LEGISLATIVE COUNCIL

Wednesday 24 August 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 bring up the fifth report 1994-95 of the Legislative Review Committee.

QUESTION TIME

TRANSPORT FARES

The Hon. BARBARA WIESE: I seek leave to make a brief explanation before asking the Minister for Transport a question about public transport fares.

Leave granted.

The Hon. BARBARA WIESE: Yesterday on three occasions the Minister told this Council that her submission to Cabinet recommending sweeping changes and massive increases to some public transport fares had been withdrawn. The Minister said:

> I have not been rolled in Cabinet. As I indicated, I withdrew the submission.

However, in another place the Premier told Parliament that Cabinet had considered the Minister's plans and that they had been rejected. The Premier said:

> I can assure the House and the public of South Australia that the Government has rejected the proposed fare restructuring.

We then saw the Minister do a gold medal back flip on the steps of Parliament House when she told the media that her submission had been rejected. By then, one of her minders must have given her some instructions on what to say. On one point, however, the Minister and the Premier were rock solid: when questioned, they both failed to rule out the introduction of distance based fares.

The Minister for Education and Children's Services and the Treasurer also got their stories right by both refusing to rule out that the Government has already decided to cancel school card transport concessions.

As public transport fares are a critical issue for the public of South Australia, some guarantees are needed. The Minister must tell the public what she is doing and remove the uncertainty that yesterday's performance created. So, my questions are:

1. Will the Minister explain whether her submission was withdrawn or rejected after debate?

2. Was the submission rejected because it did not return a big enough increase in revenue to suit the Treasurer?

An honourable member: What a joke!

The Hon. DIANA LAIDLAW: It is a joke, and even the honourable member is smiling and can hardly keep a straight face.

An honourable member: It's called thrashing around.

The Hon. DIANA LAIDLAW: It is: it is searching for something when they do not have much or, in fact, do not have anything, because, as I indicated yesterday, the matter is history. The matter is not before Cabinet: I am reconsidering the issue, so it is history in that sense. As I indicated yesterday, I withdrew the submission. The matter was discussed in Cabinet.

Members interjecting:

The Hon. DIANA LAIDLAW: You can imagine that it would be. It was discussed and withdrawn. You can discuss anything. It was discussed and I withdrew it. There were reservations, and I am not at all surprised because—

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: I did not mislead the Parliament. I was quite consistent in terms of the statements I have made on the issue. There was discussion, as one would expect (and in fact one would demand) on something as important as public transport fares. I indicated that I was happy to have the matter reconsidered. I had reservations myself. I indicated that to the media yesterday, because the issue is an important one in terms of discussion, and that is what happened. So, it is being reviewed and there will be further consideration of the matter.

VICTIM IMPACT STATEMENTS

The Hon. CAROLYN PICKLES: I seek leave to make a brief statement before asking the Attorney-General a question about a victim impact statement.

Leave granted.

The Hon. CAROLYN PICKLES: Yesterday, during the World Society of Victimology Symposium, a research report entitled 'Victim Impact Statements in South Australia—an Evaluation' was released. It is a comprehensive assessment of an initiative which South Australia has taken to assist victims of crime and which, until recently, was not available in other States. The report will be used to improve the victim impact statement system and, in due course, we would like to see the Attorney-General's response to it.

However, there is one matter of major concern in the report which indicates a very disturbing attitude that some judges have towards the law and which seems to be somewhat prevalent in this State. The law in sections 7 and 10 of the Criminal Law (Sentencing) Act makes it clear that judges are to consider injury, loss or damage resulting from an offence, that is, the effect of the crime on the victim, in sentencing. To assist this, victim impact statements are given to the court. The law requires that the injury to the victim be taken into account in sentencing.

It is most disturbing that one judge has ignored the law. It is quite clear that the judge has acted illegally in ignoring the provisions of the legislation. I will refer to the quote from the judge, as follows:

> I never bother to read them, to me it—

that is, the victim impact statement—

> is a political thing to appease the feminist lobby in rape cases.

This is a statement which is similar to other statements made by judges recently, such as that by Justice Bollen—

Members interjecting:

The Hon. CAROLYN PICKLES: If you find this amusing, you may find my questions amusing.

Members interjecting:

The PRESIDENT: Order! Standing Orders do not allow debate in questions. I ask the honourable member to ask her question.

The Hon. CAROLYN PICKLES: This statement is similar to other statements made by judges recently such as that made by Justice Bollen that rougher than usual handling was permissible in attempting to gain consent for sexual intercourse. It raises the whole question again of gender bias

of the judiciary and whether judges are out of touch with society. My questions to the Attorney are:

1. Does the Attorney-General believe that the judge quoted has ignored the provisions of the Criminal Law (Sentencing) Act?

2. If so, are judges permitted to act illegally by ignoring legislation?

3. Although the judiciary is independent, where it is shown that a judge acts illegally, what redress is available?

4. What action does the Attorney-General intend to take in relation to this matter?

The Hon. K.T. GRIFFIN: I did make a press statement yesterday, having had some forewarning that a paper would be presented at the Victimology Symposium in relation to South Australia's victim impact statements. I made the point in that press release, and as I talked to the media about it, that South Australia was the first State to bring in victim impact statements and I supported the use of them. If members look at *Hansard* they will note that at the time this was before the Parliament, introduced by the former Attorney-General, the then Opposition and now Government supported victim impact statements.

I also said that it is important with any new initiative in relation to crime prevention or victim support that we ought not to resile from the proper objective evaluation of such an initiative. In fact, it is imperative that we do so in the interests of the State, in the interests of the victims and in the interests of others who might be affected by the use of victim impact statements.

So, I have no difficulty with the evaluation that has been made. I have indicated that I will be assessing the report over the next month or two with a view to determining what changes, if any, might be necessary in respect of victim impact statements. However, I can give the Council an assurance that they will not be removed. In fact, it would have to be an Act of the Parliament that would do that. However, in any event, I have no intention of backing away from my view that victim impact statements are an important addition to the procedures of the court and are an important balance in the criminal justice system to provide a better focus upon the consequences of a criminal act rather than a focus only on the accused.

At the Victimology Symposium yesterday there was a number of observations about victim impact statements, not the least of which was that, whilst placing a greater focus upon victims and the consequences of a criminal act, one should ensure that the onus of proof that rests on the Crown to prove that an offence has occurred beyond reasonable doubt is maintained.

In respect of the reference to a judge, the report does not contain any identification of that person. I am giving consideration as to what should be done about it and I have not concluded a view. I have not had an opportunity to talk to the person who prepared the evaluation, but I certainly intend to do so. I would expect, though, that in conducting this sort of survey and evaluation the researchers may well have given some undertaking as to confidentiality about the responses. So, it may not be possible to ascertain the identity of the judicial officer who has made that statement.

However, quite clearly, judges are required by the law to take into consideration victim impact statements, whether they are presented verbally or in writing. Of course, one of the difficulties that the evaluation raised was that some victims thought they were good, some thought that they provided no benefit and another group was not interested. Also, it was evident that there were different standards of preparation of victim impact statements. So, that requires some attention. They are prepared mostly by police. Certainly, the focus of this Government is to make police officers much more sensitive to the needs of victims, whether they be victims of domestic violence or any other crime, whether relating to property or personal injury.

In relation to the judiciary generally, I have said that I will be sending a copy of the report to each of the chief judicial officers—the Chief Justice, the Chief Judge and the Chief Magistrate—drawing their attention to the findings of the report and seeking a response. As the honourable member has said, the judges are independent of the Executive. However, I would hope that they can be persuaded, through presentation of the results of this report and evaluation, that there is a need for them to undertake at least some examination of attitudes with a view to addressing that particular issue of the consideration of victim impact statements.

I also said yesterday that I would take up with the Australian Institute of Judicial Administration the issue as to whether there is some appropriate forum within which, quite independently of the Executive arm of Government, steps can be taken to ensure that victim impact statements and other issues relating to the approach that has to be demonstrated towards victims and witnesses can be appropriately addressed in some form of continuing legal education. Because the report was released only yesterday I have not yet had an opportunity to do that, but I certainly will be pursuing those issues.

The honourable member will recollect that there was a significant amount of debate recently about judicial independence, particularly in relation to the Industrial Court and subsequently in relation to separation packages for judges of the District Court. In response to that, I indicated that the Government and I do have a particular sensitivity to ensuring that judicial independence is maintained. Notwithstanding that, it is appropriate for the Government to draw attention to particular issues such as this and seek to ensure that the courts, and the judicial officers themselves, come to grips with the issues raised by these sorts of evaluations.

The Hon. CAROLYN PICKLES: I have a supplementary question. Will the Attorney-General answer my questions. Does he believe that the judge quoted has ignored the provisions of the Sentencing Act? If so, are judges permitted to act illegally by ignoring legislation? Although the Attorney-General has answered the questions relating to the judiciary, what redress is available if they act illegally?

The PRESIDENT: That was hardly supplementary.

The Hon. CAROLYN PICKLES: It is the same question.

The Hon. K.T. GRIFFIN: I am happy to answer, Mr President. I do not know whether or not the judge has acted illegally. All I have is a one line statement. Obviously, you do not make judgments on the run about whether or not someone has acted illegally. I do not intend to make any comment about that until, as I said at the commencement of my answer, I have had an opportunity to discuss the matter with the person who conducted the research and produced the report. If a judicial officer has acted illegally, which can cover a wide range of activities from motor vehicle breaches of the law to more serious criminal offences, one has to put the whole issue into perspective. I am not able to do that at this stage because, as I have said, I have not had an opportunity to examine and investigate the allegations or statements which have been made.

If the illegality is serious enough, the only redress is for an address to both Houses of Parliament to be passed seeking the dismissal of a judicial officer. There is a different mechanism provided in the Magistrates Act for magistrates, where there has to be an investigation by the Full Court of the Supreme Court and, if there is substance found in any allegation by the Full Court, dismissal can occur. I am not in a position to say whether or not in this instance that is the sort of behaviour which would warrant an address to both Houses. However, I suspect not. I have again raised the issue of both judicial independence and judicial accountability. The Governor raised it in her speech at the opening of this session. She said that the Government is exploring in the medium to longer term with the Law Society and the judges themselves how we can address this important issue of judicial accountability. New South Wales has adopted a judicial commission style, and I have indicated that I am not proposing that. What it does draw attention to is the fact that, apart from an address to both Houses of Parliament, which has to be for an extraordinarily serious matter, there is no mechanism by which judges and magistrates can be held accountable for matters other than their judicial decision-making.

Their judicial decision making ought not be subject to interference but is always subject to review by courts of appeal right up to the High Court of Australia. So, one has to be sensitive to both judicial independence and also at the same time recognise that judges and magistrates, as with Ministers and members of Parliament and other members of the community acting in a public capacity, do have to be accountable for their actions. The problem is what mechanism we put in place in respect of the judges who, as I have said, by virtue of their constitutional position and by virtue of a longstanding precedent, are independent of the Executive arm of Government and in some respects the accountability to the Parliament is somewhat limited.

TRANSPORT FARES

The Hon. R.R. ROBERTS: I direct my question to the Minister for Transport. In view of the disconcern in the submission to Cabinet in respect of transport, what is the Government's policy for public transport fares, and when does the Minister expect a decision will be made on her proposal to increase public transport fares?

The Hon. DIANA LAIDLAW: I do not know whether the honourable member has been asleep or is hard of hearing—

An honourable member interjecting:

The Hon. DIANA LAIDLAW: Asleep, perhaps, yes. I indicated yesterday, and I have said again today, that the matter is being considered and it will be returned to Cabinet for further consideration.

Members interjecting:

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

The Hon. T.G. ROBERTS: In view of the answer given to the previous question, I have a question of the Minister for Transport. Has the Minister received representation on the issue of fare structures in the past 24 hours from members holding southern suburban seats, and will she now rule out any introduction of distance-based fare structuring, imposing increased fares on outer suburban travellers, given those representations?

The Hon. DIANA LAIDLAW: I have not received representations from such members, Liberal or Labor—if there are still any Labor.

ENTERPRISE BARGAINING

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Industrial Affairs, a question about enterprise agreements.

Leave granted.

The Hon. SANDRA KANCK: I refer the Minister to comments he made on 23 March 1994 upon the introduction of the Industrial and Employee Relations Bill. At that time, the Minister said:

> The central focus of the new industrial relations system will be the creation of enterprise agreements negotiated between an employer and a group of employees at the enterprise level.

He also said:

> The Government believes that only where the industrial relations system focuses on enterprise outcomes is there maximum potential for improved enterprise productivity and improved wages and conditions of employment for its employees.

At that time, the Minister also reiterated an election promise of this Government, which was that:

> Access to enterprise agreements will be available to all employers and employees.

I refer the Minister also to an industrial agreement negotiated last November between Department of Mines and Energy management and the four relevant unions. All parties involved in good faith invested a great deal of time and effort to develop this agreement, which is widely acknowledged as vital to adjust the department to a competitive agreement. It is widely acknowledged as an agreement which, if implemented, will deliver enormous benefits to South Australians through large productivity gains which will cover employee pay rises. My questions are:

1. As Government departments such as the Department of Mines and Energy are committed to introducing more corporate style management and work practices into their organisation, why is the Government forcing them to retain the old industrial relations system eight months after its election?

2. Is the Government deliberately stalling the signing of the Department of Mines and Energy enterprise agreement in the hope that its proposed changes to the Government Management and Employment Act are passed by Parliament?

3. If the Government wishes to change conditions of employment, does the Minister believe that the Government should negotiate with its employees as all other employers have to do? If not, why not?

4. By delaying enterprise bargaining until the GME Act is changed, is not the Minister in fact saying to public servants that their conditions of employment are not able to be improved under enterprise bargaining before they are first cut?

The Hon. K.T. GRIFFIN: I am not aware of any deliberate delaying tactics in relation to those matters dependent upon what happens with the Government Management and Employment Act.

The Hon. T.G. Roberts interjecting:

The Hon. K.T. GRIFFIN: No. The matters raised by the honourable member are matters of substance which are the responsibility of the Minister for Industrial Affairs, and I will refer those questions to him—and probably also to the

Minister for Mines and Energy, because the questions contain a reference to what is happening in his department—and bring back a reply.

SCHOOL SERVICE OFFICERS

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to make a ministerial statement.

Leave granted.

The Hon. R.I. LUCAS: Yesterday in the Legislative Council the Hon. Mike Elliott made a series of claims that the Government—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: —was demoting 900 school assistants in a process aimed at saving in excess of $1 million and that the Government was 'slashing the pay' of some assistants by $1 300. The facts are that no School Services Officers will suffer a demotion or drop in salary. In fact, pay rises were granted generally as a result of the restructuring process, and approximately 70 per cent of employees gained through the translation process while the remainder remained at their current salary. Rather than saving the Government in excess of $1 million there has, in fact, been a net increase in costs to Government.

The Department for Education and Children's Services is currently undertaking the very large and complex exercise of translating and implementing school services officers (formerly school assistants) into a new award called the School Services Officers (Government Schools) Award. This process of reclassification first began under the previous Labor Government in 1991-92.

Following the structural efficiency principle laid down in the State Wage Case in September 1989, the process of restructuring the School Assistant (Government Schools) Interim Award began. This involved consultation and negotiation between the Department for Education and Children's Services (or its predecessors), the Commissioner for Public Employment, the Public Service Association and the South Australian Institute of Teachers which jointly represent school services officers.

The SSO Award was finally ratified in the Industrial Commission on 21 December 1992 with the agreement of the unions. I emphasise that, because the Hon. Mr Elliott yesterday indicated that he believed the unions had not agreed with this particular process. The School Assistant (Government Schools) Interim Award was abolished and the new School Services Officers (Government Schools) Award took its place. From this point on, the Department for Education and Children's Services, in consultation with the unions, began the lengthy process of translating and implementing existing school assistants grade 1, 2 and 3 into the new structure which had been agreed and ratified at the Industrial Commission. The new structure contains four levels. Therefore, a process of assessing school services officers was put in place in order to determine a new level in the SSO Award. This was specified in the award.

The exercise of translating and implementing SSOs into the new award is being conducted in accordance with the agreed processes between the Department for Education and Children's Services and the unions. These employees will be assessed in accordance with the provisions of the award and an appropriate level will be determined for them. This is also prescribed in the award.

There may be a general perception of loss if a school services officer previously classified as school assistant grade 2, for instance, is translated to an SSO level 1 in the new award. In this situation, the salary paid to that officer remains at the former grade 2 salary; in other words, the officer becomes pegged at the former grade 2 salary and does not revert to the level 1 salary. This is a requirement laid down in the award itself. The SSO award specifies the arrangements for translation and implementation and quite specifically states the responsibility of the employer.

To date, the most recent figures available (24 August 1994) show that approximately 750 SSOs (that is, former grade 2 and 3 school assistants) have been classified within the new structure. There remain about 650 decisions to be taken, and it is expected that these will be completed by the end of term 3 1994. An appeal process will be put in place for any SSO who believes they have been inappropriately classified into the new award. The process is expected to be ready for term 4 of 1994.

