fewer staff generally will not be paying payroll tax. For them, the WorkCover levy is their biggest single impost over and above salaries and wages. That is an important factor which must not be forgotten in this debate.

I compliment the Attorney-General on a very comprehensive second reading explanation of the Government's policy in this matter. It was all too rare to get a comprehensive and detailed explanation from the previous Labor Government of how the legislation operated. In fact, the Hon. Terry Roberts, as a timber man from way back, will recall the memorable Land Valuation Bill introduced by Susan Lenehan which it was said would effect a few technical adjustments and was nothing to worry about at all. It went through the House of Assembly unchallenged. It was not until it got to the Legislative Council and a few questions were asked by the then shadow Minister of Forests that it was determined that that humble piece of legislation was introducing rating on all the private forests in the South-East and, indeed, the whole of South Australia, putting them at a significant disadvantage to the public forests.

The Hon. T.G. Roberts interjecting:

The Hon. L.H. DAVIS: Indeed, and that matter is still being settled. Therefore, it is pleasing to see the detail in this legislation. One of the key points made by the Attorney-General in his second reading explanation was that this legislation, if accepted in full, would save an estimated $90 million and over time would effectively shave a full point off the levy rate from just over 2.8 per cent currently to 1.8 per cent. If that $90 million is translated into jobs—that was not done in the second reading explanation—assuming that the benefit is passed on in full, it has the potential to create 2 500 to 3 000 extra jobs. I would have thought that the union movement could almost be happy with that possibility. Unemployment remains the biggest single challenge in Australia, and to address this hard core of long-term unemployment is a significant step in the right direction. Shaving 1 per cent off the levy rate will free $90 million of levies which can be channelled into additional employment.

The Hon. T.G. Roberts: I cannot see that as an amendment to the Bill if it all goes back into employment.

The Hon. L.H. DAVIS: No. I am saying that it has the potential to flow back into employment; that is what I said. Certainly, there will be a $90 million saving on the calculations. The Hon. Terry Roberts will be well aware that in the select committee we compartmentalised the savings for each element in the workers compensation equation. WorkCover was able to give us precise estimates of the savings if adjustments were made, for example, to the definition of 'stress', if journey accidents were deleted from the WorkCover equation, and so on. In my view, it is possible to be more precise with these calculations than with many other pieces of legislation. I think that the economic benefits of this legislation are therefore undoubted.

The Hon. R.R. Roberts: The injured pay.

The Hon. L.H. DAVIS: The Hon. Ron Roberts says that the injured pay.

The Hon. R.R. Roberts: No. I said that you say, 'Let the injured pay'—the workers.

The Hon. L.H. DAVIS: I say to the Hon. Ron Roberts that there is no point in having the best workers compensation system and the best superannuation system and the highest

unemployment rate simultaneously with the lowest growth rate in the world. We have to make a choice in the real world in which we live.

Members interjecting:

The Hon. L.H. DAVIS: If the Roberts twins want to make a judgment about which State is travelling the roughest of all the mainland States, we do not have to pause for long, because the answer is South Australia, South Australia, South Australia. Let there be no mistake: we fill the first three places. We are still travelling very roughly.

The Hon. R.R. Roberts interjecting:

The Hon. L.H. DAVIS: That is a legacy of 11 years of Labor. I will not dwell on that, because you have been thumped about the head long enough on it. Let us get back to this Bill. This Government has said that not only will there be savings to employers, but also a more effective system will be put into operation to ensure that workers rehabilitation goes hand in hand with occupational health and safety. The Minister will have responsibility for policy, which incredibly the Hon. Terry Roberts shied away from. The very Government that used to try to give the Minister power over statutory authorities is now saying that it is not a good idea here when it is in Opposition. The Bill specifically provides that the Minister should take advice from advisory committees with respect to occupational health and safety and workers rehabilitation. I cannot find any fault with that. It was not an area that was covered in detail by the select committee, but the select committee received persuasive evidence that recognised the administrative limitations of the existing Act.

The Hon. T.G. Roberts: We just assumed that Bob took advice and ignored it.

The Hon. L.H. DAVIS: Well, there we are. I want to put that on the record, and I hope *Hansard* has it. The honourable member is revealing something that we have all talked about and have now had confirmed: that the Minister of Labour in the Labor Government really was not up to speed.

The Hon. R.R. Roberts: That is not quite what he said.

The Hon. L.H. DAVIS: I didn't say that he was on speed; I said he was not up to speed. The other matter that reveals a fundamental philosophical difference between the two major Parties is the proposed amendment to the present board. We have the absurd situation of a 14-person board—the touring cricket team in workers compensation. There are seven members from the employers and seven from the employees, so it will always be a lock-out. It leaked like a sieve and it was a farce. It was not a commercial board.

It did not make sense and it did not work. This legislation, in a very commonsense and practical fashion, addresses that and brings the WorkCover Board into line with so many other statutory boards—a smaller, tighter unit with people with a variety of skills to ensure that WorkCover heads off in the right direction.

As far as WorkCover itself is concerned, I have had nothing but praise for the way in which Lew Owens and his team have reined in the excesses and the problems which were endemic with WorkCover when he took over with his management team some three or four years ago.

Real problems existed when SGIC was entrusted with WorkCover when it first came into force in September 1987. To some of us, who know SGIC well, that may not necessarily come as a surprise. However, when WorkCover took over from SGIC massive problems existed: there was a looseness in the system and rorting was widespread not only on the part of employees but also on the part of many people in the health industry. We received very persuasive evidence of that in the select committee. There were extraordinary stories of health professionals who were demanding that people had to get their final check before they could go back to work. Those professionals were getting their $250 for seeing them and a further $250 once the injured party returned to work for a 19-year-old nurse in a white outfit getting them to sign a piece of paper saying, 'Yes, I am okay in the head; I feel as though I am up to going back to work now that my broken toe has healed.' There were some terrible rorts.

The Hon. T.G. Roberts: I cannot remember that.

The Hon. L.H. DAVIS: That was one that I got—

The Hon. R.R. Roberts interjecting:

The Hon. L.H. DAVIS: No, I did get it, but—

The Hon. T.G. Roberts: It's not like Graham Ingerson's squash game is it: it didn't officially come before the committee?

The Hon. L.H. DAVIS: It did not officially come before the committee. The other point which should not be forgotten and which unfortunately has been ignored by the Hon. Terry Roberts in his contribution is that the Government is fulfilling an election promise in providing an additional $2 million of funds for education and prevention programs designed to establish safer work places, particularly in small business and the higher claims industries.

The Hon. T.G. Roberts: I acknowledge that.

The Hon. L.H. DAVIS: He now acknowledges that, and I am pleased to see that he accepts that. The big debate on journey accidents, stress claims and alcohol and drug induced injuries is scheduled for the Bill that seeks to amend the main Act. However, this Bill seeks to restructure the WorkCover Corporation administration; it seeks to fuse the workers rehabilitation and compensation and occupational health, safety and welfare arms; and of course it seeks to provide other administrative benefits. I support this legislation. I think it is overdue and will certainly make South Australia a more competitive place in which to do business.

The Hon. J.F. STEFANI secured the adjournment of the debate.

The Hon. K.T. GRIFFIN: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

WORKERS REHABILITATION AND COMPENSATION (ADMINISTRATION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 12 April. Page 398.)