There are approximately 1 300 former grade 1 school assistants who have requested a reclassification of their duties under the new award. These employees are currently being interviewed by the department in order to determine a level for them under the new award. At this stage, it is difficult to predict the outcome in terms of the number of reclassifications granted and appeals that might arise from this group. Nonetheless, there can be no demotion or loss of salary from this group either, as these employees are currently classified at the base grade level of the award as they were under the School Assistants Award. In fact, all employees classified at this level gained a slight pay increase through the restructuring process.

Members might be aware that Mr Elliott's claims have caused great concern amongst some school services officers, especially his claim that some SSOs might have their pay cut by $1 300. This concern has been heightened by the *Advertiser* reference this morning to a 'new Government plan' and by the fact that my explanation that Mr Elliott's claims were wrong was not published by the *Advertiser*. Given the concern being generated by Mr Elliott's claims, I would now urge him to concede publicly that his claims were wrong.

TRANSPORT FARES

The Hon. T. CROTHERS: I seek leave to direct a question to the Minister for Transport on the subject of the revisitation of the oft canvassed cost cutting proposals to public transport costs.

Leave granted.

The Hon. T. CROTHERS: Will the Minister rule out that school card transport concessions will be abolished?

The Hon. DIANA LAIDLAW: That area is not my responsibility.

MOTOR FUEL LICENSING BOARD

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Industrial Affairs, a question about the Motor Fuel Licensing Board.

Leave granted.

The Hon. R.D. LAWSON: The Motor Fuel Licensing Board was established under the Motor Fuel Distribution Act of 1973. The principal purposes of this Act are to regulate

and control the distribution of motor fuel and to control the number and location of motor fuel retail outlets. Put more bluntly, this legislation was enacted to encourage a rationalisation of the large number of service stations that were operating in 1973.

The latest annual report of the Motor Fuel Licensing Board was tabled in this Council on 23 August. The report is in respect of the year ended 31 December 1993 and shows that the number of licences for retail motor fuel outlets on issue on 31 December 1993 was 638. The number of licences on issue at the end of 1974 was 962; thus, over the 19 years in which this legislation has operated the number of petrol outlets in South Australia has fallen, notwithstanding an increase in population and an increase in the use of motor vehicles.

The same report paints a broadly similar picture in relation to permits that are granted in respect of business premises where the selling of motor fuel by retail is not the main or principal business. The highest number of permits on issue since this legislation came into force was 802 in 1976. At the end of 1993 there were 579 on issue. The Motor Fuel Licensing Board is comprised of three members, and its principal functions are to determine applications for licences and permits. The board has power to grant variations to existing licences and it processes applications for new industrial pumps. The current workload of the board would not appear to be great: it considered only six applications for new licences last year and granted four of them. It considered applications for three industrial pumps in the same year. The board has power to undertake inspections, and it undertook 50 such inspections during the whole of the year.

There is even a Motor Fuel Licensing Appeal Tribunal. In 1993 that tribunal overturned the two decisions of the board to refuse licences for new premises. My questions to the Minister are:

1. What is the annual cost of administering the Motor Fuel Distribution Act, including the costs of maintaining the board, the appeal tribunal and the inspectorate?

2. Does the Minister agree that the objectives of this Act can be achieved without any specific legislation by appropriate local government planning controls over the number and siting of service stations, coupled with ordinary market forces of supply and demand?

3. Has any analysis been undertaken in relation to the benefit to the community of retaining this legislation and/or the board?

4. If not, will the Minister undertake to examine the desirability of retaining the legislation and the board?

The Hon. K.T. GRIFFIN: I will refer the matter to my colleague the Minister for Industrial Affairs and bring back a reply.

TRANSPORT FARES

The Hon. M.S. FELEPPA: In answer to a question that I put to the Minister for Transport in February this year in relation to public transport fare concessions, she replied that the concession scheme would have continued under private operators. I therefore ask the Minister today whether she will give an undertaking that the interpeak system for tickets will continue, or will it be abolished?

The Hon. DIANA LAIDLAW: I have indicated that the whole matter is being reconsidered. I have mentioned that several times yesterday and today. In terms of the interpeak period there are problems at the present time because it is confined to a two hour period, and I have received many complaints from older people, in particular, from SACOTA and from the other umbrella organisations, from the Older Women's Advisory Committee plus individual representations, that the two hour period which applies for the interpeak period ticket and concessions at the present time is too restrictive.

Suggestions have been outlined in this infamous Cabinet submission that has been withdrawn that the interpeak period would be abolished and that there would be a benefit for anybody travelling within a six hour period, and that that would apply after hours and on weekends. That was a suggestion that was put up and, as I indicated, it is a matter that is still being considered.

There are benefits in having interpeak periods, in having a more flexible arrangement, in having a cheaper arrangement and in having a more flexible arrangement. All those matters are being considered at the present time.

PUBLIC SECTOR SALARY DEDUCTIONS

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Attorney-General a question about PSA court action.

Leave granted.

The Hon. A.J. REDFORD: At a conference conducted last Thursday by the South Australian Employers Chamber of Commerce and Industry on the new industrial relations law, Mr Andrew Murray, representing the United Trades and Labor Council, in a speech indicated that between 80 per cent and 100 per cent of public sector unionists maintained their membership of their respective Public Service union following the administrative changes regarding the collection of union dues announced by the Government earlier this year. If that is the case, it would appear that the Public Service Association's litigation regarding the collection of fees for public sector workers is a waste of its members' money and union resources. Will the Attorney consider writing to the PSA's solicitors requesting them to drop their legal action in the courts, thereby saving everyone a lot of time and money?

The Hon. K.T. GRIFFIN: What the PSA does with its members' money is a matter between the members and the PSA, so it is not a matter in which I have any particular interest, although any litigation involves the State and the rest of the community in meeting particular costs. I have not seen the statement made by Mr Andrew Murray. I will ask the Minister for Industrial Affairs to check that and to let me have a response to the substantive part of the question, because it is the Minister for Industrial Affairs who is in effect the client instructing the Crown Solicitor in respect of that court action.

The PSA, as I think members will recall, sought an interim injunction against the Government in respect of the new scheme for collection of union fees from public servants, but was not successful in that. I had understood that the matter was not being taken any further but, if it is, I am certainly prepared to examine it in conjunction with the Minister for Industrial Affairs.

If, as the honourable member suggests, Mr Murray is reported to have said that the PSA has lost hardly anything, one wonders why the legal proceedings continue. However, if membership is substantially down, it simply reflects that former members are making a choice and that really is the essence of what this Government is on about. If people wish to belong to a trade union or any other organisation, they are

entitled to do so, and if they do not want to belong they are also entitled to that course. If they do not want to belong they should not be the subject of any victimisation or undue pressure to join or to continue their membership. So, it is a matter of freedom of choice. As far as employees under State law are concerned, that is now enshrined in legislation that we passed at the end of last session. So far as the substantive issue is concerned, I will refer the matter to my colleague, the Minister for Industrial Affairs, and bring back a reply.

CHEMICALS IN SCHOOLS

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about the use of chemicals in schools.

Leave granted.

The Hon. M.J. ELLIOTT: This was a subject that I raised with the previous Government and it was never answered adequately, so I hope that the new Minister might be able to assist. I had a meeting with a group of parents and teachers earlier this year on the issue of the safety of the school environment and, in particular, the use of chemicals in schools (and in this case I am not talking about chemistry laboratories) and the lack of any prior warning or consultation about decisions to use chemicals. I spoke to a number of parents, but will take one as an example. This parent expressed concern that exposure to chemicals has exacerbated the mild allergies and hay fever suffered by her five year old son.

He came into contact with chemicals on three separate occasions in the first three weeks at an Education Department school. The mother took her son to a specialist after her son began having asthma attacks regularly after starting at school. The specialist's opinion was that these problems arose from his contact with chemicals. I was told that on one occasion the school was sprayed for fleas without any parental notification. On inquiry, the mother was told by the principal and the Health Commission that the chemical used, a synthetic pyrethroid, was the same as pyrethrin. She said that she persisted with her investigations and found out what chemical was used and it turned out to be Cislin 10, a fourth generation synthetic pyrethroid, about which concerns have been raised as it can be an irritant to the respiratory tract and is capable of inducing an asthmatic response in susceptible persons.

On another occasion in the first couple of weeks, the carpet in the classroom was replaced and the children returned to the classroom immediately afterwards where the air conditioning was circulating the fumes from the glue used to fix the carpet. The mother believes that her son collected the glue on his hands, which he later rubbed in his eyes and nose, worsening his allergies. Anyone who has ever been to a junior primary school will tell you that five year olds spend a lot of time sitting on the carpet in the first couple of weeks, thereby being exposed to the flea decontaminant. They are exposed to the glue fumes in the carpet itself as well as to this third chemical. The mother said that at the same time there had been some vandalism at the school and that the blackboard had been cleaned with a strong solvent. It was done at about the time the children were around.

The child has been removed from the school to one that has promised to notify the parents of any chemical use and she said that his health has improved noticeably. That was one illustration and other parents have given other examples. For instance, there was spraying of bee hives in trees directly adjacent to classrooms, which have been in use. These things have occurred. It is an issue that I have raised in this place in the past. My questions to the Minister are:

1. Will the Minister explain what justification the Education Department uses when deciding if and when to allow pesticides to be used in schools?

2. Will the Minister investigate whether spraying is necessary and, if it is, that it can take place during the holidays rather than when children are at school and therefore at greater risk?

3. Will the Minister implement guidelines through which parents will be notified if and when their children will be exposed to chemicals and the nature of the chemicals used?

4. Will the Minister establish a treatment register for schools through which parents and teachers can find out how the school has been treated and with what chemicals?

5. Will the Minister investigate in particular the effect of Cislin 10, which I understand has been used in a number of metropolitan schools to kill fleas and inform the Chamber of the dangers associated with its use?

The Hon. R.I. LUCAS: In relation to the first question, clearly the reason why sprays are used at all and certainly within departmental guidelines within schools is that children, parents and staff complain about the problem at the school. The problem for young children of having an infestation of fleas at school can be quite distressing. The Hon. Mr Elliott asked the reason and I presume that it is because children, their parents and staff can be quite distressed about infestations of fleas. There have been examples in the southern suburbs where there have been infestations of spiders and a range of other problems in the schools.

It is an important issue being raised by the Hon. Mr Elliott. I will undertake to have the questions he has raised investigated by departmental officers and bring back a response as soon as I can. It is an increasingly important issue as young people become sensitive not only to sprays but also to a whole range of ingredients in foods such as colourings and so on. Even sprays used to take away odours and a variety of other things affect children in our schools. It is an important issue.

The department has guidelines and I will bring them back for the benefit of the honourable member. I will ask departmental officers to consider whether some of the suggestions made by the honourable member ought to be considered for any changes if there are deficiencies in the current guidelines and will try to bring back advice as soon as I can.

The Hon. T.G. ROBERTS: By way of supplementary question, will the Minister also investigate the potential for those guidelines to include contamination from outside sources such as aerial spraying close to school boundaries, fences and ovals?

The Hon. R.I. LUCAS: I would be happy to have it considered, but clearly within schools we can control certain things. If we spray we have control over it because we make a conscious decision about it. Once we come to things on the boundary, particularly in country areas where farmers are spraying, depending on prevailing winds it does not have to be an adjoining or adjacent property but could be somewhere in the near vicinity, so it is a much more difficult issue. I will ask the department to consider it, but would not want it to delay response to the Hon. Mr Elliott's questions unnecessarily by waiting for that response. I will obtain a reply for the honourable member.

PREMIERS' CONFERENCE

The Hon. G. WEATHERILL: I seek leave to make a brief explanation before asking the Minister representing the Premier a question about the Premiers' Conference in Darwin.

Leave granted.

The Hon. G. WEATHERILL: After the conference involving the Prime Minister and the Premiers, the South Australian Premier issued a statement that would lead one to believe that a broad agreement has been reached in respect of the privatisation of some State Government authorities, such as EWS and ETSA. My questions to the Premier are:

1. Has he given any commitment to the Prime Minister in respect of the foregoing?

2. If he has, why has he done so?

3. If he has not done so, why not?

The Hon. R.I. LUCAS: I can assure the honourable member that he will be delighted that the Premier has not given the Prime Minister a commitment on anything in relation to this important issue and related issues. There have been, I must admit, some varied press reports throughout the nation about what actually went on last Friday, in particular, in relation to the meeting of COAG.

Part of the problem has been that most of the senior officers were removed from the bulk of the meeting; it was really only the leaders who were there. I guess that there have been varying interpretations of what actually went on during the proceedings on that day. However, the honourable member would have seen from the press reports that the Premier of South Australia was most unhappy with progress in a number of important areas and certainly has given no commitments to the Prime Minister in relation to these issues. There are matters that have to be resolved and there is an intention to try to resolve them, I think, by February of next year, when COAG again meets in Adelaide.

COMMONWEALTH POWERS

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to make a ministerial statement on the subject of Commonwealth intervention in State affairs.

Leave granted.

The Hon. K.T. GRIFFIN: The issue of Commonwealth intervention in State affairs has once again arisen. Members will be aware that the Federal Minister for Aboriginal Affairs, Robert Tickner, recently used his powers to put a halt to the Hindmarsh Island bridge project. Then the South Australian Government was compelled to intervene in Western Australia's High Court challenge to the Native Title Act. Our intervention in that matter is not directed at the existence or otherwise of native title, but rather to protect our State's ability to manage our own affairs in the manner that the constitution clearly intends.

In a press statement the Premier made at the time, he said:

> Rather, our action on the Native Title Act will be based on its complexity and on the particular manner in which it affects State legislative and executive powers.

He went on to say:

> First, we will argue that the Commonwealth does not have the power to tell the State which of its legislative or executive acts will be valid. While the Commonwealth is entitled to enact its own laws on a topic and to then rely on section 109 of the Constitution to invalidate inconsistent State laws, that is not what it has done in this case.
>
> Instead, it has purported to say to the States, 'Your actions will only be valid if you do them in this way.' This is so prescriptive as to leave the States without any discretion of their own. The Constitution and section 109 were never intended to operate in this way. We will argue that the Commonwealth cannot control the manner in which State legislative and executive powers are exercised in the manner proposed by the Native Title Act.
>
> Secondly, the intervention will focus on the power of the Commonwealth to turn the common law into statute law without identifying any particular rules. I refer in particular to section 12 of the Native Title Act in this regard.
>
> In enacting section 12, the Commonwealth has blurred the basic distinction between judge-made common law on the one hand and statute law on the other. It has caused uncertainty. This distinction is fundamental to the Constitution and in particular section 109. We believe it is of critical importance that section 12 is struck down.
>
> Thirdly, we will focus on the way in which State legislation can be caught by the right to negotiate regime. We consider that the Commonwealth has gone too far in purporting to require a State Parliament to negotiate with native title claimants before it can pass particular types of legislation.
>
> Finally, we take issue with the width of the criteria that the Commonwealth has purported to lay down in connection with the right to negotiate. It has purported to require an arbitral body to take into account all sorts of things that may have nothing to do with native title. This represents an unwarranted intrusion into a State's ability to manage its own affairs.

Now, the Commonwealth plans to legislate to override Tasmania's law relating to sex between homosexual couples. It has been reported that other States have decided to launch a High Court challenge. But, while we are greatly concerned that the Commonwealth is again seeking to overturn State laws, South Australia has not considered the matter of a High Court challenge. Until we have seen the Commonwealth's proposed legislation it is premature to speculate about our position.

It is normal practice in South Australia, when Commonwealth legislation is passed affecting directly or indirectly the affairs or responsibilities of a State or States or when a case is commenced by anybody where the case may raise constitutional issues and intervention may have to be considered, that advice is sought from the Crown Solicitor and the Solicitor-General. That does not necessarily mean taking advice on challenging the legislation but rather on the effect of the legislation or the issue in the case. The Government would then consider the matter before a final decision is made about whether or not to intervene.

Frequently, it is not the specific subject matter of Commonwealth legislation but rather the consequences for State powers that would prompt the Government to intervene or even initiate a challenge. Each case is decided on its merits.

The Government's concerns about the Commonwealth seeking to override the rights, powers and responsibilities of the States and to take over the States' legislative responsibilities is a point which was made strongly at COAG last week. Increasing concerns about the Commonwealth's attitude towards the States is one of the reasons why we are intervening in respect of aspects of the Native Title Act and some industrial relations issues. In the area of industrial relations, in June we intervened in a High Court challenge mounted by Victoria. The case, known as SPSF No. 2, is a challenge by the Victorian Government of the right of the Federal Industrial Relations Commission to make an award covering public servants. We argued before the High Court that the States should have the right to retain control of services provided for public purposes. We are currently awaiting a decision from the court.

Our Government is involved in a number of cases challenging the shift from the State to the Federal industrial relations jurisdiction. We are strongly contesting the case before the commission at the moment, where the Australian Education Union is seeking an interim Federal award.

Another area where the Commonwealth seeks to undermine the States or intrude into their areas involves crime prevention and criminal law. On 22 August the Prime Minister made a speech in which he flagged potential Commonwealth involvement in the area of the Model Criminal Code. He refers to some issues which are very much the responsibility of the States. Crime prevention is one of those areas. What we do not want to see is the Commonwealth exerting pressure or seeking to become involved legislatively or administratively in those wide ranging issues which are the responsibility of the States and in respect of which the States already have extensive programs.

There is a catalogue of issues concerning the South Australian Government, and other State Governments, in relation to Commonwealth interference and widening of Commonwealth involvement in areas which the States are much better able to deal with. It is time to reinforce our concerns and send a clear message to those who would seek to frustrate our goals and achievements, that the South Australian Government will not be bullied, and as long as the bullying does persist we will continue to return the punches. What we want for Australia is a diverse, competitive federal system, not heavy-handed control from Canberra.

SCHOOL ASSESSMENT

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services about assessment in schools.

Leave granted.

The Hon. ANNE LEVY: Some time ago the Minister announced that a policy of assessments for grade 3 and grade 5 would be introduced into South Australian schools. He also indicated that the assessment package, which will be used for this purpose, is being obtained from New South Wales, not developed in South Australia for South Australian conditions, and that a pilot program would be operating very shortly across a number of schools prior to the package being adopted throughout all primary schools in South Australia. My questions are:

1. What was the cost to the Education Department of obtaining the New South Wales developed assessment package?

2. Was an estimate made of the cost of developing a South Australian assessment package and, if not, why not?

3. What is the cost of conducting this assessment in the pilot schools, taking into account the teachers' time for applying and assessing the results of administering this assessment package?

4. What is the estimated cost, including teachers' time and all other costs (estimated with correct accounting procedures), of implementing this package across all primary schools in South Australia?

The Hon. R.I. LUCAS: I will have to get detailed information for the honourable member on that issue, but I can give her some information now. First, it is not correct to say that the South Australian Government, when it introduces the tests next year for all year 3 and year 5 students, is taking the New South Wales tests and applying them here without adapting them to South Australian conditions. As I have indicated on a number of public occasions, the tests to be applied next year will be jointly developed by officers of the New South Wales Department of Education and the South Australian Department for Education and Children's Services. That is especially so because we need to be assured that they are tests that are suitable for students in South Australian schools. Equally, I am sure the New South Wales officers will want to ensure that they are suitable for New South Wales schools as well. We see it as being very sensible cooperation in what is potentially a costly area if a State chooses to go it alone.

In relation to investigating the costs of going it alone, I am advised (but I will check the figures for the honourable member) that the New South Wales Government spent some $1 million to $1.5 million on the development of the tests. The decision the South Australian Government took was that we would much prefer to spend the money on doing something about the information, that is, having identified the students with learning difficulties, putting the money into early intervention programs and trying to correct the problems rather than spending that sort of money on developing tests solely by ourselves. The arrangement we have with New South Wales, in an agreement signed early this year between the Minister and me, is a very favourable deal for South Australia in that all the developmental costs have been absorbed by the New South Wales Government. The only contribution will be, each and every year, the period of time that the South Australian officers sit down with the New South Wales officers in redeveloping and refining the tests in an agreed fashion for both State systems.

The Hon. Anne Levy: You must have a cost on that.

The Hon. R.I. LUCAS: As I said, I will get the cost for you and I can bring that back. I said that at the outset. We have estimates of the figures and I will be able to bring those answers back. We believe that the joint arrangement between New South Wales and South Australia will mean that South Australian taxpayers will save at least a half a million dollars, and maybe more, as a result of the cooperative agreement between two States in this important area of the assessment of literacy and numeracy. We believe that they are essential, but we believe we should minimise the amount of money spent on undertaking the tests and maximise the amount of money spent on doing something with the information, that is, assisting those young children with learning difficulties who are not getting the assistance that their problems merit within the system. There was a range of specific questions. I will be happy to take them on notice and bring back a reply as soon as possible.

PORT LINCOLN PRISON

In reply to **Hon. SANDRA KANCK** (10 May and 24 March).

The Hon. K.T. GRIFFIN: The Minister for Correctional Services has provided the following response to the honourable member's question of 10 May 1994 and has indicated that the response is also relevant to the question of 24 March 1994.

1 & 2. On 28 June 1994 the Government announced its decision on the future of Port Lincoln Prison. The Port Lincoln Prison is required to:

- reduce staff by four through TSPs (these staff have already accepted their packages)
- increase prisoners by nine (this has already been done)
- reduce operational costs, currently at $35,000 (excluding capital) to $27,000 per prisoner per annum. Staff submissions have indicated that this is an achievable target.

The prison is to be operated at 30.5 equivalent full time staff for 63 prisoners. This equates to a staff reduction of 12 per cent, prisoner number increase of 23 per cent and cost per prisoner reduction of

22 per cent. The prison operated on a trial basis with nine extra prisoners for some two months before the final decision was made.

3. At this time no prisons are earmarked for closure, but future options for use of the Cadell Training Centre beyond the next 12 months are being closely examined.

CFS VOLUNTEERS

In reply to **Hon. R.R. ROBERTS** (11 August).

The Hon. K.T. GRIFFIN: Travel to or from a CFS activity is classified as part of employment. A legal opinion obtained by the CFS confirms that the changes to the Workers Compensation and Rehabilitation Act, which came into effect on 1 July 1994, will not alter the level of compensation payable to CFS volunteers.

FAR NORTH CONSULTATIVE COMMITTEE

In reply to **Hon. CAROLYN PICKLES** (3 August).

The Hon. DIANA LAIDLAW: The Minister for the Environment and Natural Resources has provided the following information.

In answer to the honourable member's question the Minister for the Environment and Natural Resources can assure you there is no imbalance of conservationists on the Far North Consultative Committee.

There are fifteen persons on the Far North Consultative Committee and they represent a broad range of community interests.There are a number of people appointed for their arid lands expertise, general conservation expertise and Aboriginal cultural expertise—all conservation areas.

The following is a list of Far North Consultative Committee members and their expertise.

Mr Frank Badman, Chairman. Although employed by Western Mining he is not a Western Mining representative. He was a consultative committee member for seven years before he was employed by Western Mining Corporation. He was a founding member of the original North Consultative Committee (12 years service). Mr Badman is a professional biologist/botanist and has been working in this field for 20 years. He is an expert in arid land conservation and mound springs and their management. Mr Badman has won a Landcare Award and has been a finalist on two other occasions.

Mr Badman has had numerous articles published in a variety of reference works.

- eight refereed papers on birds (single author)
- two refereed papers on birds (senior author)
- four refereed papers on birds, plants and reptiles (junior author)
- two monographs on birds
- four published conference papers
- three invited articles on natural history subjects
- Producing a 300-plus page book on the flora of the Marla Oodnadatta Soil Board Region

He has made in excess of 7300 plate collections for the State Herbarium from the Lake Eyre Region in the last 16 years. He is one of the leading authorities on birds of the Lake Eyre Region.

Mrs Sharon Bell, Deputy Chairperson, pastoralist, Dulkaninna Station. Mrs Bell is studying for a Diploma in Land Management. She has extensive fieldwork experience on numerous conservation projects. She has experience in the field of biology. Mrs Bell and her husband have won a Regional Ibis Award and have been State finalists in Landcare Awards. She is currently Secretary of the Marree Soil Board.

Mr Rod Hand, employed by the South Australian Tourist Commission. Has a Bachelor of Arts degree, Diploma in Public Administration and an anthropology major. He has an interest in conservation but is principally on the committee for his expertise in tourism.

Mr Terry Aust, employed by Department of Mines and Energy South Australia. He has a BA in Chemical Engineering, a Graduate Diploma in Economics. Mr Aust was appointed for his expertise in the hydrocarbon industry. His input allows the committee to make informed decisions on these issues.

Mr Greg Campbell, employed as Landcare Manager for Kidman Pastoral Company. He has a BA in Science and a Post Graduate Diploma in Natural Resources. Mr Campbell works in the cattle industry on conservation issues. One of his major functions is to develop management plans for sustainable pastoral use of arid lands.

Mr Steve Tunstill is employed by Santos as an Environmental Officer. He is studying for a Diploma in Science and Natural Resources. He has an in-depth knowledge of rehabilitation techniques associated with the hydrocarbon industry.

Mr Jim Puckridge is a PhD candidate with the Department of Zoology, University of Adelaide, and was nominated by the Conservation Council of South Australia. He has a Masters of Science in arid zone aquatic ecology and a BA, MSc. and Diploma Secondary Education Dip TESL. Mr Puckridge has a strong conservation background and is a member of the Wilderness Society, Australian Conservation Foundation and Conservation Council of South Australia. He is a past member of the management committee of the Wilderness Society and a past member of the executive of the Conservation Council. His PhD project is a study of the ecology of the rivers of the Lake Eyre Basin.

Mr Steve Charles is employed by the Road Transport Department and was nominated by the Four Wheel Drive Association in Adelaide. Mr Charles is representing Four Wheel drivers and he provides advice to the committee on issues affecting 4WD owners and provides feedback to them, from the committee.

Mr Jim Vickery is retired, but was a former Lands Department employee (25 years in the arid zone). He was also Chairman of the Pastoral Board. He has extensive knowledge of arid zone land tenure and was active on arid lands water conservation. Mr Vickery understands the Pastoral Industry and provides advice on sustainable pastoral use and other conservation issues to the committee. He is a member of the Agricultural Technologists of Australasia and received his formal education at Roseworthy. Before he entered Government service he had 17 years practical experience in the pastoral industry. Additionally, he spent four years in Aboriginal Affairs in the arid zone.

Mr Gordon Coulthard. Mr Coulthard is an Aboriginal person and actively works on improving opportunities for Aboriginal people. He participates in a number of committees protecting and enhancing Aboriginal culture.

Mrs Colleen Mitchell, pastoralist, Muloorina Station and member of the local community. In Colleen's words 'I am a mother, a wife and I am involved in the industry and I use commonsense'. Please note that the two women on the Far North Consultative Committee are from the local community and bring a very important perspective to the deliberations of the committee.

Mr Brian Powell (AM), retired, works actively on conservation issues. Was awarded the AM for services to conservation. The following is a list of other awards he has won:

1983 District Council Kanyaka-Quorn, Citizen of the Year Award
1987 to 1993 KESAB Tidy Towns Awards for his contribution to conservation and Tidy Towns by tree planting
1991 SA Landcare Award, Individual Landcarer
1991 SA National Parks Centenary Awards, one of a hundred notable contributors to conservation in the State of South Australia
1992 Honours list January 26, Member in the General Division of the Order of Australia (AM) for services to conservation
1992 Banksia Environmental Award, outstanding individual in Australia.

Mr Powell has been involved with numerous conservation projects over the years. He is closely associated with the South Australian Museum by guiding and assisting on field trips and providing biological samples. He was instrumental in identifying 30 colonies of rock wallabies in the Flinders Ranges. He has operated and maintained a seismological station for the University of Adelaide for 20 years and he has assisted with geophysical experiments throughout the arid zone. He has also provided invaluable assistance to many anthropologists. He has observed, tabulated and reported on occurrences of marsupial mice in the Flinders Ranges.

Mr Adam Plate, self-employed in the hospitality/tourist industry. Has resided in the Oodnadatta area for over 20 years. He has detailed local knowledge of Witjira National Park and has provided invaluable service to tourists in the Outback. Mr Plate and his wife have been ambassadors for the South Australian tourist industry.

Mr Rex Stuart, employed by the Department of State Aboriginal Affairs and formerly by NPWS. He was appointed to the committee to provide advice on Aboriginal cultural issues. He has experience in conservation in general through his years in the park service.

Mr John Watkins, employed by the Department of Environment and Natural Resources. He has had 16 years full-time service in the department working on conservation on a broad scale as well as national park related conservation issues.

The honourable member can see from this that a large percentage of the committee members have either formal qualifications in the

natural resource area or are experienced in arid land management, natural resource management or Aboriginal culture.

With this type of representation on the Far North Consultative Committee there is no need to take up the Conservation Council's offer at this stage. The Minister for the Environment and Natural Resources certainly thanks them for their interest.

HINDMARSH ISLAND BRIDGE

In reply to **Hon. M.J. ELLIOTT:** (2 August).

The Hon. DIANA LAIDLAW: The Minister for Housing, Urban Development and Local Government Relations has provided the following information.

The information and response provided by the Minister for Transport accurately summarises the current situation. The Department of Housing and Urban Development is dependent upon advice provided by the Department of Transport on access to the island.

INFORMATION TECHNOLOGY

In reply to **Hon. C.J. SUMNER** (2 August).

The Hon. K.T. GRIFFIN: The Crown Solicitor has provided advice to the Premier on the question whether the 'pre-election' arrangements between IBM and the then Opposition has resulted in any legal liability or obligation upon the South Australian Government. The Crown Solicitor advised that those arrangements did not result in any liability or obligation upon the South Australian Government. In that advice the Crown Solicitor did not express any concern about the current arrangements.

SCHOOL SECURITY

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister of Education a question about security guards in high schools.

Leave granted.

The Hon. T.G. ROBERTS: Page 2 of today's *Advertiser* contains the headline 'Stabbing sparks move for school guards.' I hope that this is an isolated incident that does not lead to further problems associated with the overlapping of violence both on and off campus. We have had a number of these incidents over the years, and I hope that this is an isolated incident rather than indicating a growth in these sorts of problems. The response as reported in the *Advertiser* is that the State Government could deploy security guards in schools after the stabbing of a western suburbs high school student yesterday. Problems have been reported to me by senior secondary schoolteachers and it appears that these problems need multiple responses, not only in relation to off-campus violence rolling on to campuses but also concerning a total response by the Education Department.

It needs to look at training programs and development programs for both teachers and students so that we can come to terms with some of the social problems that are coming on to the campus, given that the retention rate of students now is much higher in preparation for, in a lot of cases, tertiary education and training programs for TAFE courses and the interlapping of those courses. The age profile of students is being raised and the problems that that brings with it in schools means that a program needs to be developed to come to terms with those problems. I certainly would not like to see our schools become like some of the American schools where students have to walk through metal detectors to get to their lessons. My question is: what steps are being taken by the Education Department to protect teachers and students from bullying and violent behaviour?

The Hon. R.I. LUCAS: I will be happy to refer that question to the department and bring back a reply. The response I gave this morning to the *Advertiser* was that the department would consider a range of options. If in certain circumstances the use of security guards for limited periods might be of use, then that would be one of the options that we would consider. It was no stronger than that. I indicated to the *Advertiser* journalist that over previous years on some isolated occasions security guards had been used in situations which were deemed by security to be dangerous, but they were rare and were for limited periods. As a result of the problem at that school yesterday, I have been advised that the security section has instituted a security guard for a limited period from now onwards. There is obviously a police investigation. We do not know yet all the details of the assault that occurred yesterday, whether it was part of an ongoing problem or whether it was an isolated incident that arose as a result of a difference of opinion between one person and another group of people. Of course, until we are aware of all that detail we will have to reserve our position. Nevertheless, there is a security guard down there at the moment to provide some security.

I would agree with the honourable member that the notion that we in South Australia could move to a situation like that in some American schools and States is completely alien to all that the honourable member and certainly I as Minister would want to see in our system. To be fair, these sorts of incidents where outsiders come onto a school premise with a knife and baseball bat and assault somebody are, thankfully, rare. We do have behaviour management problems within schools. They are ongoing and we need to manage those. But these sorts of incidents are rare, thankfully, and hopefully they will continue to be rare. I will refer the honourable member's question to the department and bring back a reply.

ADDRESS IN REPLY

Adjourned debate on motion for adoption.

(Continued from 23 August. Page 174.)

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I thank Her Excellency for the speech that she gave in opening the session. Most members have spoken in the Address in Reply debate, and I thank all members for their contributions. I certainly thank members of the Government for what have been generally thought provoking, excellent and constructive contributions to a range of issues. A number of members very thoughtfully outlined the achievements of the new Government in its first eight months. Of course, as I said, it makes for impressive reading, and particularly the achievements in relation to economic development and the attraction of new development and investment to South Australia.

Also, I commend the contribution of the Hon. Julian Stefani in relation to some important issues the Government will need to take into consideration on the whole question of economic development of South Australia, the cost competitive advantages of South Australia versus other States, and also the cost competitive advantage of Australia as a nation with other competing nations. There is also the very important question of the role of levels of immigration and its effect on economic development. Of course, there are two broad schools of thought about that issue: those who believe that increased levels of immigration can generate economic

development and improvement in the State and the nation, and those who have the view that increased levels of immigration will lead only to increased unemployment. It is an important issue for the nation. It is also an important issue for South Australia in relation to population growth, when one looks at the growth that is occurring in particular in States such as Western Australia and Queensland.