The Hon. M.J. ELLIOTT: In my contribution yesterday I had covered most of the more significant matters contained within the Bill, and today I will take a quick excursion through the Bill and look at some of the less important matters. The first relatively minor amendment that I will move when we go into Committee relates to the commencement. In fact, with all three pieces of legislation in this package I will move amendments which make clear that all provisions of the Act must be brought into operation simultaneously. I do not want to find us in the position where, after certain amendments have been made to a Bill, a Government then chooses to proclaim only the parts of the Bill which suit it and not the rest and so, in effect, thwart the intent of Parliament. So, I will move amendments to ensure that that does not happen.

It is most important that the advisory committees are not simply token bodies. The fact that the corporation itself now is not a tripartite body, as the Government argued that it wanted a more commercial body, makes it imperative that the advisory committees are places where the various interests can be represented. I am pleased to say that, in my discussions with both employer and employee representatives, that notion is supported. So, I will be moving an amendment to allow for the advisory committee mentioned in this Bill to be made up of 10 members comprising a presiding member, four members who have been appointed by the Minister on the recommendation of employers, four members who have been appointed by the Minister on the recommendation of the UTLC and one member who is an expert in rehabilitation.

I also wish to make some small changes to the conditions of membership. In fact, the amendment that I will be moving will mean that the conditions of membership are the same as those under the old Workers Compensation Act. I am not satisfied with the current methodology for removing members, particularly section 6(2)(d) which refers to what happens if serious irregularities have occurred in the conduct of the board's affairs or the board has failed to carry out its functions satisfactorily, and the board's membership, in the opinion of the Governor, being reconstituted for that reason. It actually enables the Minister to go in and pull one or two members out perhaps because they are not doing what suits the Minister's bidding. The Minister will have his or her opportunity at the end of the three years.

It is one thing to talk about gross misconduct, which would already be covered, but I believe this provision goes too far, and the effect of my amendments will be that that will be deleted. I will be moving similar amendments to the occupational health, safety and welfare legislation. The proceedings of the advisory committees come under clause 11 and cause me some concern because the procedures of the advisory committees are, according to the Bill as its stands, to be decided by the Minister. That could not happen under the old Workers Compensation board. It is not proposed that that be the case with the WorkCover Corporation, but with these two advisory committees it is the case.

I believe that these proceedings should be in the hands of the committees themselves. If we are to have independence on these committees, if they are going to be providers of independent advice, the Minister's hands should be kept off these committees to a great extent, which is why I have concern about the amendments and how people might be removed from the committees. Also, it is why I have concerns about who decides what the procedures of the committee should be. Essentially, I am changing the proceedings of the advisory committees back to the same form as applied under the old Workers Compensation Board.

I have not received any indication of problems with the way that they were conducted and there is no good reason for any suggestion that there be a change. As to confidentiality, I have consistently argued in this place on many pieces of legislation for as much openness as is possible. The proceedings of the committees should be freely available to the public. Two major grounds apply where there may be need for privacy. One relates to commercial confidentiality and the other relates to matters of a personal nature relating to an individual.

Except in those circumstances I do not believe we should be insisting on confidentiality within the workings of these advisory committees. It was a great pity that the public was not aware of some of the findings made by the Workers Compensation Board previously. I know for a fact (although I am not supposed to know for a fact) of grave concern by board members about several Government departments, particularly the Education Department and a couple of other departments as well because they were simply not administering their Acts properly. That is information that should have been in the public domain. Similarly, if there are private sector employers who are not doing the right thing, I do not mind their commercial processes being kept confidential but, if they are not doing the right thing, I fail to see why that should be covered up.

The Hon. T.G. Roberts: What about board members who want to publish the names?

The Hon. M.J. ELLIOTT: They should be able to do so. The Government is suggesting that the divulging of any information obtained as a member of a committee could lead to a $4 000 fine. That is not particularly constructive and I believe the more information the public has, the more informed debate we can hope to have. As to alcohol and drugs, in clause 6 of the Bill (page 7) the Government is seeking to insert new section 30B, the effect of which is that a disability is not compensable, not just in relation to serious and wilful misconduct but also in relation to a person being under the influence of alcohol or a drug voluntarily consumed by the worker.

Many people have argued that that provision is totally unnecessary and I would agree with them. It does not add anything to the Bill, but it might also be argued that its removal does not achieve much either. Nevertheless, I am concerned at the current wording of this clause because one could be under the influence of a drug that was obtained lawfully, say, over the counter, but not have actually received specific directions. For instance, a number of cough mixtures can make one drowsy, and that would mean that one was under the influence of the drug voluntarily. One could have an accident and then find that it was not compensable. That is unreasonable. The current test is unreasonable and I will be moving an amendment saying 'the influence of alcohol or a drug voluntarily consumed by a worker other than a drug lawfully obtained and consumed in a reasonable quantity by the worker'.

If a person is hopping into their cough mixture in a crazy way and seems to be setting about trying to be influenced by the drug, that is a different matter from taking a dosage which may be a recommended dosage on the bottle and one then becomes drowsy and has an accident, as the accident would be denied compensation, as the Bill is now drafted. I will be moving a further amendment to new section 30B. It picks up my next concern relating to the issue of compensation payable on death. Until now the family of a person who died or suffered serious and permanent disability was able to make a claim of workers compensation and the question of serious and wilful misconduct was not raised.

It would be reasonable to argue that the Government is effectively finding a person guilty in their absence and asking their family to pay the cost for that. As that is a fairly rare occurrence, the change I am seeking to make will not have any significant cost impact but it is not unreasonable, in relation to the death, that the test of serious and wilful misconduct should not be applied. I have covered the issues that I wish to cover in the second reading debate, but there are still a couple of minor points that can wait until the Committee stage.

I reiterate that the Democrats are supporting the legislation in general. We have reservations about some components of

it. As to journeys, my amendments will make it plain that a journey accident will be claimable only where it is as a consequence of work, that it is directly attributable to a person's work, which is essentially what the Government said it wanted to get, anyway, although its own amending Bill went beyond that and essentially denied all journey accidents, which would create injustice in some cases and I gave examples when I spoke earlier. As to stress, I will be moving one minor amendment but, other than that, I am not looking for a change from the *status quo*.

The point I have made—and it has been conceded in discussions I have had with employer representatives—is that the most recent change in the law has still not been tested in the courts, yet the Government is saying that it is inadequate and is seeking to change it again. I am of the opinion that we should wait to see what interpretation the courts place on the current wording before effecting a further change. That is in relation to changing over to 'wholly or predominantly', as the Government wishes to do at this stage. But in relation to the second part of that clause, we are rejecting what the Government is doing there as being most unreasonable. It is a denial that stress is a real condition at all and also I believe a denial that management practice is incompetent, particularly in the public sector and particularly in a couple of departments. That is where the problem largely lies and that is where it should be tackled.

Our position is that commutation should not occur with non-economic loss being subtracted from the lump sum, that the lump sum should be actuarially derived and that, once derived, it is non-appealable other than that there may be a review of the actual quantum sum: a review of whether or not there has been a actuarial error, no more or less than that. The Democrats will support the legislation but we will insist on some amendments to ensure that what we have is a fair piece of legislation.

The Hon. L.H. DAVIS: The amendments to the Workers Rehabilitation and Compensation Amendment Bill are our second major attempt since the legislation came into force in September 1987 to amend this key measure. This legislation is important because it really strikes at the heart of economic prosperity. If we do not have workers compensation legislation that makes South Australia competitive with other States, it is a signal, a flag, to intending investors in South Australia, to potential expansion in South Australia, that the Government of the day is not interested in creating economic prosperity in this State. For too long that simple reality has been ignored. You cannot escape the fact that a State which has many disadvantages compared with the eastern States rivals of Queensland, New South Wales and Victoria cannot have the biggest on-cost for most of its employers, substantially larger than those of the other States.