I intend to respond to a number of the contributions from honourable members. First, the Minister for Transport has provided me with some comments in response to statements made in this debate by the Hon. Barbara Wiese. On behalf of the Minister for Transport I place on record the following comments. The honourable member addressed a number of transport issues, but during her hysterical outburst she got confused. Earlier on, she took—

The Hon. Anne Levy: That sounds like opinion.

The Hon. R.I. LUCAS: Well, you are allowed to have opinion in speeches; you need to look at your Standing Orders. Earlier on she took a king hit at transport planners and transport theoreticians, inferring that they were a low breed of human being in the Public Service system. Yet these same people were the same dedicated public servants who she later says would work for whichever Government was in power because they were professionals. The Minister for Transport values the public servants with whom she works. She, too, considers they are professionals and, accordingly, will listen to and evaluate the advice that they provide on public transport fares or indeed on any other matter.

The Hon. Barbara Wiese's hysterical outpourings yesterday represented a rare display of energy and interest in her job or in the wellbeing of South Australians. I am told that various journalists around Adelaide have written column inches about her incompetence, suggesting that she should retire from this place sooner rather than later. They have derided her ambitions to replace the Hon. Chris Sumner as Leader of the Opposition in this place. Yesterday she tried to reassert her status amongst her colleagues but failed to impress. The Hon. Barbara Wiese also seems to suffer from a short-term memory loss. Over the past 11 years, the Government of which she was a member lost over 30.3 million passenger journeys from the STA system; raised fares by three times the rate of inflation, despite promises by Premier Bannon in 1982; spent over $1.2 billion of taxpayers' dollars subsidising the STA's operations; cut the frequency of most bus services; cut out Sunday services on most routes; got rid of guards from trains; told passengers to go out of their way in search of a rail ticket from a retail vendor, if they could find one; and allowed fare evasion to run rife.

The Government has inherited a public transport system that is costing a fortune, and one which fewer and fewer people want to use. The Hon. Barbara Wiese, as Minister for Transport Development—and I use that term advisedly—did not care about the people she left stranded in their homes when she cut out Sunday services. This move hit older people the hardest. She did not care about the people who relied on a frequent, efficient and safe bus or tram service when she cut the frequency of services, removed guards from trains or made them buy their train services off-board.

In eight short months in Government, the Minister for Transport has worked diligently, as all her colleagues will agree, and with determination to reverse the mess that Labor plunged our public transport system into. As I am sure other Ministers will acknowledge, this sort of determination sometimes might upset the odd public servant or two in the process, but it is not surprising when one looks at the extent of the mess that this Government has inherited from Ministers such as the Hon. Barbara Wiese.

To refresh the memory of members, some of the initiatives of the Government in the important area of transport are: passage of the Passenger Transport Act reflecting reforms to public transport which Professor Fielding deemed urgent in 1988 but which Labor failed to address; the elimination of confusing administrative muddles, with three separate transport agencies responsible for licensing and oversight of taxis, trains, trams, buses, coaches, hire cars and limousines; the introduction of new, easy to read customer friendly timetables (hear, hear!); the introduction of 60 new passenger service staff to reinstate a human face on trains, address fare evasion and various safety issues; the introduction of TransAdelaide, a Government-owned public transport operator; the introduction of the Passenger Transport Board to develop a safer more comprehensive, more frequent and more cost efficient public transport system; and transfer of responsibility for STA Transit Police to SA Police to provide a greater measure of safety.

Indeed, the Minister recently reported the tremendous success that that initiative has already achieved in our passenger transport system. I am sure that all members, even the Hon. Barbara Wiese, would congratulate the Minister on that far-sighted initiative to ensure a greater level of safety. I do not think that even the Hon. Barbara Wiese could be so churlish as not to congratulate the Minister on that significant achievement in relation to passenger transport.

Other initiatives include the initiation of open days at all TransAdelaide depots and the encouragement of better working relationships between employees and managers. The list goes on but, because we have to visit the Governor, time will not allow me to go through the whole list of the Government's achievements—that is just a potted summary of some of the better ones in the short time that is available.

The Hon. Barbara Wiese interjecting:

The PRESIDENT: Order! The Hon. Barbara Wiese will cease interjecting.

The Hon. R.I. LUCAS: The Hon. Michael Elliott made some claims yesterday, too, in relation to a number of issues. I have been provided with some information by the office of the Minister for Industrial Affairs. For the sake of accuracy, I think it is important that this be placed on the record as well during my reply.

First, Mr Elliott made some allegations in relation to the appointment of employee representatives from the AWU/FIMEE Amalgamated Union not being acceptable because the Minister had not chosen a person from the UTLC on their nomination. The Hon. Mr Elliott alleged that the Minister's appointment of one of the employee representatives to the WorkCover Advisory Committee actually breached the law. He also alleged that the Minister told the WorkCover Advisory Committee that one employee member had offered their resignation when that had not happened.

The facts are: on 22 and 26 May 1994 the Minister wrote to the UTLC requesting names of suitable candidates for the WorkCover Board and the WorkCover Advisory Committee. On 17 June 1994, the UTLC advised the Minister of the council's nominations for these bodies. The UTLC nominated Ms Joy Palmer and Mr Jim Watson for membership of the WorkCover Board. Under the WorkCover Corporation Act (as passed by Parliament earlier this year) the Minister was required to consult with the UTLC in relation to these appointments, but was not bound to appoint persons at the direction of the UTLC. The UTLC nominated two persons to

the WorkCover Board. The Minister appointed one of those persons, Ms Joy Palmer, to the board. The second person appointed by the Minister to the WorkCover Board to represent the interests of employees was Mr Brian Martin, the Joint Secretary of the AWU/FIMEE Amalgamated Union. This appointment was based on merit.

This union is a major union affiliate of the UTLC and, in fact, Mr Martin is a past President of the South Australian Labor Party. To suggest, as Mr Elliott does, that the Minister has acted irresponsibility or provocatively in employing Mr Martin, who is steeped in the history of the trade union movement and the Labor Party, is, of course, absolute nonsense. The person nominated by the UTLC to the WorkCover Board but whom the Minister did not appoint was Mr Watson. However, Mr Watson was appointed to the WorkCover Advisory Committee. Of the three nominations made by the UTLC for positions on the advisory committee, the Minister appointed two as well as Mr Watson, who had been nominated by the UTLC for the WorkCover Board. Therefore, to imply, as Mr Elliott does, that the Minister had appointed a person to the advisory committee who was not nominated by a union is quite misleading. Mr Watson's appointment to the advisory committee was based upon his expertise in the area of WorkCover policy and the fact that the advisory committee—

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: You wouldn't criticise Mr Martin's appointment, would you, Mr Roberts?

The Hon. T.G. Roberts: I am criticising the process.

The Hon. R.I. LUCAS: But would you criticise Mr Martin's capacity?

An honourable member: Silence.

The Hon. R.I. LUCAS: Silence. Let *Hansard* report that.

The PRESIDENT: Order! I ask the Minister to address his remarks through the Chair.

The Hon. R.I. LUCAS: Thank you, Mr President, but let *Hansard* record silence and a big gap in the proceedings as the Hon. Terry Roberts gulped deeply, because he knows that Mr Martin is highly regarded by members of the Labor Party and the union movement.

The Hon. Diana Laidlaw: He was the President of the Labor Party.

The Hon. R.I. LUCAS: He was the President of the Labor Party and is highly regarded by members of the Labor Party and the union movement. As I said, Mr Watson's appointment to the advisory committee was based upon his expertise in the area of WorkCover policy and the fact that the WorkCover Advisory Committee would be dealing with issues of policy rather than the management oriented board.

The Hon. Mr Elliott has suggested that the Minister suddenly found out that he had actually breached the law. This is completely wrong. The Minister has made all appointments to the WorkCover Board and the advisory committee in accordance with the law. In fact, I am advised that the Crown Solicitor has advised the Minister that all appointments have been made in accordance with the Act and that the advisory committee is validly constituted.

The Hon. A.J. Redford: Mr Elliott might know more than the Crown Law Department. He's an expert on this.

The Hon. R.I. LUCAS: Yes. Mr Elliott also suggested that the Minister told the advisory committee that a member of the advisory committee had resigned from the committee when that person has not offered his resignation. Presumably, Mr Elliott is referring to Mr Watson. By letter dated 8 July 1994, Mr Watson advised that he 'will not be complying with your appointment'. The Minister has been advised by the Crown Solicitor that the correspondence from Mr Watson adequately conveys Mr Watson's intention to resign and thus constitutes a written resignation to the Minister. On that basis, the Minister quite properly advised the Chairman of the advisory committee on 17 August 1994 that the committee had been validly constituted.

The Minister has also written to Mr Watson advising that his resignation has been accepted. Further, the Minister has written to the UTLC inviting that council to nominate a suitable person who may be considered for appointment to replace Mr Watson. Again, Mr Elliott's suggestions are both factually and legally wrong and misleading.

The Hon. Mr Elliott also alleged that the Government announced that public servants had five weeks in which to sign up again as members of various unions or fee deductions would not continue—

The Hon. A.J. Redford: He got it wrong again.

The Hon. R.I. LUCAS: Again—and that the Minister had to concede ultimately an extra couple of months for that joining process to occur. As my colleague the Hon. Mr Redford indicates, I am afraid he has got it wrong again. There was never a requirement to sign up as members of the union, I am told; the issue concerned only authorisation for automatic union deductions from payroll, not union membership. The decision to require reauthorisation of union deductions was announced on 15 February and effective from 1 April—6½ weeks, not five weeks as alleged. At the time the decision was announced on 15 February, the Minister told a delegation from the United Trades and Labor Council that, if administrative problems were encountered by the unions in meeting this deadline, the deadline would be extended as a transitional arrangement.

On 21 February 1994, the Minister and his staff cooperated with a delegation from the UTLC in jointly drafting an agreed reauthorisation form and notice to employees.

The Hon. A.J. Redford: Mr Elliott must have been away.

The Hon. R.I. LUCAS: Yes. The willingness to extend the deadline as a transitional arrangement was repeated by the Minister in correspondence to the UTLC Secretary dated 22 February 1994. On 2 March 1994, the UTLC requested an extension of the reauthorisation deadline by three months. On 7 March, the Minister wrote to the UTLC extending the deadline by two months to 1 June 1994.

A legal challenge by the public sector unions to the Government's decision was made in the Supreme Court on 18 March 1994. On 19 April 1994, the Supreme Court dismissed the legal action, refused to grant any injunctions, and ordered costs against the unions.

The suggestion by Mr Elliott that the Government was forced to concede an extra couple of months is misleading in the extreme. The possibility of that extension being made was made known to the unions before the original announcement was made—and the extension granted was consistent with the Government's intentions from the outset if the unions were experiencing administrative difficulties in obtaining reauthorisations.

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: He has had a bad day. This fact was known to Mr Elliott, actually (this gets even better) in correspondence from the Minister to Mr Elliott dated 28 February 1994. If any member is interested I can provide a copy of the letter. It actually starts 'Dear Mike' and is signed 'Graham'—a very friendly letter from the Minister to Mike Elliott, as is his wont as a Minister. The letter states:

In correspondence to the UTLC of 22 February 1994 (copy enclosed) I also advised the UTLC that the Government will give consideration to transitional arrangements after 1 April 1994 if it is then apparent that unforeseen administrative difficulties have arisen.

I think it is pretty clear that not only was the course of action, as outlined by the Minister, undertaken but also the Minister in a very friendly letter to the Hon. Mike Elliott had advised him of that as far ago as February of this year. So, again the claims made by the Hon. Mr Elliott, I am told by my colleague the Minister, are wrong.

The Hon. Mr Elliott also made some allegations in relation to the Industrial Commission resignations. He alleged, for example, that the Minister put direct pressure on commissioners and members of the court to resign and that Minister Ingerson did not succeed in persuading commissioners to resign, although he told some of them that I had agreed to a change in legislation and I had not. Mr Elliott has also alleged that Minister Ingerson succeeded at least in making the President of the court and commission jump. I am advised by the Minister and his officers of the following facts—

The Hon. A.J. Redford: Let me guess: he has got it wrong again.

The Hon. R.I. LUCAS: He has got it wrong again, yes. The Hon. Mr Redford is very prescient. He is picking up all the subtleties of these particular responses. The facts are as follows. On Tuesday, 29 March 1994 the Minister met individually with each of the four then commissioners of the Industrial Commission of South Australia and the then President of the Industrial Court and Commission of South Australia.

I am told that at each of those meetings the Minister informed the members of the commission that the Government had, the previous week, on 23 March 1994, introduced into State Parliament a Bill for new a Industrial Relations Act, and that Bill proposed that the Governor be given the discretion whether to appoint or reappoint existing members of the commission to the proposed new Industrial Relations Commission.

The Minister indicated to each of the members of the commission that this part of the Bill was likely to be vigorously debated by the Parliament and that it would be entirely the Parliament's judgment as to whether the Government's proposal in the Bill would be accepted. At no stage did the Minister indicate to the members of the commission that any member of the Parliament, or Mr Elliott in particular, had agreed to this change in the legislation.

I am also told that the Minister did not force or persuade any members of the Industrial Commission to resign either on that basis or any other basis. The Minister did not force the President of the Court and the Commission, Justice Stanley, to resign. The fact is that Justice Stanley of his own motion sought a meeting with the Minister on Thursday 7 April 1994 and at that meeting advised the Minister that he would be prepared to retire from his office subject to an appropriate package being negotiated. Justice Stanley outlined to the Minister the package which he would be prepared to consider accepting.

On 29 June 1994 Justice Stanley retired from office as a result of his decision to accept a separation package. That package was offered to Justice Stanley in accordance with the principles developed by the judges of the Supreme Court and was consequential upon the decision by the Government to reduce from four to three the number of judges in the Industrial Court of South Australia. Had Justice Stanley not chosen to retire, the Industrial and Employee Relations Act 1994 would have guaranteed him the position of Senior Judge at the Industrial Relations Court. At the time of his retirement the State Government had not made any decision on the issue of the presidency of the Industrial Relations Commission.

It is false and grossly misleading for the Hon. Mr Elliott to suggest that the Minister had misled any members of the Industrial Commission or that the Minister had forced Justice Stanley to retire from his office.

These are the biggest ones, I suppose, which we could identify or which the Minister for Industrial Affairs was able to identify in the Hon. Mr Elliott's contribution.

The Hon. A.J. Redford: And there is more?

The Hon. R.I. LUCAS: There is more. This is like a Demtel advertisement, 'Not only that, but there's more.' The last one, as time is running out, are the allegations made by the Hon. Mr Elliott about Industrial Commission reports. Mr Elliott has suggested that the Minister had acted irresponsibly in the appointments made to the Industrial Relations Commission, in particular, that of the Enterprise Agreement Commissioner, Mr Peter Hampton, and that one of the Minister's advisers had a personal axe to grind that led to Mr Hampton's being appointed as Deputy President in favour of some other unnamed person.

I am advised as follows by the Minister. The appointment of Mr Hampton as Enterprise Agreement Commissioner was based on merit. Commonsense dictates that the person who is responsible for promoting and administering the enterprise agreement laws must have an understanding of and an association with the business community, particularly small businesses, which will be encouraged to make enterprise agreements for the first time.

Mr Hampton worked closely at an enterprise level with the business community and is highly respected within the organised industrial relations community as well. Is Mr Elliott saying that because Mr Hampton had had a prior association with employer organisations he is disfranchised from being considered on merit?

Surely, not even the Hon. Mr Elliott would be suggesting that. The appointment of Mr Hampton as a Deputy President was made by the Governor on the recommendations of Cabinet, not made by a ministerial adviser. Contrary to the implications from Mr Elliott, there has never been any expectation that somebody else would get the job. As Mr Elliott should know, the new structure of the Industrial Relations Commission divides the commission into two divisions: an Enterprise Agreement Division and an Industrial Relations Division. The Government's decision was to appoint two Deputy Presidents, one from the Enterprise Agreement Division and one from the Industrial Relations Division. This was both fair and commonsense. Mr Hampton, being the Enterprise Agreement Commissioner, was the only member of the Enterprise Agreement Division, and it was therefore appropriate for him to be appointed as a Deputy President.

Mr Elliott fails to mention the fact that the Minister also recommended the appointment of Commissioner Greg Stevens as a Deputy President in the Industrial Relations Division of the commission. Commissioner Stevens was the most senior of the Industrial Relations Commissioners and a member of that Industrial Relations Division. He was also appointed to this position on merit. Mr Elliott also conveniently forgets the fact that Commissioner Stevens was promoted by the Government, notwithstanding the fact that he was a past President of the South Australian Labor Party. We are spending all our time appointing past Presidents of the

South Australian Labor Party to senior and significant positions, and we—

Members interjecting:

The Hon. R.I. LUCAS: It certainly demonstrates the even-handed approach of the Minister when such senior former officers of the South Australian Labor Party and the trade union movement are being promoted by a Liberal Government to such distinguished positions here in South Australia.

The Hon. Carolyn Pickles: Don't you think it is on merit? It is on merit.

The Hon. R.I. LUCAS: And merit as well; that is what we said. We said it. He was appointed to this position on merit. And the Hon. Ms Pickles would agree that Brian Martin would be appointed on merit too, would she not?