The Hon. T.G. Roberts: Why do they have to be second class citizens?

The Hon. L.H. DAVIS: That is a fact of life. They will be third class citizens if these heavy imposts continue. Imposts will certainly be associated with the extraordinary debacle of the State Bank and SGIC; we accept that, but we have to create a climate conducive to investment. I think that it is important to recognise that the business community is looking for a lead in this important area and other areas as well. The Labor Party must be reminded of what the former Premier, John Bannon, said in March 1991, just three years ago, when he gave a commitment that workers compensation premiums in South Australia would be competitive with those of other Australian States by the financial year 1993-94. Here is your opportunity, not to fulfil the promise made by John Bannon under a Labor Government, but at least to do the decent thing and recognise the imperative of doing it, even though there is a Liberal Government in power.

The Hon. T.G. Roberts: That is the first time you have ever praised him.

The Hon. L.H. DAVIS: I praised him for the promise, but as so often happened, you could never praise him for the fulfilment of that promise because it was never fulfilled; it was an idle promise. It was one of the many dreams the Labor Government had, and it lacked the backbone and spine to push through these measures. On matters that counted, such as the State Bank and SGIC, they ignored advice, they lacked professionalism and business sense, and on matters such as workers compensation they realised the imperative of becoming competitive with other States, they promised they would, but they failed to deliver. There it is in black and white for all to see: John Bannon's promise of March 1991, and he wimped out. Now, after three years of South Australia trailing in the ruck behind other States, we have the opportunity to address this matter.

It is important to recognise that in this sagging economic climate, where there has been a natural shrinking in the number of WorkCover claims over recent years—down 22 per cent in the first half of 1991-92 for example, a fall in average payments per claim during 1991-92—all reflecting the sagging economy, that this has masked the real problems in the WorkCover balance sheet. WorkCover has advised the Liberal Government that the savings to the scheme have to be implemented, because they are battling as it is to hold it at this currently uncompetitive rate of 2.86 per cent. Without any amendments, it would be forced to recommend to the Government that the average levy rate would increase to 3.15 per cent, which is an extra $25 million per annum in premiums from employers.

The select committee which met in that 15 month period from late 1990 through to early 1992 recommended a package of amendments, which if adopted would have reduced the average levy rate by between .4 and .55 per cent. That was a significant step towards becoming more competitive. That was agreed to by the Australian Democrats, by the Labor Party and by the Liberal Party in both Houses in that all-Party, all-House committee. In fact, in the debate during March-April 1992, the Liberal Party went further and put on record the belief that journey accidents and stress claims were other matters that should be considered. If accepted, our proposals would have reduced the levy rate still further, to a total of about .6 per cent rather than the .4 to .55 per cent which the select committee had proposed.

The Hon. T.G. Roberts: The unfunded liability is still coming down, isn't it?

The Hon. L.H. DAVIS: The unfunded liability is still coming down, but it can be argued that that reflects as much the fact that we are going through an economic trough rather than the scheme coming into balance. On any upturn in the economy, that performance of the past 12 to 18 months may not be repeated. Journey accidents represent about 4.5 per cent of claims and 7 per cent of annual costs. The proposals that we have here, to exclude journey accidents, would save $22 million before recovery, and $15 million the year after recovery. It is unfortunate that this debate about journey accidents tends to ignore the fact that, if journey accidents are not going to be picked up by WorkCover, they will be picked

up elsewhere. We are removing it out of WorkCover. That is the proposal.

The other matter regarding stress, which the Hon. Michael Elliott recently addressed, is again something which was thoroughly canvassed by the select committee. We received evidence from the employers, unions, medical and health authorities, we took advice from interstate and looked at recent court decisions, and it distressed me to hear the Hon. Michael Elliott say we should not move on this matter until a further legal decision comes in on a case that involves stress. At that time there was an important case before the courts which, if it went the wrong way, would have put the Government in jeopardy. That was one of the reasons why the select committee was anxious to tighten up on the definition of stress, to overcome the problem which may arise from an unfavourable court decision.

The situation with the stress definition at that time was so absurd that in fact a worker receiving stress because he was angry at being disciplined, because he had not done the right thing at work, would be entitled to workers compensation. Justice DeBelle in that case said:

> It strikes me as curious at least that an illness which is perhaps an unreasonable reaction to a proper disciplinary measure can entitle a worker to compensation.

We are forgetting, after all, a very basis of legislation like this, that there are rights and obligations on both the worker and employer. Surely that basic fact cannot be ignored when we are canvassing legislation such as this.

On the matter of stress, it cannot be ignored that the stress claim information which we have before us shows a terrible state of affairs in government. The report of the Auditor-General for the year ended 30 June 1993, on the Department of Labour, pages 157 to 159, reveals an appalling set of statistics. The claims payment for workers compensation by departments has blown out from $36.5 million to $50 million over a four year period, 1990 through to 1993. That is a 37 per cent increase in four years, at a time when there has been a general levelling off in public sector employment. In that four year period, the total claim payments for education exploded by 76 per cent from $10.35 million to $18.3 million, and Correctional Services went up 64 per cent from $3.6 million to just over $6 million.

At the time of the debate in April 1992, I made the point that it had reached the stage that, in 1990-91, the Department of Correctional Services had one in 16 workers out on stress claims. That is 6 per cent of the total work force in Correctional Services out on stress claims. It was running at many times the level of stress in the Police Force, which one would have thought was arguably comparable with Correctional Services. Also, it was interesting to see that the stress claims by Commonwealth employees in South Australia were running at 2.5 times the national average for stress claims in the Commonwealth employment pool around Australia. Adelaide had become the stress capital of the world. We were running at 4.5 times the level of stress claims in the Queensland public sector, and 28 times the level of stress claims in New South Wales. They are quite extraordinary statistics from that time.

The figures from the latest Auditor-General's Report show that not much has changed. On page 159 we see that stress claims over the period from 1989 through to 1993 have increased by 50 per cent. They have gone from 404 to 601, even though the number of claims in that same period of time has remained virtually static. There has been a 50 per cent increase in stress claims. I received some information from WorkCover Corporation which confirmed that the State Government has a stress claim incident rate at least six times higher than non-exempt or private exempt experience, and the cost ratio is in line with that result. The level of stress claims in the State Government is equal to 2.43 per cent of the cost of annual remuneration, and that is running at six times the level of cost of non-exempts, and about four times the level of Crown agencies, which are the statutory authorities set up by Acts of Parliament, such as the Electricity Trust and the State Bank. So, that is a matter which is desperately out of control in the public sector. You cannot argue those facts, that Adelaide has been for sometime the stress capital of the nation.

The Hon. T.G. Roberts: Have they been diagnosed and treated in New South Wales?

The Hon. L.H. DAVIS: The Hon. Terry Roberts may remember that I asked the Minister at the time, the Hon. Bob Gregory, to get some figures on stress from around Australia, to get some comparisons. He could not do it, but I did. The Minister's reluctance or inability to get that information confirmed what I thought was a typical softness on the part of the former Government to face up to reality. I did an enormous amount of work in getting this data. I established that in New South Wales in 1989-90 there were 306 stress claims for 1.9 million State Government and private sector workers. We had 507 claims for just 110 000 South Australian State Government employees.

The Hon. T.G. Roberts: How many people left their employ without diagnosis? You do not have any figures. Nobody has them.

The Hon. L.H. DAVIS: These are the people actually being treated as having stress claims. New South Wales were categorising people for workers compensation. It was not just under any other category. They had to have a category for workers compensation. Stress just was not a known factor. I would have thought that living in Sydney would have created a bit of stress in itself. That point about stress is important.

The Auditor-General had been critical of the Government also for failing to introduce fraud prevention policies, and for failing to appoint a fraud prevention office to control the number of stress claims in the public sector. All of that is on the public record. I do not want to dwell on that. It is an opportunity to bring South Australia into line with other States, to make South Australia economically competitive again. It is something that we have not been able to say for a decade under Labor, that South Australia is competitive in terms of its on costs. It is the most expensive State in which to do business, with high workers compensation and high rates, high taxes and all those other Government charges.

This Government's prime role in not taking sides, worker versus employer, but creating rather the right environment in which there is a win-win situation, where the employer wins and profits create pay envelopes, means also that the worker wins. That is what this legislation is about. It is about creating the right environment for existing businesses and potential investors in South Australia. These measures seek to reduce the workers compensation levy a full 1 per cent from an average annual levy rate of 2.86 per cent, the highest in the nation, down to 1.8 per cent over a period of time as this legislation is introduced.

There is no doubt that the Australian Democrats and the Labor Party, if they do not support this legislation, cannot be heard to complain if South Australia continues to be uncompetitive into the future.

The Hon. R.D. LAWSON: I only wish to speak on the subject of journey accidents in relation to this Bill. Members will know that it is proposed that injuries arising as a result of a journey to or from work will not be compensable. It is further proposed that injuries arising from journeys between two work places with different employers will not be compensable. However, journey injuries will continue to be covered if the journey is undertaken as part of a worker's employment or at the express direction or request of the employer. On a related subject, this Bill also proposes the removal of compensation cover for injuries occurring during authorised breaks away from the work place or at the work place before or after work where the worker is involved in activity unrelated to his or her employment.

These are timely amendments, in my view. There have been a number of cases, some of them illustrated in speeches to this Council, which suggest that it is high time for reform in this area. Section 30 of our existing Workers Rehabilitation Compensation Act provides, generally speaking, that subject to the Act a disability is compensable if it arises from employment. Subsection (2) of that section provides that a disability arises from employment if 'it arises out of or in the course of employment'.

That general scheme will remain under the new legislation as proposed in the Bill. The scheme, to which I have just referred, is one that has been greatly enlarged upon by decisions by the courts over a long period of time. As a result of many judicial decisions, in cases where injury was not sustained during actual work, the test of whether an injury has been sustained in the course of employment ultimately depends upon whether the workman was doing something which he was reasonably required, expected or authorised to do in order to carry out his actual duties. This extension occurred over a long period of time and the culmination of the cases was a decision of the High Court of Australia in *Hatzimanolis v ANI Corporation* in 1992.

In that case the court held that a worker, on a three month contract at Mount Newman in Western Australia who was injured in a vehicle on his Sunday off, was entitled to workers compensation. That case was applied in a number of cases in which the results, most would consider, were bizarre. For example, in the 1992 case of *McCurry v Lamb* the employer was a pastoralist. He provided sleeping accommodation in shearing quarters. At the relevant time some shearers, including the worker who was ultimately injured and two female rouseabouts, were using the accommodation.

To the knowledge of the employer, the particular worker and a rouseabout whose name was Karen were, by mutual consent, sharing a bed in the accommodation. On the night in question the worker and Karen were occupying one bed and another rouseabout employed on the same property was occupying another with another friend from the local town. Another shearer, who was also employed by the same farmer and who had earlier been rejected by one of the young ladies, entered the room armed with a shotgun and shot two of the people dead: one of the rouseabouts and the hapless visitor from town. He also shot the worker in question who was seriously injured.

The Court of Appeal in New South Wales, on legislation similar to that applying in South Australia, held that the worker was entitled to workers compensation because he had received his injuries in the course of his employment. This is a worker in bed with a co-worker, in the middle of the night, unsupervised, and whatever job he was doing it was not the job of his master. Justice Handley, in the Court of Appeal in New South Wales, held that the result may seem anomalous, even bizarre. He noted that another person who had been shot dead, if he had merely been injured, would not have been entitled to any compensation at all.

That learned judge made the very pertinent comment that the risks of injury from a deranged lover with access to a gun might be thought to be a community risk rather than an employment risk, even if fellow workers were involved.

The Hon. T.G. Roberts: Is this relevant, Your Honour?

The Hon. R.D. LAWSON: Indeed, it is, because under our proposed amendments compensation will not be payable in these circumstances where the injuries occur during authorised breaks away from the work place or before or after work. We seek, by these amendments embodied in this Bill, to avoid this bizarre consequence, namely where a worker in bed with his girlfriend is entitled to workers compensation.

The Hon. C.J. Sumner: You will have to abolish the lot to get around that.

The Hon. R.D. LAWSON: We are not abolishing the lot; we are merely, by this Bill, removing compensation cover for injuries occurring during authorised breaks away from the work place or at the work place before or after work in this particular context.

The Hon. R.R. Roberts interjecting:

The Hon. R.D. LAWSON: If he was shearing at the time or engaged in his employment he would indeed be covered. *Inverall Shire Council v Lewis* was another New South Wales case, again on legislation similar to that which applies in South Australia. In this case the worker had been sent to the country for training. He was instructed to stay overnight in a nearby caravan park. He and some other men were in the caravan of a young lady, having coffee late one night, when her brother came in with a rifle and shot this unfortunate worker. He was injured and he received compensation because his injuries were held to have occurred in the course of his employment. In the course of his employment he was having coffee late at night in a caravan park.

Finally, I mention the case of the *Workers Compensation Board of Queensland v MacKenzie*, where the worker was a school teacher responsible for a particular educational program. Out of school hours he attended weekly golf lessons organised by local teachers. Once every month the golf extended to a family barbecue. This teacher was injured in a motor accident while travelling home from the barbecue. It was held that he was entitled to workers compensation for his injuries because his superior had encouraged him to attend the golf days as his attendance enabled him to promote the program he was employed to teach. One may ask why an employer should have to meet the expenses of an injury sustained on such a journey. It is anomalies such as this—

The Hon. R.R. Roberts interjecting:

The Hon. R.D. LAWSON: He did not require him to take it.

The Hon. R.R. Roberts: You said that his employer requested him to be there.

The Hon. R.D. LAWSON: His employer encouraged him to attend these social functions. That does not mean—

The Hon. R.R. Roberts interjecting:

The Hon. R.D. LAWSON: Compensation in those circumstances ought not to be paid by the employer or out of funds generated from the employer. If compensable injury is sustained, it is a proper charge to be levied against the community generally, on insurers generally or on the compulsory third party insurance fund. It is that philosophy which drives the Government in relation to these proposals.

The Hon. T.G. Roberts: Have you got amendments to cover that?

The Hon. R.D. LAWSON: Amendments are not required to cover that. The anomalies about which I have spoken in these cases will be removed under the regime that is sought to be established. Decisions such as those—and there have been many others of which examples can be given almost *ad nauseam*—have had the effect in this State of increasing premiums and discouraging employment. They represent a disincentive to employment. The responsibility for injuries of this kind ought to be sheeted home to the community generally, not the general pool of employers or a particular employer. I commend the second reading to the Council.

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

REAL PROPERTY (MISCELLANEOUS) AMENDMENT BILL

Returned from the House of Assembly without amendment.

WILLS (MISCELLANEOUS) AMENDMENT BILL

Returned from the House of Assembly without amendment.

ACTS INTERPRETATION (MONETARY AMOUNTS) AMENDMENT BILL

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

The Hon. K.T. GRIFFIN (Attorney-General): I move:

That this Bill be now read a second time.

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

Leave granted.

This Bill is to allow agencies to round down to the next five cents the amounts that they accept for settlement of accounts.