The Hon. Carolyn Pickles: Absolutely.

The Hon. R.I. LUCAS: 'Absolutely', she says, and we would also agree; absolutely on merit. Mr Elliott also ignored the fact that the State Government chose to reappoint all existing commissioners (Greg Stevens, Michael McCutcheon and Bob Fairweather) even though Parliament gave the State Government the free right to choose not to reappoint any particular persons. All three were appointments by previous Labor Governments, and Commissioners Stevens and Fairweather were appointed straight out of the trade union movement. They were all reappointed on merit. I am told that the structure of the Industrial Relations Commission reflects a proper balance between employer and employee interests. Two Industrial Relations Commissioners have been appointed with backgrounds representing employee interests (Commissioners Stevens and Fairweather), whilst two commissioners have been appointed with backgrounds representing employer interests (Commissioners McCutcheon and Huxter).

There is no requirement in the legislation that the Enterprise Agreement Commissioner come from one background or the other. Even if there were such a requirement, the legislative requirements in relation to Industrial Relations Commissioners allow the number of commissioners from either background to differ by one where there is an odd number of appointments. Therefore, there is no breach by the Minister of either the letter of the law, as approved by Mr Elliott, or the spirit of the law and its past conventions. The suggestion that one of the Minister's advisers had a personal axe to grind and the further suggestion that the Government would make appointments based on such grounds is an absolute outrage that defies the facts.

Time is getting away from me, and I had intended responding to a range of other issues. The Hon. Mr Elliott made some claims that some people on long-term leave from the Education Department have been taking targeted separation packages. That is contrary to the guidelines of the targeted separation package scheme as it is operating in the department. I invited him yesterday—and again today invite him—to provide me with the details of those abuses of the scheme. I undertake to take up those issues on his behalf.

The Hon. A.J. REDFORD: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

Motion carried.

The PRESIDENT: I remind members that Her Excellency the Governor will receive the President and members of the Legislative Council at 4.10 p.m. today for the presentation of the Address in Reply. I ask all members to accompany me to Government House forthwith.

[Sitting suspended from 4.6 to 4.43 p.m.]

The PRESIDENT: I have to inform the Council that, accompanied by the mover, seconder and other honourable members, I proceeded to Government House and there presented to Her Excellency the Address in Reply to Her Excellency's opening speech adopted by this Council today, to which Her Excellency was pleased to make the following reply:

Thank you for the Address in Reply to the speech with which I opened the second session of the Forty-Eighth Parliament. I am confident that you will give your best consideration to all matters placed before you. I pray for God's blessing upon your deliberations.

MOVEABLE SIGNS

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

That by-law No. 10 of the City of Tea Tree Gully concerning moveable signs, made on 7 July 1994 and laid on the table of this Council on 2 August 1994, be disallowed.

As its name suggests, this by-law relates to moveable signs on streets and roads in Tea Tree Gully. Section 370 of the Local Government Act empowers councils to prohibit and regulate moveable signs. Paragraph 5 of this by-law provides that a moveable sign may be placed in a public street or road, subject to certain restrictions, namely, the sign must contain material which advertises a business being conducted on premises adjacent to the sign or the goods and services available from that business.

Paragraph 5 of the by-law deals with the subject of electoral signs. This paragraph specifies that those restrictions about advertising the business do not apply to a sign designed to promote a candidate in a local, State or Federal Government election, provided that the sign complies with the following restrictions: the sign must only be displayed during the period of six weeks immediately preceding an election but, more importantly, the sign must not be placed within one kilometre of any other moveable sign relating to the same candidate.

The Legislative Review Committee regarded this last restriction as inappropriate and offensive. In the first place, section 370 of the Local Government Act relates to business signs. The committee doubts that this section empowers a council to regulate election signs. This point is reinforced by the restrictions contained in paragraph 5, to which I referred, namely, a requirement that a moveable sign only contain material which advertises a business on the adjacent premises or the goods or services available from that business. In addition, the preamble to the by-law states that its purpose is to regulate the placement of signs in a manner that recognises 'the advertising needs of businesses to maximise economic viability'. This is hardly criteria appropriate to a candidate for elective office. Moreover, and more importantly, the committee does not consider that election material ought to be the subject of restrictions by local councils. The Electoral Act already contains provisions concerning the size and siting of election signs.

In addition, even if the committee had been satisfied that the council had the requisite legislative power to pass a by-law regulating the placing of election signs, it would regard as unreasonable in the extreme the requirement that a moveable sign relating to an election must not be placed within one kilometre of any other moveable sign relating to the same candidate. The Legislative Review Committee fully recognises the desirability of regulating the placement

of moveable signs on streets and roads. That is a proper function of local government. Most of the provisions of the Tea Tree Gully by-law, the subject of this motion, are to be applauded. Regrettably this House has no power to amend a by-law by excising the offensive provisions, nor does the Legislative Review Committee have the power to make such a recommendation. A number of members of this Council have long held the view that section 10 of the Subordinate Legislation Act ought to be amended to allow for the amendment of regulations rather than the present requirement, which allows either House to disallow regulations only in their entirety.

In conclusion, this motion contains an unreasonable and offensive intrusion into electoral processes and I urge this Council to support the motion for its disallowance.

Motion carried.

SHOP TRADING HOURS (EXEMPTIONS) AMENDMENT BILL

The Hon. M.J. ELLIOTT obtained leave and introduced a Bill for an Act to amend the Shop Trading Hours Act Amendment Bill 1977. Read a first time.

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

That this Bill be now read a second time.

On the question of shop trading hours, I think South Australia now has two issues which deserve to be debated. It is in response to both of those issues that I am moving this private member's Bill. It is not just a question as to whether or not trading on Sundays in the city is a good thing, and I will certainly tackle that issue, but there is also the issue as to how the decision was made that Sunday trading would occur within the city itself. It is worth looking at what the Government had to say about shop trading hours before the election. I will begin by quoting an article in the *Small Retailer* (January 1994) written by the Executive Director, John Brownsea, who said:

> You will note that the Liberals criticised Labor for the heavy-handed manner in which they extended shopping hours—failing to consult with all sectors of the industry and doing what unions and large retailers wanted. Fair enough and entirely true. But what the Liberals do not say was that they were opposed to any extension of shopping hours. In fact, their statement of only a few months ago that a Liberal Government would not change trading hours at all for the life of the Government is now entirely forgotten. But at our retailers' rally on the steps of Parliament House on 8 December, the Liberal's Graham Ingerson did say that he was opposed to Sunday trading and would not permit it as long as he was the Minister.

That is what John Brownsea said in January 1994, very soon after that rally, which was just before the election. However, it is also worth noting that he had his grave doubts about the sincerity of the Liberals, because he then went on to say:

> But what if the inquiry recommends Sunday trading? Will the Liberals stick to their statements or will the inquiry establish a new policy? It is not entirely clear as the inquiry is to advise on, make recommendations and report on what action should be taken.

Nevertheless, what the Liberals said before the election was clear, and particularly in relation to Sunday trading: it was absolutely explicit. In relation to a meeting that they had with Minister Ingerson, he also said in the *Small Retailer* in March 1994:

> Just hours before the announcement of the new inquiry we were called into Minister Graham Ingerson's office for a 15-minute discussion and left over an hour later. The Minister emphasised that his previous comments made publicly about opposing Sunday trading still stood. No change from the present conditions. He also emphasised that deregulation of the remaining six days was not a goal of the inquiry, though we expect some of the majors will push for it.

So, even in March 1994, we are getting reports well after the election that Minister Ingerson is still saying that Sunday trading is not on the agenda and that he does not support it. The question then moves from there—the Government's having made absolutely clear statements about what it intended in relation to Sunday trading, in particular, and it reneged. However, let us look at the way it went about its reneging. I draw the attention of members of this place to a press release put out by Minister Graham Ingerson, then shadow Minister, dated 26 October 1993. The press release, which was entitled 'Longer supermarket trading hours: hundreds of small business jobs to go', states (in the third sentence):

> For a start, the Shop Trading Hours Act requires the Government to consult with shopkeepers affected by this move before there is any extension (section 13).

He then said in the next sentence:

> Unless the Government is about to ignore the Act there can be no immediate introduction of extended hours.

So he notes that for there to be an extension there needs to be consultation under section 13, and I stress that it is section 13. In fact, it is meant to be more than consultation: the Minister knows very well that he is meant to be fully satisfied that there is majority support, not just of traders but of the shop workers and of the residents in the area. All of those are requirements under section 13. He then states, '. . . unless the Government is about to ignore the Act.' That is October 1993. Again, he is playing along the same line that, 'Really, we are not pushing for change, and even if we did we would do it properly.' I have previously raised in this place the comments of the now Premier Mr Brown. Back in 1977 people said, 'Hey, you are quoting a bit of history here.' But the important issues that I raised when I quoted Brown's comments in 1977—

The Hon. R.I. Lucas: We thought you wrote the stuff.

The Hon. M.J. ELLIOTT: Well, it is in *Hansard*—1 November 1977. The point that I was making then, and the point I make again, was not whether or not Brown had changed his mind about shop trading hours—certainly people may change their mind on issues over time. That is not an issue that I was addressing at all. What is more important is what he said about the role of Parliament itself. He said (page 591):

> Our insistence that Parliament have a say is now proving to be most worthwhile. The Minister has attacked the Liberal Party previously for not allowing the matter to be dealt with entirely by the Industrial Commission.

A little later, on the same page he states:

> I went on to point out that the issue of the hours in which a shop should be allowed to open or shut should be made here in Parliament.

The point that I was making about his speech in 1977 was not about Brown changing his mind about shop trading hours. In fact, members will find that he personally has been very consistent on that issue. Where he has been very inconsistent is about the role of the Parliament itself. There he was back in 1977 saying that the Parliament should be making these sorts of decisions and now he is quite clearly feeling that Parliament should not have a say.

When Minister Ingerson announced that he was going to deregulate shop trading hours in the city he said that he would be doing it under section 5 of the Shop Trading Hours Act.

Section 5 relates to individual shops. Mr Ingerson knew that he was not supposed to use section 5 and that, indeed, he was to use section 13. That is what he said in his press release on 26 October 1993, and even then he suggested that that could happen only after proper consultation. As I said, he did not interpret clause 13 fully. Also, in the fourth sentence of that release he accused the previous Government of perhaps trying to avoid the Act. He has now done precisely what he said the previous Government was likely to do, and he stands condemned for his actions in the process.

That is how the change actually occurred. I have not spent a great deal of time looking at the farce of the inquiry and the other things that happened, but only really at how the final decision was made. It will now go to the Supreme Court. I believe that it is most likely, on the legal advice I have received and seen, that the Supreme Court action will succeed and that we will see it back in this Parliament, where the decision rightly belongs.

What about the question of shop trading hours itself? The first question is, 'Is it something which is wanted by the shoppers?' Minister Ingerson set up an inquiry. The inquiry in its report produced a set of graphs which showed what people felt about extended trading hours. Of those surveyed, 68.5 per cent were happy with the current trading hours arrangements; 20 per cent wanted an extension; 10 per cent wanted a reduction; and 1.5 per cent did not know. It is worth noting that the 20 per cent who wanted an extension did not necessarily suggest that it had to be on a Sunday; it could have been a few additional hours some week night.

So where is this overwhelming public demand for an increase in hours, when almost 80 per cent said that they were happy with what they have or even want less? It was four to one. That is a pretty powerful ratio against what the Government is seeking to do. This is the inquiry the Minister himself set up. Of course, the inquiry did not let itself be put off by those sorts of statistics. I stress that, subject to section 13, even if he had chosen to use it, the Minister could not have justified the extension of trading hours in the city with 80 per cent opposed to an extension.

Then there is the question of whether or not he has the support of the traders. The Small Retail Traders Association held on meeting on 14 July 1993 at which a series of motions were put. The motions were as follows. Were the recent Sundays in the city profitable for your business? Answer: yes, 1.5 per cent; no, 98.5 per cent. Do you want to trade every Sunday? Answer: yes, 0.5 per cent; no, 99.5 per cent. Is one week of extended trading, including a Sunday, sufficient for the leadup to Christmas? Answer: yes, 92 per cent; no, 8 per cent. Late night trading at Christmas to retain the balance of one night for the suburbs, one night for the city? Answer: yes, 100 per cent. Do you support the freezing of trading hours for the next four years? Answer: yes, 98 per cent; no, 2 per cent. Would you support a review of trading hours to establish the most profitable hours to trade? Answer: yes 100 per cent.

So under section 13, where is the trader support? It is quite clear that 99.5 per cent are opposed to the Minister's move. That then leaves the third category of people he is supposed to consult with, and that is the retail workers. While I am not familiar with any survey, the SDA made it quite plain, on behalf of the workers, what it thinks. You do not have to be a genius to work out that the vast majority of workers with a set number of hours per week, if they had to do some of their hours on a Sunday, are likely to say 'No'. The figures in relation to both shoppers and traders is overwhelmingly against it. So, to the question, 'Is the wanted?', the answer is resoundingly 'No'.

Then there is the question of likely impact. I draw to the attention of members an article in the *Advertiser* of 12 July 1994: 'Adelaide is still the best capital for grocery bargains'. *Choice* had conducted its annual basket survey for, I think, 50 goods. The price of this basket of goods in Adelaide was $70.59. The next cheapest city, Sydney, was $74.08 which, on my calculations, is a little over 5 per cent more expensive. Interestingly, if you went to Perth, which was the worst of the larger State capitals, it was $85.15, which is over 20 per cent more expensive for that same basket. If you look at the survey itself, Adelaide was cheapest in 23 of the 50 products that were in the basket. What is most intriguing is that you can get goods such as sugar and pineapple cheaper in Adelaide than you can in Brisbane.

The Hon. R.R. Roberts interjecting:

The Hon. M.J. ELLIOTT: I am not talking about Sunday trading. What I am talking about is a survey that was done in the March quarter of 1994. The point I am making is that South Australia, and Adelaide as a capital city, has the cheapest goods in supermarkets nationally. Two explanations have been put forward in relation to why that differential occurs: one relates to competition and the other relates to the cost of extended trading hours. Let us take, first, the question of competition. In the 'Money' column of the *Advertiser* of Monday 18 July 1994 Phillips Henderson Ward was giving some advice to buy Woolworths stock, as follows:

> We view Woolworths as the best value in the retail sector with a clear and successful growth strategy. Market share gains continue and we are expecting further growth at the expense of independents and small specialty retailers and through the ongoing store refurbishment program.

Note that it is expecting further growth at the expense of the independents and the small specialty retailers. Coles Myer has also done a survey and it believes that out of extended trading, particularly if it is fully deregulated, that it can increase its market share by up to 5 per cent in the short term. The significance of that is that South Australia has the most competitive retailing in Australia, and that is because, unlike other capital cities, Adelaide is not dominated by one or even two majors; there are three big players and a couple of other players of quite reasonable size. Members might recall the basket survey that I quoted earlier, which showed Perth to be very expensive. Perth is dominated with one company which has over 50 per cent of the retail market. In fact, I think it is closer to 60 per cent, but I do not have those figures here. The one with the least competition happens to have the highest prices—that is not really a surprise. But, to a lesser extent, that is pretty well the situation in the other capitals as well.

Deregulated hours in South Australia will mean an increased oligopoly, decreased competition and, ultimately, increased prices. If the Government, particularly in the fragile state of the South Australian economy, thinks that that is a bright idea, then it has got me totally confused. I do not really think that it has thought through some of the important side issues which relate to this matter. It is not enough to look at just shop trading hours in isolation and say, 'Let anybody open whenever they like, and that is fine,' if you are not willing to take the time to ask, 'What are the consequences of it?'

The fact is that anti-trust legislation in Australia has been very weak. We have allowed levels of monopoly to build up that just simply have not happened in other Western countries

to this time. We will be the losers from this, because these big companies, although they are very powerful in the market, are also grossly—and I stress grossly—inefficient.

While we are looking at the question of cost, I will quote from an article from the *Australian Retailer*. It does not have a date on it but, for people who are interested in a copy of it, I can supply it. It states:

> Coles supermarkets may cut back extended trading hours in some Queensland stores unless late night sales improve, according to reports of a memo sent from State office to store managers. The memo reportedly says average weekly turnover has grown 3 per cent to 5 per cent since the May introduction of 9 p.m. closing weekdays and 5 p.m. closing Saturdays by the State Government. However, the gains have been outweighed by additional overheads as high as 25 per cent.

What the Coles supermarkets were finding in Queensland with deregulation—and this happened to be not on Sundays but on week nights and a further extension on Saturdays—was that while they managed to increase turnover (and that had to be at the expense of somebody else) their overheads rose by 25 per cent while their turnover went up by 3 per cent to 5 per cent. So, they were looking to cut back hours. It does show that the matter of extended hours does not mean increased profitability in itself.