Members will be aware of the decision by the Federal Government to withdraw one cent and two cent coins from circulation in the community. This has meant that the cash currency available for making payments does not always exactly match the amounts due for supplies or services.

The cent remains the basic unit of currency and payments involving cheques, credit cards, or electronic funds transfer can continue to be made to the exact cent. However, payments made in cash need to be rounded to multiples of five cents.

In general, Government agencies have been instructed to round down to the nearest five cents when setting prices, when preparing invoices, or when receiving cash.

A few situations remain however where the amount included on Government invoices is determined by legislation and therefore cannot be adjusted to ensure that it is a multiple of five cents. For example the amount of water rates is determined under legislation.

The Government has decided not to introduce separate Bills to change each of the Acts in which this problem arises but rather to introduce this Bill seeking an amendment to the Acts Interpretation Act to allow agencies where necessary to round down to the next five cents the amounts which they accept for payment of accounts.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Insertion of s. 45—Rounding down of monetary amounts

The new section allows a calculated amount that is not an exact multiple of 5¢ to be rounded down to the highest multiple of 5¢ that is less than the amount.

The Hon. M.S. FELEPPA secured the adjournment of the debate.

DEBITS TAX BILL

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

The Hon. K.T. GRIFFIN (Attorney-General): I move:

That this Bill be now read a second time.

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

Leave granted.

In July 1990 the Commonwealth announced its decision to relinquish debits tax and leave the field of taxation of financial transactions to the States.

The South Australian Debits Tax Act 1990 which gave effect to arrangements with the Commonwealth for the transfer of the benefit of debits tax to South Australia and provides that the Commonwealth Debits Tax Administration Act 1982 (with certain exclusions) applies as law of South Australia, came into operation on 1 January, 1991.

Essentially the Commonwealth continued to collect debits tax as our agent. Similar arrangements were entered into by all Australian States and the Northern Territory with the Australian Taxation Office.

In August, 1993 the Commonwealth advised that it did not intend to renew the agency arrangements with the States beyond the end of 1993.

As the South Australian *Debits Tax Act* picks up all the relevant provisions of the Commonwealth Act and applies them as law of South Australia the existing South Australian legislation is only valid as long as the Commonwealth Government does not repeal the *Debits Tax Administration Act 1982*.

South Australia has received a formal undertaking from the Commonwealth that it will not repeal its legislation before 30 June, 1994.

In order for South Australia to continue to collect debits tax past this date it will be necessary for South Australia to pass legislation in its own right. Failure to enact appropriate legislation will result in a significant loss of revenue to the State.

This Bill provides for an Act for the ongoing imposition and collection of debits tax in South Australia and in general terms mirrors the current Commonwealth legislation. From a practical perspective neither the financial institutions nor their clients will be aware of any significant change in approach.

The Government has consulted with relevant industry groups and appreciates their contribution.

Explanation of Clauses

The provisions of the Bill are as follows:

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The measure will come into operation on 1 July 1994.

Clause 3: Definitions

This clause contains definitions for the purposes of the proposed Act. The following are key definitions:

- *(a)* exempt debit—a class of debit that will never be subject to the tax irrespective of the nature of the account;
- *(b)* excluded debit—broadly, a debit to an account held by a person who is entitled to exemption from the tax;
- *(c)* taxable debit—a debit to an account (as defined), other than an exempt debit;
- *(d)* eligible debit—a debit to an account, other than an exempt debit or an excluded debit (i.e. a debit for which the account holder and not the financial institution can, in special circumstances, be required to pay the tax. This might occur where a South Australian resident attempts to utilise an account outside South Australia in order to avoid payment of the tax).

Clause 4: Deemed separate debits

This clause requires a debit made to an account in respect of two or more account transactions to be treated as separate debits in relation to each of those account transactions.

Clause 5: Debits to be expressed in Australian currency

This clause requires a debit made in a currency other than an Australian currency to be expressed in terms of Australian currency.

Clause 6: General administration of this Act

The Commissioner will be responsible for the general administration of the Act.

Clause 7: Delegation of functions

This clause enables the delegation of functions by the Commissioner.

Clause 8: Imposition of tax

This clause imposes the tax on various debits of not less than $1 made to various classes of account.

Clause 9: Amount of tax

The amount of tax is as set out in schedule 1.

Clause 10: Liability to tax

This clause establishes the liability to pay the tax imposed by the proposed Act. The financial institution and the account holder are jointly and severally liable to pay the tax imposed on a taxable debit made to a taxable account. The account holder of an account other than a taxable account is liable to pay the tax imposed on an eligible debit made to the account.

Clause 11: When tax payable

This clause specifies when the tax is to be paid. Tax payable by a financial institution in respect of a taxable debit made during a month is to be paid by the 14th day after the end of the month. Tax payable by an account holder under an assessment of tax made by the Commissioner is to be paid within 14 days after the day on which notice of the assessment is served on the person.

Clause 12: Recovery of tax by financial institutions

This clause creates a statutory right for financial institutions to recover from their customers tax paid in accordance with the proposed Act.

Clause 13: Certificates of exemption from tax

This clause governs the issue and revocation of certificates of exemption by the Commissioner. The function of a certificate of exemption is to authorise a financial institution to make tax-free debits to the account to which the certificate relates.

Clause 14: Offences relating to certificates of exemption

This clause creates offences relating to the forging or unlawful alteration of certificates of exemption and misrepresentations concerning certificates of exemption.

Clause 15: Returns in respect of taxable debits

This clause requires the furnishing of periodic returns by financial institutions to the Commissioner of taxable debits made during the periods to which the returns relate to taxable accounts kept with the financial institutions.

Clause 16: Refund of amounts incorrectly paid

This clause enables the Commissioner, on application made in accordance with the clause, to refund any amount of tax overpaid by a financial institution, other than an amount paid as a result of an assessment made by the Commissioner.

Clause 17: Refunds for tax paid on excluded debits

This clause enables the Commissioner, on application made in accordance with the clause, to make a refund in respect of tax which has been paid by a financial institution in respect of an excluded debit made to a taxable account.

Clause 18: Special assessments

This clause entitles a financial institution, if it wishes to dispute the amount of tax payable by it in respect of a return, to request the Commissioner to make an assessment of the amount of tax payable.

Clause 19: Default assessments

This clause empowers the Commissioner to make an assessment of tax payable by a financial institution or an account holder, whether or not any return has been furnished.

Clause 20: Penalty for failure to furnish return, etc.

This clause imposes additional tax, as a penalty, on a financial institution or account holder who fails to furnish information required by the proposed Act to the Commissioner or who furnishes false or misleading information.

Clause 21: Amendment of assessments

The Commissioner will be able to amend an assessment at any time within three years after it is made and provides for the effect of any such amendment.

Clause 22: Validity of assessments

This clause ensures that in any objection or dispute relating to an assessment, the objector can only challenge the correctness of the assessment and not any act or omission of the Commissioner in making the assessment.

Clause 23: Definition of "tax

This clause defines tax, for the purposes of the proposed Part, to include additional tax under clause 20 or 34 so as to confer rights of objection and appeal in respect of any form of tax payable under the proposed Act.

Clause 24: Objections and appeals

This clause enables a person who is dissatisfied with an assessment of the Commissioner, or with certain decisions of the Commissioner, to object to the Treasurer, or appeal to the Supreme Court. The scheme is similar to the scheme that applies under the *Financial Institutions Duty Act 1983*. If a person makes an objection and is dissatisfied with the Treasurer's decision, an appeal may be lodged with the Supreme Court.

Clause 25: Onus on objector

This clause places the onus on the objector to establish on the balance of probabilities that the tax in question was wrongly assessed.

Clause 26: Nature of Court's decision

The Act will apply to any assessment of tax made by the Court in the same way as it applies to assessments made by the Commissioner.

Clause 27: Payment of tax assessed and calculation of refund by Supreme Court

This clause provides for the payment of any tax assessed or refund calculated by the Supreme Court.

Clause 28: Liability not affected by objection, etc.

This clause provides that the lodging of an objection or appeal does not affect the objector's liability to pay tax, except to the extent otherwise permitted by the Commissioner.

Clause 29: Assessment not otherwise open to challenge

This clause is similar to a provision in the *Financial Institutions Duty Act 1983* and ensures that the only method of judicial review is as provided under the Act. The provision therefore attempts to avoid multiplicity of proceedings.

Clause 30: Commissioner may state case

This clause enables the Commissioner to state a case to the Supreme Court on a question of law.

Clause 31: Evidence

This clause provides for the giving of certificate and other documentary evidence signed by the Commissioner in proceedings under the proposed Part.

Clause 32: Recovery of tax

This clause requires tax due and payable under the proposed Act to be paid to the Commissioner and gives the Commissioner the right to sue for the recovery of unpaid tax in a court of competent jurisdiction.

Clause 33: Extension of time and payment by instalments

This clause authorises the Commissioner to grant an extension of time for the payment of tax.

Clause 34: Penalty for unpaid tax

This clause imposes additional tax at the rate of 20% p.a. by way of penalty for late payment of tax. The clause also gives the Commissioner a limited power to remit the additional tax.

Clause 35: Evidence

This clause provides for the giving of certificate and other documentary evidence signed by the Commissioner in proceedings for the recovery of unpaid tax.

Clause 36: Offences—generally

This clause makes it an offence for a person:

- to fail or neglect to furnish a return or information or to comply with a requirement of the Commissioner;
- without just cause, to fail or neglect to give evidence, answer questions or produce records required by the Commissioner or an authorised officer;
- to furnish a false return or give a false answer.

Clause 37: Evading taxation

It is an offence for a person to evade or attempt to evade tax.

Clause 38: Time for commencing prosecutions

A prosecution for an offence may be commenced within three years after the date of the offence or, in the case of an offence relating to the furnishing of a return, at any time.

Clause 39: Penalty not to relieve from tax

The payment of a penalty does not relieve the offender from any liability to pay tax.

Clause 40: Obstructing officers

This clause makes it an offence to obstruct an officer acting in the administration of the proposed Act or the regulations made under it.

Clause 41: Disclosure of information, etc.

This clause specifies the circumstances in which information obtained in the administration of the proposed Act or the regulations made under it may or may not be disclosed.

Clause 42: Institution of prosecutions

This clause enables informations for offences to be laid in the name of the Commissioner by authorised officers and sets out the procedure for instituting prosecutions.

Clause 43: Proceedings for offences

These proceedings constituted by the measure are summary offences.

Clause 44: Return in relation to exempt accounts

This clause requires a financial institution to furnish an annual return to the Commissioner setting out details of exempt accounts kept by the financial institution during the year.

Clause 45: Representative officers, etc., of financial institutions

This clause requires financial institutions to be represented, for the purposes of the proposed Act, by specified officers of the financial institutions.

Clause 46: Access to books, etc.

An officer duly authorised by the Commissioner must be given access, at reasonable times, to all books, records and other documents held by any person.

Clause 47: Commissioner to obtain information and evidence

This clause enables the Commissioner to require, in writing, any person to furnish any information, to attend before the Commissioner and answer questions, on oath or otherwise, or to produce any books, records or other documents in the person's custody.

Clause 48: Service on partnerships and associations

This clause causes service of a document on a member of a partnership or on the committee of management of an unincorporated association or other body of persons to be taken to be adequate service of the document on each member of the partnership, association or body.

Clause 49: Commissioner may compromise a claim for tax

This clause enables the Commissioner to compromise a claim for tax because of difficulty in ascertaining the amount of tax.

Clause 50: Collection of tax from persons owing money to taxpayers

This clause enables the Commissioner to garnishee money owed to or held on behalf of a taxpayer who has defaulted in payment of tax.

Clause 51: Preservation of records

Financial institutions must preserve, for a minimum of five years, records sufficient to enable their liability for tax to be assessed.

Clause 52: Official signature

This clause provides for the authentication of documents issued by the Commissioner for the purposes of the proposed Act.

Clause 53: Regulations

This is the regulation making power for the purposes of the measure.

Clause 54: Payments from Consolidated Fund

This clause provides for the appropriation of any amounts required by the Commissioner under the Act.

Schedule 1

This schedule sets out the rate of taxation.

Schedule 2

This measure is to replace the scheme that applies under the *Debits Tax Act 1990*, which Act is to be repealed.

Schedule 3

This schedule sets out various transitional provisions for the purposes of the new measure.

The Hon. T.G. ROBERTS secured the adjournment of the debate.

STAMP DUTIES (SECURITIES CLEARING HOUSE) AMENDMENT BILL

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

The Hon. K.T. GRIFFIN (Attorney-General): I move:

That this Bill be now read a second time.

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

Leave granted.

The Stamp Duties Act has been progressively amended to facilitate significant improvements to Australia's system for the transfer, settlement and registration of quoted securities undertaken by the Australian Stock Exchange ("ASX").

The ASX has sought amendments to the relevant stamp duty laws from all State and Territory Governments to facilitate the introduction by the ASX of the Clearing House Electronic Subregister System ("CHESS").

CHESS will operate through a central clearing house controlled by the ASX.

CHESS will include the concept of an electronic subregister (which will comprise the records of the clearing house) upon which securities held by CHESS participants will be registered.

CHESS will introduce the concept of an "electronic" transfer of securities in place of the traditional on-market transfer document.

CHESS will also facilitate "electronic" transfers of securities in place of the Australian Standard Transfer form in respect of certain off-market transfers, wherever such transfers involve at least one clearing house participant as transferor or transferee.

CHESS will introduce simultaneous settlement and registration against the CHESS subregister.

The use of electronic transfers will render the existing arrangements for "stamping" both on and off-market transfer documents inappropriate.

The existing provisions which provide stamp duty exemptions for transfers will also need to be extended to all CHESS participants. The CHESS system will enable participants to electronically record share trades through a subregister located on the ASX's central computer, eliminating the need for vast amounts of paper and improving the speed and efficiency of the share trading system.

The proposed amendments will ensure that the provisions of the Act recognise electronic transfers and will provide the necessary framework to enable the duty to be collected by way of return. The amendments do not impose any additional revenue impost on share trades but provide a more efficient way for both the Government and the ASX to collect the existing duty.

Complementary legislation will be introduced in all other relevant State and Territory jurisdictions and the proposed amendments have been the result of significant consultation between all State Taxation Commissioners and the ASX.

The Bill also contains some consequential amendments to the access to records provisions to take account of the electronic nature of many of the records which are now kept.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for the commencement of the measure on a date to be set by proclamation.

Clause 3: Amendment of s. 27b—Access to records

This clause amends section 27b of the principal Act by providing for inspection of records that are maintained on computer and to provide for the provision of written copies of such records.

Clause 4: Amendment of s. 71c—Concessional rates of duty in respect of purchase of first home, etc.

This clause removes an offence of making a false statement in respect of first home purchase duty concessions. This amendment is consequential on the amendment made in clause 14.

Clause 5: Substitution of heading to Part IIIA

This clause makes an amendment to the heading to Part IIIA consequential on the separation of Part IIIA into 4 divisions.