Just by coincidence, on the same page, I found it interesting to note that there was an article about David Weeks, who some members may recall was the person who initiated the Bi-Lo chain in South Australia, which was subsequently bought out by the Coles Myer group, and who started up a new chain called Giant Supermarkets. He has now sold out his company to Franklins, and he said that it was unlikely that he would ever go back into grocery retailing. Basically, he just found that the muscle of the big companies was too much.

So, here is somebody who successfully once started a company, Bi-Lo, in a South Australian environment that actually encouraged and allowed small independents to get going. Next time he tried, it was too tough and it is getting tougher all the time. Why we are prepared to hand over increasing muscle to a couple of companies and see consumers as well as a lot of independent retailers hurt in the process for no gain whatsoever is totally beyond comprehension.

Then we have people telling us that it would be good for tourism. That really does test credibility. That was the excuse given for the Casino. For almost everything that a Government tries to get up in South Australia it says, 'Well, it's for tourism.' As long as you say it is good for tourism, then that is supposed to be one of the most powerful arguments in its favour. The fact is that 94 per cent of shops in South Australia are free to open on Sundays right now. Most of them choose not to do so, because simple demand is not sufficient for them to do so. They will do it in Glenelg, because the tourists are there. Most of them are local tourists, but they are tourists nevertheless. They will do it in Hahndorf, the Barossa Valley and Victor Harbor. Most of them—not all—do not open in Rundle Mall on a Sunday, because it is not worth their while.

Last night I touched on this subject in my Address in Reply contribution. It is fine to suggest that they actually have some sort of a choice in all this, but they know very well that, once Coles and David Jones open, although the market on Sundays may not be large, it will be a market share that they will lose, and they would have no choice but to be open. No-one yet has explained to me what on earth the tourists would want to go into the Myer bedding department for anyway, in the electrical department to buy themselves a fridge, or whatever else.

An honourable member: You could go to Le Cornu's.

The Hon. M.J. ELLIOTT: Yes, but not tourists. The tourism argument is a nonsense one, and anybody who cared to be honest about that would have to admit that the tourism argument does not hold. We have quite extensive Saturday trading now within the State. I have been a resident of country areas for many years, and I have never found it a problem to buy something I really needed. You tended to come for major items, and you made sure that you were in the shops on a Saturday. I was in the country in the days of Saturday morning trading only, and it was not a problem. I say that as a person who lived more of his life in the country than in the city. That argument does not hold water, and I can say so from personal experience.

Then there are questions as to why, indeed, we ever decided that Sundays could be taken off by most people. There was a time when people did not have days off. If you go to third world countries, you find that they do work seven-day weeks. It seems that previous generations, over a long period, had actually decided that having days off, particularly Sundays, which for many people is a sacred day, was an important thing. Even for the non-church goer it is a major opportunity to spend time with one's family.

I find it an enormous contradiction for people who claim to represent the family and family values to put workers and small shop owners in a position essentially of no choice than to have to leave their family on a Sunday because they have to work or else lose their business or their job. That is immoral, and it is hypocritical of people who pretend to care. It is certainly true that some people have to work on Sundays, but that is not an excuse to force others to do so, or else the chain reaction will continue. Again, as I said last night, we will end up asking people in banks, insurance companies and in every job to work on a Sunday. I believe that the level of social dysfunction that we will produce will be too high a price to pay.

The legislation is very straightforward, seeking as it does to amend sections 5 and 13 of the Shop Trading Hours Act. The essence is that they remove the Minister's power to grant exemptions for about a six month period, dated from the day that he announced he would deregulate trading in the city. At that stage, I was merely seeking to give the simplest and easiest of opportunities for this Parliament to say, 'We want this matter to be handled properly.'

The Hon. Diana Laidlaw interjecting:

The Hon. M.J. ELLIOTT: Wait a second! The Minister has not used the Act appropriately. He might have been able to construct some sort of argument if he used section 13 rather than section 5 and if he had used it in the proper manner, but he chose not to do that. That option could always remain. The Opposition, in the legislation that it has tabled, has taken a slightly different tack, where it has said, 'From now on, if there are to be changes in trading hours, they should be by regulation,' and as such Parliament retains purview over any change.

Ultimately, I will have to decide whether to insist on my legislation or support that of the Labor Party. We both decided at the same time to move legislation, and I did not know at that time what the Labor Party intended to introduce, but—

The Hon. R.R. Roberts interjecting:

The Hon. M.J. ELLIOTT: That's right. I indicate at this stage that I have some attraction for the Labor Party Bill. It

attacks exactly the same clauses but in a slightly different way. At this stage it is possible that I may not pursue my legislation further and may end up supporting the Labor Party's legislation. However, whether I make my contribution now or later, the effect will be exactly the same.

I urge members to support either my legislation or the Labor Party's legislation on the Shop Trading Hours Act. As I said, we need to confront two essential issues: one relates to Sunday trading itself and the other to whether or not Ministers should behave in a legal way, and I believe the Minister is not doing so. Whether or not we believe in parliamentary democracy or the dictatorship of the Executive, ultimately for anyone with a conscience that will become an important issue. We cannot allow that to slide, regardless of what we think about shop trading hours.

The Hon. L.H. DAVIS secured the adjournment of the debate.

CAT BILL

The Hon. M.J. ELLIOTT obtained leave and introduced a Bill for an Act to establish the Cat Management Committee; to regulate the sale and the supply of cats; to encourage the desexing of cats; and for other purposes. Read a first time.

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

That this Bill be now read a second time.

I first introduced this legislation in, I think mid-1990, and I have moved it on several occasions since. It would be fair to say that when I first introduced the legislation some people questioned whether or not this was a significant issue. However, time moves on, and I think it is now the common belief of the majority of the community and of many people with knowledge in relevant areas that such a move is necessary—in fact, so much so that on the last report even the Kennett Liberal Government at Cabinet level was considering introducing legislation similar to that which I now put before the Parliament. That really is how far things have moved in the past four years.

At local government level in both South Australia and Victoria, similar sorts of measures have been introduced successfully, particularly in Sherbrooke Shire in Victoria where legislation has been enacted for a specific purpose: to protect a population of lyrebirds. It has been a spectacular success and widely accepted by the community. So, we are now well beyond the theoretical, which it was very much so when I spoke in 1990.

The Bill aims to control the number of unwanted cats that are being bred and, in many cases, subsequently dumped and unwanted cats that become part of the feral and stray cat population, many of which end up meeting their end in an animal refuge. There is no intention whatsoever that this Act should work in the same way as the Dog Control Act. I do not anticipate seeing cats with collars with a registration disc which must be renewed once a year and with cat inspectors checking on them all the time. It is not in the nature of a cat that we would try to tackle the cat issue in that way.

The emphasis of this Bill is very much on population control and responsible ownership, not control of the movement of the animal. You cannot confine a cat in the same way as you can confine a dog, although some people find that even dogs can be difficult to confine at times.

I want to put controls on cat breeding for two reasons: concern for the welfare of unwanted cats and the environmental damage that is caused by feral and stray cats. In 1990, when I first introduced this legislation, the estimate of the number of unwanted cats being put down each year was about 20 000—a huge number. I now believe that it has dropped to about 8 000. That is very encouraging, and it shows that already in the community there has been a significant change in attitude in terms of the responsibility of ownership of cats: fewer than half the number are being brought to an animal refuge—and ultimately half of those are being euthanased—than was occurring four years ago. Clearly, the first introduction of this Bill had an effect because it stimulated an important community debate.

While I can quote the number of cats that have been killed by the RSPCA and the Animal Welfare League, much to their grief—I have spoken with workers at both of those institutions and they do feel grief; no-one wants the job of putting down an animal—a huge number of unwanted litters are simply drowned, put in a bag and thrown onto a road and other disgraceful things. The odd ones that survive are fed occasionally, but essentially they are in a half wild state and go through a great deal of suffering.

Anyone who cares about cats would want to ensure that they are cared for. The legislation will require people to make a commitment either to desex a kitten or to pay a much higher registration fee, one which would exceed the cost of desexing. They will have to make a commitment to desex the animal or state that they want to breed from it. That is a decision an owner will have to make, but it should be a very conscious and deliberate decision, and that is one way to encourage responsible pet ownership.

My second concern regarding cats is that unwanted and uncared for cats wreak a great deal of environmental destruction. They have become established throughout Australia, but in near metropolitan areas their numbers are kept at an artificially higher level because there is a constant input of cats from cities or towns.

So, the level of cats you would have, for instance, wandering through Belair National Park, would be much higher than you would find in similar sort of bushland well away from the city. Thus, the destruction they would be wreaking would be much greater. By tackling unwanted domestic cats being bred, we are tackling a major input to the feral cat population. I do not believe that feral cats will ever be removed from Australia—they are here to stay—but we will eventually try to at least get their numbers to a much lower level and this is part of that process. Anyone with any knowledge of the Australian environment will know that it is not the cat alone that is being fingered. There are three animals which are being blamed for major destruction: the cat, the fox and the rabbit. Clearly, they have been the most destructive to native populations, but there are a number of other animals jockeying there just outside the bronze medal position. Goats and even pigs are becoming increasing problems in certain areas, but nothing like the cat, the fox and the rabbit.

I have taken the opportunity to speak with a large number of animal welfare organisations, including the Animal Welfare League itself and the RSPCA. They both support legislation to lead to desexing programs. In 1990 the RSPCA did not support it, but the Animal Welfare League did.

The Hon. R.R. Roberts: They have viewed this legislation?

The Hon. M.J. ELLIOTT: Yes, it is the same legislation as introduced four years ago. The RSPCA has since changed its position. It is fair to say there has been division among cat breeders, but there are certain cat breeding associations that

have been very supportive. They see that responsible pet ownership is important. They are greatly concerned about the fact that there are some backyarders (and I mean that in the very worst sense of the word)—cat breeders who are highly irresponsible. One thing that I propose (although the legislation does not contain it, the regulations will allow for it) is special discounts to be given for registration of entire animals if they are being bred by breeders who belong to registered associations. The registered associations could then have rules of conduct, and so they can check and police the activities of these breeders. For some reason some breeders are a bit worried about that and I think that you can only come to your own conclusion.

It is fair to say that the other major opposition has come from animal liberation groups, which take a view that any animal once it has been born has a right to live a long life and die of old age, having been extremely happy throughout its whole life. Now, that is an admirable goal, but the fact is, as I have said, 8 000 cats a year are being put down legally and I would hate to think how many thousands are being put down illegally and how many are dying quite miserably at the moment. What I am trying to encourage and what this legislation is all about is getting to a position where in fact what we have are cats only being bred because they are wanted, and so the ultimate goal, perhaps, of the animal liberation groups will be met. Of course, seeing the article in the *Advertiser* this morning, I could imagine that they would have been absolutely horrified by the suggestion that cats could be caught and instantly executed. That is something that I would never promote.

The Hon. Diana Laidlaw: Does your Bill allow it?

The Hon. M.J. ELLIOTT: I will get to the clauses in a second and I can explain that. I would never entertain the thought. First, it seems to me that what is important is that, along with registration and desexing of animals, the animals will also be marked. You would mark them by way of either an ear tattoo or an electronic implant. By that means you would actually have an opportunity to do something that does not happen at present.

If a person finds a stray cat, if a cat is taken to the Animal Welfare League, there is no way of tracking down the owner. For the first time, we will be providing an opportunity to assist in finding the owner of an owned cat and a cared for cat, if it gets lost. If an animal has not been registered, then it will not be marked. Even in that case I would not encourage the instant killing of the cat. I think the cat should be held, as dogs are when they stray, for one or two weeks, which is what the Animal Welfare League does now, giving an owner the opportunity to claim it. When the owner comes to claim it he or she will be told there and then, 'Desex the animal, mark the animal and you can have it back.' That is responsible. This is not about finding excuses to kill off cats.

One of the biggest problems with cats, and it happens to a lesser extent with dogs, is impulse buying or, worse still, the gift. 'Would you like a kitten?' Kittens are a lot of fun; they roll a ball of wool around the floor for a while, but they grow into cats. Cats can be very loving companions, but they lose their playfulness and are also a responsibility. They are a responsibility that, unfortunately, some people do not take seriously. They have a cat in their backyard, which they feed occasionally, but they do not take much more responsibility for it. This Bill would require that when you buy a kitten you pay for the cost of desexing. You cannot desex them until they are close to six months, but what you would do at the time of buying the kitten is buy a certificate that covers the cost of the later desexing. So, there is that up front cost, but it is a cost that any responsible pet owner would pay.

I believe that close to 90 per cent of pet owners are desexing animals now so, for the majority of responsible cat owners, it is not actually an increased cost at all. It is an up front cost but a cost that nevertheless you must be prepared to meet. If you ask how much it costs to own a cat, anyone who owns any pet knows that they end up making fairly regular visits to the vet. You have the cost of food, and the sort of cost I am talking about, and I would hope to keep it at a reasonable level, would be a minor cost in terms of the overall cost of owning a cat in the long term, but at least it would be enough to make a person stop and think, 'Do I want to take this little ball of fluff, this playful kitten? Am I prepared to be a responsible owner?'

The RSPCA and the Animal Welfare League have both expressed concern to me about impulse buying: walking past the pet shop and seeing that cute kitten or pup in the window. 'Let's take it home,' say the children. If they get mum and dad at a weak moment, they succeed when perhaps the decision might have been otherwise.

In clause 4 of the Bill I propose the establishment of a Cat Management Committee. In the long term, the committee would not have much work but in the short term there are quite a few regulations to be drawn up and protocols that will need to be established. It is important that we have a committee broadly representative of interest groups so that this is done properly. The committee should consist of seven members: one nominated by the Minister for the Environment and Natural Resources, the relevant Minister; one nominated by the Australian Veterinary Association, because it has clear interests in the matter; one nominated by the RSPCA; one nominated by the Animal Welfare League; one nominated by the Local Government Association; and one nominated to represent the associations involved with the breeding of cats.

The committee would have four roles: it would be involved in the issuing of certificates of registration, which I suggest it would choose to do via local government. I might add that nothing in this Bill makes it compulsory for local government to be involved, but I have already been approached by six or seven councils whose members said they want legislation, so, if we establish this legislation, those councils will jump up and say 'We want to be involved.' But nothing in the Bill actually allows the Minister to force local government to be involved.

The committee would also be involved in monitoring and reporting to the Minister on the effectiveness of the Act. Quite clearly, there will be a need for fine tuning as things proceed and to exercise other functions assigned by the Minister. Clause 6 is simply a requirement for the committee to report. Clause 7 relates to authorised officers and their appointment. I see under clause 8 the need for the establishment of a fund to collect money by way of fees paid under the Act, any money appropriated by Parliament and any income from investment of money belonging to the fund. It will be used for the payment of costs, administration of the Act and redeeming desexing vouchers. If a person goes to a pet shop and purchases a kitten, they have bought the voucher. They may then present the voucher at a veterinarian's some four months hence, and the veterinarian can have the voucher redeemed by forwarding it to the committee.

Clause 9 relates to the marking of cats. At the time that an animal is desexed there is a requirement that it be marked in a manner required by the regulations. I do not have a personal view as to whether tattoos or electronic implants are better:

that is something best determined by the committee itself. Obviously, there is a need for it to be an offence to mark a cat in a manner prescribed unless it has been desexed and also an offence for any person other than a veterinarian to mark an animal. Clause 10 makes it plain that you cannot sell or supply a cat that is not marked as required by the regulations or unless there has been a certificate of registration issued under the Act. You do have a defence where the animal is less than six months old. However, there is a requirement that you have purchased a desexing voucher.

Clause 7 authorises the destruction of unmarked cats but makes plain that the cat to be destroyed has to be not marked in the manner required or authorised by the regulations. As I said, I would hope and expect that, in the implementation of that, the cat would be held for some time to allow any owner to make a claim on the animal. Clause 13 relates to desexing vouchers. I have already referred to those and will not say anything further at this stage. Clause 15 is the general power to make any regulations. It appears to me a deal of fine tuning needs to be done. I think the Bill in broad outline allows all that needs to be done to occur, and the regulations will clearly fill the gaps. All sorts of minor criticisms have come up. For instance, a person says, 'What about the farmer: you don't expect him to register his cats?'

I suspect that most farmers do not register their dogs, either but, in any case, I do not expect members of local government to be going to every farm trying to find out if they have a cat and spending the time to catch them. That is clearly a nonsense. As far as the farming community is concerned, there will be an attempt to run an education program.

An honourable member interjecting:

The Hon. M.J. ELLIOTT: That is right; I think most of them know. Most farms do not want a problem. As I said, people can put up the objection that this will be hard on the farmers. The reality is that nobody will be out on farms checking, and that is really a nonsense argument.

I have said all along that I do not expect inspectors to check up on people. Inspectors will be reacting largely to problem areas, to areas where there are known to be collections of strays and we all know of places where that occurs or where somebody has 20 or 30 cats in their backyard, causing a nuisance to the neighbourhood. Local government's hands are tied in such circumstances at present. So, I will not go into further detail at this stage. The time is right. Public surveys have shown overwhelming public support for such programs. The Government has started making some of the right noises, but having experienced the previous Government making the right noises for two or three years without doing anything I have chosen to come back to the Parliament to try to force the pace on this issue and I urge all members to support the Bill.