Clause 6: Amendment of s. 90a—Interpretation

This clause inserts a number of definitions relevant to the concept of the securities clearing house.

Clause 7: Insertion of heading

This clause inserts a heading for Division II.

Clause 8: Amendment of s. 90b—Application of Division

This clause makes an amendment consequential on the amendment made in clause 5.

Clause 9: Amendment of s. 90c—Records of sales and purchases of marketable securities

This clause makes an amendment consequential on the amendment made in clause 5. It amends subsection (6) to provide for the keeping of records on computer and it increases the penalty for failure to maintain the records required under section 90c.

Clause 10: Amendment of s. 90d—Returns to be lodged and duty paid

This clause increases the penalty for failure to lodge a return under subsection (1) and for failure to make a payment on assessment under subsection (4).

Clause 11: Amendment of s. 90e—Endorsement of instrument of transfer as to payment of duty

This clause amends section 90e to provide that, where undertaking an SCH regulated transfer, a dealer does not have to endorse the transferring instrument, a procedure that is only relevant in the case of paper instruments.

Clause 12: Insertion of Divisions 3 and 4

This clause inserts two new Divisions that provide for the payment of duty on SCH regulated transfers of marketable securities and

which provide for the registration and regulation of the securities clearing house (SCH).

The clauses as inserted are as follows:

DIVISION 3—DUTY ON CERTAIN SCH—REGULATED TRANSFERS

Application of Division

90H. This section provides that duty will be payable on SCH transfers of marketable securities only where—

(a) the transfer is a proper SCH transfer (that is, a securities clearing house transfer undertaken in accordance with SCH's rules); and

(b) Division 2 does not apply to the transaction; and

(c) the security is—

(i) a share, or a right in respect of a share, of a relevant company (that is, a body registered under SA law or a company registered under foreign law that has its registered office in SA); or

(ii) a unit of a unit trust scheme the principal register of which is situated in this State; or

(iii) a unit of a unit trust scheme that has no register in Australia and that is either managed by a relevant company or a person who is principally resident in this State or, not having a manager, has a trustee that is a relevant company or a natural person principally resident in this State; and

(d) the SCH scheme has been brought into operation by the registration of SCH under Division 4.

Transfer documents treated as instruments of conveyance

90I. This clause provides that the electronic "document" by which a marketable security is transferred through SCH constitutes an instrument of conveyance and the provisions of the *Stamp Duties Act* apply to it accordingly.

SCH participant liable to pay duty

90J. One or both of the parties to an SCH transfer will be an SCH participant.

Where both are SCH participants, this clause provides that the participant who is, or is acting for, the transferee will pay the relevant duty.

Where only one person is a SCH participant, he or she will be liable to pay the relevant duty and if that person is not, or is not acting for, the transferee, the person may recover the amount of the duty from the transferee as a debt by action in a court of competent jurisdiction and may, in reimbursement of that amount, retain any money in the participant's hands belonging to the transferee.

Record of SCH-regulated transfers

90K. On the making of an SCH-regulated transfer to which this Division applies, the relevant SCH participant (that is, SCH participant who is liable to pay duty, or where the transaction is exempt from duty, the participant who would be liable to pay if the transaction was not so exempt), must make records in respect of the following matters:

- the date of the transfer;
- the identification number of the transfer;
- the name of the transferee and, unless the transferor is, or is represented by, another SCH participant, the name of the transferor;
- the identification code of the participant and of the other SCH participant (if any);
- the quantity and description of the marketable security transferred;
- the transfer values of each marketable security and the total transfer value of all;
- the amount of duty chargeable in respect of the transfer;
- if *ad valorem* duty is not chargeable in respect of the transfer, a statement of the grounds on which *ad valorem* duty is not chargeable;
- in the case of an error transaction to reverse an earlier transfer that was made mistakenly, the transfer identifier of that earlier transfer; and
- any other prescribed particulars.

The SCH participant must keep these records for not less than five years and if the participant fails to make or keep a such records, the participant is guilty of an offence ($2 000 fine or $200 expiation fee).

Particulars to be included by relevant participant in transfer document

90L. The conditions of registration of SCH may define the particulars to be included in a transfer document. Failure to include such particulars is an offence ($2 000 fine).

Relevant SCH participant's identification code equivalent to stamping

90M. This clause provides that, on the inclusion of an SCH participant's identification code in a transfer document, the document will be taken to be duly stamped.

Report to be made and duty paid

90N. This clause obliges SCH participants to provide reports to SCH regarding all dealings during each month in which the participant has traded. A report must be made within 7 days of the end of the month and must contain the particulars required by the Commissioner under the conditions of registration of SCH.

The participant must within the same time pay any duty payable in respect of the month to the Commissioner.

Failure to make such a report is an offence (penalty $5 000).

The Commissioner may make an assessment in relation to duty that he or she believes or suspects is unpaid and may also assess penalty duty equal to twice the amount of primary duty assessed. The participant is liable to pay this duty on being served by the Commissioner with a written assessment notice. If the defaulter does not pay the duty on or before the date specified in the notice, he or she is guilty of an offence (penalty $5 000 plus an amount equal to twice the amount of the primary duty assessed).

The Commissioner may remit any penalty duty, or part of any penalty duty, payable under this section.

Refund for error transaction

90O. Where the Commissioner is satisfied that *ad valorem* duty has been paid in respect of an error transaction to which this Division applies, the Commissioner must refund the duty so paid.

DIVISION 4—THE SECURITIES CLEARING HOUSE

Registration as the securities clearing house

90P. This section requires the registration as SCH of the body approved as SCH under the *Corporations Law*. Registration may be subject to conditions determined by the Commissioner from time to time.

The registration of the body as SCH is not limited by time but may be determined by SCH or suspended by the Commissioner if SCH fails to comply with the Act or the Commissioner's conditions of registration.

Monthly return

90Q. SCH must, within 15 days of the end of each month, lodge with the Commissioner a return setting out the particulars specified in its conditions of registration and must, by that date, pay to the Commissioner any duty paid to SCH under this Act in respect of an SCH-regulated transfer made in the preceding month.

The Commissioner may make an assessment in relation to duty that he or she believes or suspects is unpaid by SCH and may assess penalty duty equal to the amount of duty assessed.

The Commissioner may remit any penalty duty, or part of any penalty duty, payable under this section.

Particulars reported by participants to be kept by SCH

90R. Where a SCH participant reports particulars to SCH, the particulars reported must be kept by SCH for a period of not less than five years.

Disclosure to SCH of information

90S. This clause provides that the Act does not prevent the disclosure to SCH of information acquired in the administration of this Part.

Clause 13: Amendment of s. 106a—Transfers of marketable securities not to be registered unless duly stamped

This clause provides that the prohibition against registration of transfers of marketable securities in relation to which duty has not been paid does not apply to the new class of SCH transfers.

Clause 14: Substitution of s. 107

This clause inserts a new general offence of providing or recording false or misleading information (Penalty: Where there is intent to evade duty, $10 000; in any other case, $2 000. An expiation fee of $200 is also fixed).

Clause 15: Amendment of second schedule

This clause provides for amendments to the second schedule. The second schedule specifies the amount of duty payable in respect of various types of instruments.

Paragraph *(a)* provides that gifts of marketable securities transferred via SCH will incur duty at the rate of 60 cents per $100.

Paragraphs *(b)* and *(c)* update the wording of exceptions to duty clauses 19, 20 and 21 to accord with the rest of the Act.

Paragraph *(d)* provides exemptions to duty in respect of entrepot accounts (dealers' clearing accounts previously referred to in

repealed clause 24 of the exemptions), error transactions and securities lending transactions.

The Hon. M.S. FELEPPA secured the adjournment of the debate.

STAMP DUTIES (CONCESSIONS) AMENDMENT BILL

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

The Hon. K.T. GRIFFIN (Attorney-General): I move:

That this Bill be now read a second time.

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

Leave granted.

As part of its Rural Policy commitments the Government announced that it would provide stamp duty exemptions for:-

- intergenerational farm transfers;
- rural debt refinancing;
- tractors and farm machinery.

This Bill seeks to amend the provisions of the *Stamp Duties Act 1923* to provide those exemptions and to implement one further measure which will ensure that multiple duty will not arise for persons who carry on a rental or hiring business in more than one State.

In relation to intergenerational farm transfers a stamp duty exemption is proposed for the transfer of land used for primary production from a natural person (or a trustee for a natural person) to a relative of the natural person (or a trustee of that natural person) where a business relationship existed between the parties prior to the conveyance.

It is proposed to define the scope of "family unit" as situations involving:—

(a) father/mother to son/daughter relationships or grandchildren of the father/mother;

(b) brother/sister;

(c) the spouses of *(a)* or *(b)*;

(d) subject to certain criteria to ensure tax avoidance/evasion does not occur a trustee for the above mentioned persons will also be eligible, although transfers involving company structures will generally be ineligible.

In all instances it will be necessary for the parties to satisfy the Commissioner of Stamps that a farming relationship existed between the relevant transferor and transferee before the conveyance to ensure that the conveyance has not arisen purely from a tax avoidance scheme.

The concept of "farming relationship" would include any previous employment relationship regardless of the amount or form of remuneration, share farming arrangements, level of previous assistance rendered to the business, partnerships, etc.

It will also be necessary to define "land used for primary production".

It is proposed that this concession operate prospectively for transfers executed on or after the date of assent.

The basic concepts of these proposed amendments for farm transfers are the same as those already applying in Victoria.

In relation to the exemption for certain loans refinanced by Primary Producers it is not proposed to exempt farmers from all mortgage stamp duty.

The concession will only apply to the amount borrowed under a mortgage which is used to "pay-out" another loan.

For example, if $200 000 was advanced under a mortgage and only $100 000 was needed to pay-out an existing loan the "new" mortgage would be exempt as regards the first $100 000 advanced only and duty at the rate of 35 cents per $100 would be payable on the remainder.

It is also proposed that the mortgages be over the same, or substantially the same, land or assets by the same mortgagor/debtor.

The requirement that the same land or assets be involved ensures that only genuine refinancing to achieve more favourable terms receives the benefit of the concession.

In such cases the same land would be used as security since the use of different land or assets as security would indicate the arrangement is an entirely new one and not a refinancing.

A reference to "substantially the same" is intended to negate any argument where there is a minor change to the land to be used as security between the dates of the earlier mortgage and the mortgage in respect of which a concession is claimed such as in circumstances where the financial institution might demand additional security over realty or other assets.

The concession will apply to all farm mortgagors but excluding public companies and their subsidiaries (as defined under the *Companies (South Australia) Code*).

It is proposed that the concession operate prospectively for loan agreements or mortgages signed on or after the date of assent.

It is also proposed to amend the Act to exempt from stamp duty, applications to register tractors and farm machinery to ensure that farmers can obtain a registration document that allows farm machinery travelling on public roads to be covered against third party claims.

This initiative is consistent with the move towards the preferred option of the National Road Transport Commission that will require the registration of all vehicles that require access to the road network.

The last matter dealt with by the Bill seeks to amend the rental duty provisions to provide a credit offset for duty paid in other Australian States or Territories.

As the Act now stands a leasing transaction may create a liability for rental business duty in more than one jurisdiction. This is neither fair nor equitable.

The proposed amendment will further advance the degree of equity and harmony between stamp duty legislation administered by the various jurisdictions and will ensure that double duty is not paid in respect of certain leasing arrangements.

The relevant industry body has welcomed this initiative.

This Bill deals mainly with fulfilling the Governments Rural Policy commitments. The rural sector has withstood a number of economically debilitating situations which have affected its ability, not only to generate growth for the South Australia community, but also to survive until better times arise.

The proposed concessions will meet the rural sector's very basic need for relief and will assist the State's turnaround to economic growth.

The Government has consulted with the relevant industry bodies on the measures contained in this Bill and has appreciated their contributions.

Explanation of Clauses

The provisions of the Bill are as follows:

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

Most of the provisions of the measure will come into operation on assent. However, the amendments relating to rental business duty will commence on 1 June 1994, to coincide with the beginning of a return period for the payment of duty under the rental duty heading.

Clause 3: Amendment of s. 4—Interpretation

It is intended to include a definition of "business of primary production". The definition is necessary for some of the amendments to be effected by this measure and it will be useful to have a definition relating to the business of primary production that can be used consistently throughout the Act. The definition is the same as a definition used in a number of other Acts.

Clause 4: Amendment of s. 31a—Duty on agreements for "walk in walk out" sales of land used for primary production

This is a consequential amendment in view of the insertion of the definition of "business of primary production".

Clause 5: Amendment of s. 31b—Interpretation

This amendment is related to the amendments to be effected by clause 6 of the Bill, in that it is necessary to include a definition of "corresponding law" so that duty paid under similar heads of duty in other States or Territories can be off-set against duty paid under the rental duty heading.

Clause 6: Amendment of s. 31i—Matter not to be included in statement

This clause will allow a registered person who has paid duty under a corresponding law in respect of rental business to claim an off-set against duty that would otherwise be payable in this State in respect of the same business. The Commissioner will be empowered to determine whether or not it is reasonable to allow an off-set in order to guard against the creation of schemes to avoid the payment of duty.

Clause 7: Insertion of s. 71cc

It is intended to insert a new provision in the Act that will provide an exemption from stamp duty in respect of certain transfers of

interests in real property used for the business of primary production. The exemption will be available if the Commissioner is satisfied that the relevant land is used wholly or mainly for the business of primary production and is not less than 0.8 hectares in area, that there has been a business relationship between the relevant parties to the transaction, in a case involving one or more trusts, that the trusts are "family trusts", and that the transfer is not simply part of an arrangement to avoid stamp duty. The exemption will apply in relation to instruments executed after the commencement of the relevant provision.

Clause 8: Insertion of s. 81d

It is intended to grant a concession from duty with respect to the refinancing of certain mortgages over real property used for the business of primary production. The proposal is that duty will not be chargeable on so much of an amount under a new mortgage as secures the balance outstanding under a previous mortgage where the Commissioner is satisfied that it is a refinancing arrangement involving land used wholly or mainly for the business of primary production that is not less than 0.8 hectares in area. The mortgagor under both mortgages will need to be the same person. The concession will not apply if the mortgagor is a public company or a subsidiary of a public company. The provision will apply in relation to mortgages executed after its commencement. The provision is expressed to expire on the second anniversary after its commencement.

Clause 9: Amendment of second schedule

This clause will amend the Act to provide an exemption from stamp duty in respect of any application to register, or to transfer the registration of, a tractor or item of farm machinery owned by a primary producer.

Clause 10: Transitional provision

This provision clarifies that the amendments relating to rental business apply in relation to business transacted on or after 1 June 1994.

The Hon. M.S. FELEPPA secured the adjournment of the debate.

PARLIAMENTARY COMMITTEES (MISCELLANEOUS) AMENDMENT BILL

Returned from the House of Assembly with amendments.

ADJOURNMENT

At 10.55 p.m. the Council adjourned until Thursday 14 April at 2.15 p.m.