The Hon. L.H. DAVIS secured the adjournment of the debate.

SEAFOOD PROCESSORS

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

That the regulations under the Fisheries Act 1982 concerning processor registration fees, made on 19 May 1994 and laid on the table of this Council on 2 August 1994, be disallowed.

This matter was first raised with me by processors concerned at the massive increase in the fee for processors not exempt in South Australia. It increased from $525 in 1993 to $2 000 in 1994-95—a 300-odd per cent increase. Fish processors, in particular the smaller ones, were absolutely horrified at this increase, especially coming from a Government which, before the election, had promised that there would be no increases in excess of the CPI increases as far as it was concerned.

One needs to look back at the history of this matter. I have in front of me a minute from a meeting of the South Australian Fish Processors and Marketers Association—an association that has been around for some 25 years. It is constituted to look after the interests of seafood marketers and processors in South Australia. It has a membership of approximately 21 people. At one of their meetings earlier this year a discussion took place (and I have the minutes in front of me), whereby people from the Department of Fisheries attended a meeting called by the processors. Before the meeting opened and the guests were invited to address the meeting, the Chairman drew attention to the following statistics, before the guests from the Department of Primary Industry were introduced.

He pointed out that there are currently 1 096 licensed fishermen in South Australia. There are 1 575 exempt processors of fish in South Australia—people who run restaurants and shops, etc—who pay no fees. There are 186 non-exempt processors. These operators pay approximately $500 per annum and are required to lodge monthly returns. It is a requirement under the present Act that they paid a fee and, as part of the requirement of that licence, were required to submit their processors' returns on a monthly basis.

An in-depth discussion resulted in a common agreement after the address by Mr David Hall and Mr John Jefferson. That in-depth discussion resulted in the common agreement that the Minister should have a direct input/liaison with SAFIC, which should have a strong executive staff and cost recovery expertise. The department saw a problem with having too many licences and believed that they should be culled by having a meaningful licence system, for example, a licence fee of $2 000 per annum. It appears that there will be an optimum number of licences and they should be of one class only.

They are saying that we have to cull out almost 1 800 licences, and have one class of licence. Fish processors are obviously concerned about that proposal as they do not know who will be culled or who will be able to stay. They stated that it is desirable that departmental inspectors be empowered to enter and inspect unregistered premises, subject to authorising legislation. Mr John Jefferson agreed to review the current legislation to determine what amendments may be necessary. Mr David Hall suggested that, with what had been said, the Minister would be seen to be sympathetic with revised licensing procedures and it was suggested that the association should discuss the matter with him. Both David Hall and John Jefferson would be supportive. The object should be introduced, the fee revised and action initiated to amend legislation where necessary. At that point the guests departed after a vote of thanks. This quote from the minutes is important:

After their departure, and in consequence of the foregoing discussions, it was resolved that a substantial single category licence fee be proposed for all processors and introduced for 1994.

It states 'substantial increase'. The South Australian Fish Processors and Marketers Association did not ever say that it ought to be $2 000. It further states:

Subject to the following conditions being met in the 1995-96 season:

One category of processors should be licensed;

Introduction of power to inspect unregistered premises by Fisheries Department inspectors;

Future annual fees to be set in accordance with the perceived optimum number of licences.

The closing sentence on this minute is quite alarming:

Members were asked to consider the objections that would be forthcoming from small processors to an increase in fee level and ensure that they had the right answers prepared.

There is no doubt that this was part of an arrangement to get rid of the small processors by an elite group of processors in South Australia. I became involved in this discussion when contacted by a number of processors. I attended the meeting in Torrensville where a number of small processors were absolutely incensed, as were the dozens of people who had made contact not only with me but also with the Hon. Frank Blevins, the member for Giles, in another place. He has been contacted by people on the West Coast. There were also inquiries from the South-East and people were absolutely incensed at this massive and unjustified increase in licence fees.

I attended that meeting with the processors who, at that stage, wanted to set up an alternative small processors association to lobby the Minister on behalf of the small processors and to act as a separate body and be registered within SAFIC. My counsel to those people on that occasion was that their best approach would be to join the association that is presently constructed and that they ought open discussions and invite all 186 fish processors in South Australia to a meeting and also to invite members of the South Australian Fish Processors and Marketers Association. I also counselled them that they ought to get a copy of the constitution of that organisation and find out details of the fees payable. It was like drawing teeth. First, no-one had been able to find a copy of the constitution, which was some 25 years old. Eventually that was procured. No-one could remember how much they paid per year and eventually it turned out to be some $200 per year.

I assisted my constituents with the construction of that summit, which was chaired by Mr Peter Peterson from SAFIC and which was held on 15 August at 1 Monday Street, Port Adelaide. There were people from the South Australian Fish Processors and Marketers Association and a report was given to the meeting. Concern was expressed when this proposition and a substantial increase were being discussed, that the Minister, for one reason or another, had made the comment, I believe: 'If they cannot pay $2 000 they should not be in the industry and we will introduce the regulation.'

It was pointed out that the other caveats that went with this proposition—although the overwhelming majority of the 186 small processors in South Australia were not even consulted—were not included in the regulations or brought into the system. To their credit, concern was expressed by the people from the Department of Primary Industries, namely, John Jefferson and David Hall that, in fact, we were going too quickly on this matter and that a substantial change of this nature ought to be phased in over the next six to eight months, and that a new fee agreed between all the parties would be instituted at the next licensing period.

It is interesting to see what the changed results would be. These people lost out on the three caveats and copped a $300 000 increase against their will. I must again pay some credit to Mr John Jefferson, because when this issue arose many of the small fish processors did protest quite vehemently on the basis that they were not in a position to pay. Of course, part of the conspiracy was to make the fee high enough so that some of the small processors would drop out. That is disgraceful coming from a Government that in fact claims to champion small business in South Australia.

One of the other disturbing things that has been happening in regard to fish processing and in the fishing industry in particular, is that on 8 August this year another five inspectors were dropped out of the fishery: they took VSPs. When one starts to do the sums on the cost of that and the savings involved, I think a very conservative estimate on that would be $50 000 per inspector. So, there was a direct saving to Primary Industries, and Fisheries in particular, of approximately $250 000.

I refer to the tables and to what these proposed changes would have meant. In 1993-94, the Government component of the licence fee would have been 163 registrations at $250, which totalled $40 750. A SAFIC component of $275 would also be collected, and $275 by 163 would have resulted in collections to Primary Industries in that year of $44 825. That is a total collection of $85 575. With this massive increase that is sought to be imposed unfairly upon these fishermen, one looks at the figures and finds that the Government component of this is $1 730 by 186 registrations, which results in $321 780 being collected by the Government. The SAFIC component, which is interesting, is $270—a reduction of $5 by 186, which is $50 220. That represents a total collection from the industry of $372 000. Members can see that almost $300 000 extra is collected from the same fishery.

When I had the opportunity to speak to the people gathered at that meeting, I was encouraged by the cooperation and willingness to sit down and talk matters through between those small processors who attended. Almost 50 processors turned up and that is about 400 per cent more than the number making the original decision. However, as I have pointed out, they did not make a decision about $2 000: they said that there should be a substantial increase. It was the Minister who decided it would be $2 000.

It also needs to be put on the record that this regulation was brought in on 19 May this year—it was brought in the day after Parliament rose for the winter recess. It was brought in under our famous old clause under the subordinate legislation regulations—subsection 10aa(2), which states that the requirement for it to lay on the table for 14 days is dispensed with and it must operate from the date specified by the Minister. In fact, it was legal to collect those fees from 4 August.

Those processors who were not able to find the $2 000 approached Fisheries South Australia, and Mr John Jefferson in particular, and offered to pay the $525 whilst further discussions took place to resolve this issue on an equitable basis. Indeed, John Jefferson authorised that $525 be collected as an interim payment. As I understand it, there has been reasonable acceptance of that by the fishermen. The fish processors themselves have determined that they will conduct a couple of workshops with the South Australian Fish Processors and Marketers Association, and with the majority of the 186 smaller processors who pay fees, to look at the constitution of the South Australian Fish Processors and Marketers Association to peruse its constitution to make it more equitable to all members in the processing industry. I need to point out, too, that of those 186 members, the overwhelming majority did not even know that the association existed. It was quite encouraging to see the level of cooperation and they have now agreed to sit down together to come up with a proposal so that this industry can act as an

integrated management committee of its own and put propositions that truly reflect the wishes of South Australian fish processors, and that is going forward.

It is for those reasons, substantially, that I have taken the opportunity to move for the disallowance of this regulation. I do it on the basis that it is excessive, it is unwarranted and it is in direct contravention of the promises made by this Government prior to the election that no increases beyond the CPI would be introduced. It is outrageous in the extreme that this almost 350 per cent increase has been imposed on these fish processors.

This disallowance will give the opportunity for sensible dialogue to take place between representatives of the South Australian fish processors and the Department of Primary Industries, so that they can introduce necessary changes on the basis of equity, good conscience and the substantial merit of the argument that will be presented. It will give the opportunity for many of the aims, first, of primary industries and, secondly, the very important South Australian Fish Processors Association to be taken into consideration, and an equitable system of licence fees introduced. It will also do all the things that are claimed with respect to these changes, in particular addressing the black fish market by having processors lodge returns.

I point out, as I mentioned briefly when first speaking to this motion, that the present legislation does require the lodgment of processors' returns each month. It is conceivable that in this circumstance all registered fish processors, whether they be exempt or non-exempt, should have to lodge a return. It is possible—in fact, I know that it happens—that unregistered fish processors and not registered processors are the ones who are taking the black market fish, because the registered processors are subject to the lodgment of returns and periodic inspection.

There are clearly some problems in the trade of black market fish in South Australia. There have been many arguments as to why that is occurring. Blame has been pointed in a number of different directions, including at amateurs and the unemployed. I do not know whether or not that is true. In fact, a recent report stated that Whyalla was the black market fish capital in South Australia. Some of the fish processors in that area would agree. I am not certain whether that is the case, and I am not sure that it is not the case, either.

If the Council concurs with my submission that the best thing in the circumstance is to disallow this regulation, it will force the parties to sit down in a spirit of cooperation and make sensible changes so that the fish processing industry in South Australia can grow and prosper and so that South Australians, who after all are the owners of the fish resource in South Australia, can be assured that they will get value for their money and that their valuable resource will be protected. I commend the motion to the Council.

The Hon. CAROLINE SCHAEFER secured the adjournment of the debate.

SECOND-HAND VEHICLE DEALERS BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to regulate dealing in second-hand motor vehicles; and for other purposes. Bill read a first time.

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

That this Bill be now read a second time.

The Second-hand Motor Vehicles Act 1983 has been in operation for almost a decade without being fully reviewed. In January 1994, the Government appointed a Legislative Review Team to review the provisions of each of the Acts which fall under the Consumer Affairs portfolio. Given the high level of complaints about second-hand motor vehicle purchases made each year to the Commissioner for Consumer Affairs and the willingness of industry to contribute constructively to the search for better means of dealing with them, the review team gave priority to its examination of the Second-hand Motor Vehicles Act 1983.

The review team examined the basic need for legislative intervention and considered various modes of regulation. A variety of improvements to the Act have been recommended, although its basic structure will remain. A new streamlined licensing system is proposed under the Bill. Criteria for the licensing of natural persons will reflect the main reasons for vetting applicants and preventing the entry of undesirable and impecunious persons into the industry, namely, consumer protection. Thus, as well as being over 18 years of age, applicants must be fit and proper persons to hold a licence, must not have been previously disqualified from being a dealer and must be financially solvent (that is, applicants will not be granted a licence if they are or have been insolvent, or are or have been the director of an insolvent body corporate in the preceding five years).

A new requirement to be eligible for warranty indemnity insurance will also be introduced. This major new initiative is discussed in detail later. Similar criteria will apply to companies which apply for a licence. The Bill is also designed to prevent disqualified people with an interest (or a prescribed interest) in a body corporate from hiding behind the corporate veil and having an involvement in the business of the corporate licensee.

The duration of licences will remain the same but several amendments consequent on the transfer of power to the Commissioner to refuse licences (including removal of the requirements to advertise and serve applications on the Commissioner of Police and removal of the objection procedures) will be necessary.

It is proposed to remove from the Commercial Tribunal the task of licensing second-hand motor vehicle dealers and to reallocate this task to the Commissioner for Consumer Affairs. Appeals from a failure by the Commissioner to grant a licence will go to the Administrative Appeals Division of the District Court.

It is also proposed to amend the deeming provision in section 35 of the Act, which supports the licensing regime, by shifting the onus to people who sell over four cars a year (instead of the present six) to prove that they are not dealers.

For some time following the collapse of a major dealer, Medindie Car Sales, the Second-hand Motor Vehicles Compensation Fund was in a precarious position. It required a major injection of funds by way of a special levy to remain viable. Dealers have also long argued that it is unjust for the honest, solvent well-functioning members of the industry to subsidise the dishonest or insolvent who can simply refer consumers to the fund when they default on their obligations.

The review team therefore recommended that a warranty insurance scheme replace the fund to encourage individual responsibility and accountability among dealers while, at the same time, maintaining consumer protection. This Bill gives effect to that recommendation by requiring dealers to hold ongoing warranty insurance.

Related to this new provision is removal of the requirement for dealers to have registered repair premises. Market forces, in the shape of contractually enforceable precautions to prevent a call on warranty insurance, should lead to a more rapid rise in standards in this area than Government-imposed regulations.

The Government has decided that dealers under the Second-hand Vehicle Dealers Bill 1994 should be subject to the same sort of disciplinary proceedings as those proposed for land agents in the recently introduced Land Agents Bill 1994. Thus references to the Commercial Tribunal will be removed from the Act and jurisdiction to hear and determine complaints on the balance of probabilities vested in the District Court.

The existing provision which makes it a cause for disciplinary action if a person is guilty of an offence will also be extended to include a situation where a dealer has acted contrary to the Act and the new disciplinary proceedings will reflect the proposed new licence entry criteria.

While major changes have been proposed in the manner in which compensation may be obtained for breaches of the Act's warranty provisions (and its source), major changes to the warranty provisions themselves are not proposed. They have been updated by Parliament in comparatively recent times.

In a major advance designed to protect consumers, motorcycles will now come within the scope of the Act.

In response to requests from industry, the proposed amendments will also simplify the exclusion of obviously defective cars (in relation to which consumers cannot have high expectations) by excluding from the warranty provisions cars that are either over 10 years old or have travelled over 200 000 kilometres.

Under the current Act, provision exists for a person to waive rights such as the statutory duty to repair defects in a vehicle purchased by a second-hand vehicle dealer on obtaining a certificate in a prescribed form from the Commissioner. This provision was intended to be used only in exceptional circumstances, where a person could demonstrate that, as a consequence of their special skills or training (for example, as a motor mechanic), they could assess the risk associated with the waiver of rights. In practice, however, the Office of Consumer and Business Affairs has been inundated with thousands of applications for certificates from the Commissioner.

It has been the experience of this office that the right of waiver has been used as a perceived bargaining tool to negotiate the sale and purchase of a car. It is not therefore being used for the purpose for which it was intended to be used.

Under the provisions of the proposed Bill, a person will no longer be able to waive the rights conferred on him or her by the Act. This will ensure the maintenance of the consumer protection offered to purchasers of second-hand vehicles under the Act.

It is intended that greater reliance be placed on conciliation in the area of used car disputes. Compulsory conciliation conferences—along the lines of those contained in the 1971 Second-hand Motor Vehicles Act—will therefore be reinstituted.

The new provisions will give the Magistrates Court power to make the types of orders which appear in section 26 of the existing Act if the parties cannot reach agreement at the conclusion of a compulsory conference.

The Legislative Review Team recommended that a delegation power similar to that contained in the Land Agents Bill be incorporated into the new Second-hand Vehicle Dealers Bill. The Commissioner will then have the power to delegate specific matters under the Act to industry organisations by means of a written agreement.

In conducting its comprehensive review of the Act, the review team uncovered several minor miscellaneous amendments which are required to bring the Act up to date including updating penalties (strongly recommended by the Motor Trade Association), extending the time limit for prosecutions, moving exemptions from the regulations into the body of the Act and harmonising the vicarious liability provisions with those proposed in the Land Agents Bill. I commend the Bill to members and seek leave to have the detailed explanations of the clauses incorporated in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

These are formal.

Clause 3: Interpretation

This provides for definitions of words and phrases used in the Bill.

Clause 4: Application of Act

If a dealer sells a second-hand vehicle to a credit provider on the understanding that the vehicle will be sold or let on hire to a third person and it is sold or let on hire to the third person, the measure applies (except for clause 17) as if the dealer had sold the vehicle to the third person.

Clause 5: Non-derogation

The provisions of the Bill are in addition to and do not derogate from the provisions of any other Act and do not limit or derogate from any civil remedy at law or in equity.

Clause 6: Commissioner to be responsible for administration of Act

The Commissioner is responsible (subject to the control and directions of the Minister) for the administration of the Bill.

Proposed Part 1 is substantially the same as Part 1 of the Second-hand Motor Vehicles Act 1983 ("the repealed Act").

PART 2

LICENSING OF DEALERS

DIVISION 1—GRANT OF LICENCES

Clause 7: Dealers to be licensed

A person who carries on business or holds himself or herself out as a second-hand vehicle dealer who is not licensed under the Bill is guilty of an offence and liable to a division 5 fine ($8 000). Exceptions to this are—

- persons who are licensed as credit providers under the Consumer Credit Act 1972 whose business as a dealer is incidental to the credit business; and
- auctioneers who sell second-hand vehicles on behalf of other persons by auction or by sales negotiated immediately after conducting auctions for the sale of the vehicles, and who do not otherwise carry on the business of selling second-hand vehicles; and
- the Crown.

This clause is substantially the same as section 9 of the repealed Act.

Clause 8: Application for licence

Applications for licences must be made to the Commissioner in the manner and form approved by the Commissioner and be accompanied by the fee fixed by regulation.

Clause 9: Entitlement to be licensed

A natural person is entitled to be licensed as a dealer if the person—

- is of or above the age of 18 years; and
- has not been convicted of an offence of dishonesty; and
- is not suspended or disqualified from practising or carrying on an occupation, trade or business; and
- is not an undischarged bankrupt or subject to a composition or deed or scheme of arrangement with or for the benefit of creditors; and

- has not been a director of a body corporate that has, within five years of the application for the licence, been wound up for the benefit of creditors; and
- is a fit and proper person to be the holder of a licence.

A body corporate is entitled to be licensed as a dealer if—

(a) the body corporate—
- is not suspended or disqualified from practising or carrying on an occupation, trade or business; and
- is not being wound up and is not under official management or in receivership; and

(b) no director of the body—
- has been convicted of an offence of dishonesty; or
- is suspended or disqualified from practising or carrying on an occupation, trade or business; or
- has been a director of a body corporate that has, within five years of the application for the licence, been wound up for the benefit of creditors; and
- each director of the body is a fit and proper person to be the director of a body that is the holder of a licence.

Clause 10: Appeals

An applicant for a licence may appeal to the Administrative Appeals Division of the District Court against a decision of the Commissioner refusing the application. An appeal is to be conducted by way of a fresh hearing. The Court may, on the hearing of an appeal—
- affirm the decision appealed against or rescind the decision and substitute a decision that the Court thinks appropriate; and
- make any other order that the case requires (including an order for costs).

Clause 11: Duration of licence and annual fee and return

A licence remains in force (except for any period for which it is suspended) until the licence is surrendered or cancelled or the licensed dealer dies (or, in the case of a licensed body corporate, is dissolved). A licensed dealer must pay an annual fee and lodge an annual return with the Commissioner. If a licensed dealer fails to pay the annual fee or lodge the annual return, the Commissioner may require the dealer to make good the default and pay the amount fixed as a penalty for default. If the dealer fails to comply with the notice within 28 days after service, the dealer's licence is cancelled. A licensed dealer may, with the consent of the Commissioner, surrender the licence.

This clause is similar to section 11 of the repealed Act.

Clause 12: Requirements for insurance

A person must, at all times when carrying on business as a dealer, be insured in accordance with the regulations. A dealer's licence is suspended for any period for which the dealer is not insured.

Clause 13: Incorporated dealer's business to be properly managed and supervised

A licensed dealer that is a body corporate that does not ensure that the dealer's business is properly managed and supervised by a licensed dealer who is a natural person is guilty of an offence and liable to a division 4 fine ($15 000).

DIVISION 2—REGISTRATION OF PREMISES

Clause 14: Registration of dealer's business premises

A licensed dealer must not carry on business as a dealer except at premises registered in the licensee's name. The penalty for contravening this is a division 7 fine ($2 000). The Commissioner may register premises in the name of an applicant if satisfied that the premises are suitable for the purpose of carrying on business as a dealer. A licensee who does not, within 14 days after ceasing to carry on business at registered premises, notify the Commissioner in writing of that fact is guilty of an offence and liable to a division 7 fine ($2 000). If the Commissioner is notified of the cessation of business at registered premises or is otherwise satisfied that a licensee has ceased to carry on business at registered premises, the Commissioner may cancel the registration of the premises.

This clause is substantially the same as section 12 of the repealed Act.

PART 3

DEALING IN SECOND-HAND VEHICLES

DIVISION 1—SALES OTHER THAN BY AUCTION

The clauses in this Division are substantially the same as the sections in Division 1 of Part 3 of the repealed Act. The penalties for contravention of these provisions of the Bill are greater than those set out in the repealed Act but are consistent with comparable measures.

Clause 15: Application of Division

The proposed Division does not apply to the sale of a second-hand vehicle by auction or the sale (or offering for sale) of a second-hand vehicle to a dealer. Except as provided in clause 17, the proposed Division does not apply to the sale of a second-hand vehicle negotiated by an auctioneer immediately after the conduct of an auction for the sale of the vehicle. (Cf: Section 17 of the repealed Act.)

Clause 16: Notices to be displayed

A dealer who offers or exposes a second-hand vehicle for sale without attaching to the vehicle a notice in the prescribed form containing the required particulars and statements relating to the vehicle is guilty of an offence and liable to a division 7 fine ($2 000). The clause sets out in detail the information required to be given when offering or exposing for sale a second-hand vehicle. (Cf: Section 18 of the repealed Act.)

Clause 17: Form of contract

This clause sets out in detail the form of a contract for the sale of a second-hand vehicle by a dealer eg: these details include the fact that the contract must be in writing, be comprised in one document, be signed by the parties to the sale and must contain certain particulars set out in a particular manner. The penalty for failure to comply with this clause is a division 7 fine ($2 000). (Cf: Section 19 of the repealed Act.)

Clause 18: Notices to be provided to purchasers of second-hand vehicles

On the sale of a second-hand vehicle by a dealer, the dealer must ensure that a copy of the notice that was required to be attached to the vehicle under clause 16 and a notice in the prescribed form are given to the purchaser for retention before the purchaser takes possession of the vehicle. Failure to comply with this provision causes a dealer to be liable to a division 7 fine ($2 000). (Cf: Section 20 of the repealed Act.)

DIVISION 2—SALES BY AUCTION

The proposed clauses in this Division are substantially the same as the sections in Division 2 of Part 3 of the repealed Act. The penalties for contravention of the provisions of the Bill are greater than those set out in the repealed Act but are consistent with comparable measures.

Clause 19: Interpretation

This clause contains a definition of "trade auction" for the purposes of the proposed Division. (Cf: Section 21 of the repealed Act.)

Clause 20: Notices to be displayed in case of auction

An auctioneer who conducts an auction for the sale of a second-hand vehicle (other than a trade auction) without attaching to the vehicle a notice in the prescribed form containing the required particulars and statements relating to the vehicle and ensuring that the notice has been attached to the vehicle at all times when the vehicle has been available for inspection by prospective bidders is guilty of an offence and liable to a division 7 fine ($2 000). The clause sets out in detail the information required to be given when offering or exposing for sale a second-hand vehicle. (Cf: Section 22 of the repealed Act.)

Clause 21: Notices to be provided to purchasers of second-hand vehicles

On the sale of a second-hand vehicle to a person other than a dealer by auction, or by a sale negotiated by an auctioneer immediately after the conduct of an auction for the sale of the vehicle, the auctioneer must ensure that a copy of the notice that was required to be attached to the vehicle under clause 20 and a notice in the prescribed form are given to the purchaser for retention before the purchaser takes possession of the vehicle. Failure to comply with this provision causes a dealer to be liable to a division 7 fine ($2 000). (Cf: Section 23 of the repealed Act.)

Clause 22: Trade auctions

An auctioneer must not conduct a trade auction unless a notice in the prescribed form is attached to the vehicle and has been attached to the vehicle at all times when the vehicle has been available for inspection by prospective bidders. A person who advertises a trade auction must include in the advertisement a statement in the prescribed form. Contravention of this clause attracts a division 7 fine ($2 000). (Cf: Section 24 of the repealed Act.)

PART 4

DEALER'S DUTY TO REPAIR SECOND-HAND VEHICLES

Clause 23: Duty to repair

A dealer is under a duty to repair any defect that is present in a second-hand vehicle that the dealer sells or that appears in the vehicle after the sale. To discharge the duty imposed, the dealer must carry out the repairs in a manner that conforms to accepted trade standards. This clause does not apply—
- to certain sales of second-hand vehicles; or
- to the sale of certain second-hand vehicles; or
- to certain defects; or

- to defects appearing in a vehicle sold at a price below the prescribed amount.

These are set out in detail in the clause. If a second-hand vehicle is sold by a dealer on behalf of another dealer, the duty imposed by this clause must be discharged by that other dealer. (Cf: Section 25 of the repealed Act and regulation 26 of the Second-hand Motor Vehicles Regulations 1983.)

Clause 24: Enforcement of duty to repair

If a dealer is under a duty to repair a defect in a second-hand vehicle, the purchaser must, if requiring the dealer to discharge the duty, deliver the vehicle to the dealer for that purpose during ordinary business hours at a place agreed on by the dealer and the purchaser or (if no place has been so agreed on) any registered premises of the dealer, and afford the dealer a reasonable opportunity to repair the defect.

The purchaser may apply to the Commissioner for a conference to be convened for the purpose of attempting to resolve the matter by conciliation if the purchaser delivers the vehicle to the dealer as required but the dealer refuses to discharge the duty to repair or fails to discharge the duty to repair the defect expeditiously or the purchaser makes reasonable efforts to deliver the vehicle but is unable to do so.

On an application, the Commissioner must, unless satisfied that in the circumstances of the case it is not appropriate to convene a conference, require the purchaser and the dealer to attend a conference. If agreement is reached at such a conference, the agreement must be recorded in a written instrument signed by the parties to the agreement and the Commissioner and a copy of the instrument given to each of the parties and the agreement may, by leave of the Magistrates Court, be enforced in the same manner as a judgment or order of the Court to the same effect. Where leave is so given, judgment may be entered in terms of the agreement.

If, on application by the purchaser—

- the Commissioner determines that it is not appropriate to convene a conference; or
- a conference is convened but the dealer fails to attend the conference, the matter in issue is not resolved by agreement or the dealer fails to carry out the dealer's obligations under an agreement reached at the conference,

the purchaser may apply to the Magistrates Court for one or more of the following orders:

- an order that the dealer (or another person at the expense of the dealer) repair the defect;
- an order that the dealer pay to the purchaser the reasonable costs of repairing or completing the repairs of the defect;
- an order that the dealer compensate the purchaser for any loss or damage suffered by the purchaser as a result of the dealer's conduct.

If the Magistrates Court makes an order for the repair of the defect and the dealer fails to comply with the terms of the order, the Court may, on the further application of the purchaser, make an order that the dealer pay to the purchaser the reasonable costs of repairing or completing the repairs of the defect or an order for compensation or both.

If repairs that a dealer is under a duty to carry out are carried out by another person on behalf of the dealer and the purchaser of the vehicle pays the costs of the repair, the Magistrates Court may, on the application of the purchaser, order the dealer to reimburse the purchaser in respect of the amount paid by the purchaser.

If a dealer who is under a duty to repair a defect in a vehicle is not licensed, the purchaser may cause the vehicle to be repaired by a person other than the dealer and the Magistrates Court may, on the application of the purchaser, order the dealer to pay to the purchaser the reasonable costs of repairing the defect.

The Magistrates Court may, on an application under this clause, make an order under this clause on any terms and conditions it considers just.

PART 5

DISCIPLINE

Clause 25: Interpretation of this Part

Contains definitions of "dealer" and "director" for use in this proposed Part.

Clause 26: Cause for disciplinary action

The proper causes for disciplinary action against a dealer include if—

- licensing was improperly obtained;
- the dealer has acted contrary to an assurance accepted by the Commissioner under the Fair Trading Act 1987;
- the dealer or another person has acted contrary to Act or otherwise unlawfully, or improperly, negligently or unfairly, as a dealer;
- the dealer has failed to attend a conference convened under proposed Part 4, or has not conducted himself or herself reasonably at such a conference, or has failed to carry out his or her obligations under an agreement reached at such a conference;
- the dealer has been suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth;
- the dealer has become bankrupt or insolvent or has taken the benefit (as a debtor) of a law relating to bankrupt or insolvent debtors or, in the case of a body corporate that is licensed as a dealer, the body corporate is being wound up, is under official management or is in receivership;
- the dealer has otherwise ceased to be a fit and proper person to be licensed as a dealer.

Clause 27: Complaints

The Commissioner or any other person may lodge with the District Court a complaint setting out matters that are alleged to constitute grounds for disciplinary action.

Clause 28: Hearing by Court

On the lodging of a complaint, the District Court must conduct a hearing for the purpose of determining whether the matters alleged in the complaint constitute grounds for disciplinary action.

Clause 29: Disciplinary action

On the hearing of a complaint, the District Court may do one or more of the following:

- reprimand the person;
- impose a fine not exceeding $8 000 on the person;
- in the case of a person who is licensed as a dealer—suspend the licence for a specified period or until the fulfilment of stipulated conditions or until further order or cancel the licence;
- impose conditions as to the conduct of the person or the person's business as a dealer;
- disqualify the person from being licensed;
- prohibit the person from being employed or otherwise engaged in the business of a dealer;
- prohibit the person from being a director or having an interest in a body corporate that is a dealer.

Clause 30: Contravention of orders

If a person contravenes or fails to comply with a condition imposed by the District Court as to the conduct of the person or the person's business, the person is guilty of an offence and liable to a division 3 fine ($30 000) or division 7 imprisonment (6 months). If a person is employed or otherwise engages in the business of a dealer or becomes a director of a body corporate that is a dealer, in contravention of an order of the District Court, that person and the dealer are each guilty of an offence and liable to a division 3 fine ($30 000) or division 7 imprisonment (6 months).

PART 6

MISCELLANEOUS

Clause 31: No waiver of rights

A purported exclusion, limitation, modification or waiver of the rights conferred by the proposed Act is void. This clause is substantially the same as section 33 of the repealed Act except for the increased penalties and removal of the provision for waiver of a right on the Commissioner's certificate that the consumer understands the effect of the waiver.

Clause 32: Interference with odometers prohibited

A person who interferes with the odometer on a second-hand vehicle is guilty of an offence and liable to a division 6 fine ($4 000). This clause is substantially the same as section 34 of the repealed Act except for the increased penalty.

Clause 33: Certain agreements to indemnify dealer void

An agreement between a dealer and a person (other than a dealer) from whom the dealer purchases a second-hand vehicle that indemnifies the dealer in respect of any costs arising under this Act in relation to that vehicle is void. This clause is substantially the same as section 37 of the repealed Act.

Clause 34: Delegations

The Commissioner may delegate any of the Commissioner's functions or powers under this Act to a person employed in the Public Service, to the person for the time being holding a specified position in the Public Service or (with the Minister's consent) to

another person. The Minister may delegate any of the Minister's functions or powers under this Act.

Clause 35: Agreement with professional organisation

The Commissioner may (with the approval of the Minister) make an agreement with an organisation representing the interests of dealers under which the organisation undertakes a specified role in the administration or enforcement of the proposed Act. The Minister must, within 6 sitting days after the making of such an agreement, cause a copy of it to be laid before both Houses of Parliament.

Clause 36: Exemptions

The Minister may exempt the person from compliance with a specified provision of the proposed Act. An exemption is subject to the conditions (if any) imposed by the Minister and the Minister may vary or revoke an exemption. The grant or a variation or revocation of an exemption must be notified in the *Gazette*.

Clause 37: Register of dealers and premises

The Commissioner must keep a register of licensed dealers and of premises registered in the name of a licensed dealer. The Commissioner must record on the register disciplinary action taken against a person and a note of an assurance accepted by the Commissioner under the Fair Trading Act 1987 in relation to a licensed dealer. A person may inspect the register on payment of the fee fixed by regulation.

Clause 38: Commissioner and proceedings before District Court

The Commissioner is a party to any proceedings of the District Court under this proposed Act and may appear personally or be represented at the proceedings by counsel or a public servant.

Clause 39: False or misleading information

It is an offence for a person to make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided, or record kept, under this proposed Act. The penalty if the person made the statement knowing that it was false or misleading is a division 5 fine ($8 000) and, in any other case, is a division 7 fine ($2 000).

Clause 40: Name in which dealer may carry on business

A licensed dealer must not carry on business as a dealer except in the name in which the dealer is licensed. The penalty for breach of this proposed section is a division 7 fine (($2 000). This clause is substantially the same as section 42 of the repealed Act but for the increased penalty.

Clause 41: Statutory declaration

If a person is required to provide information to the Commissioner, the Commissioner may require the information to be verified by statutory declaration and, in that event, the person will not be taken to have provided the information as required unless it has been so verified.

Clause 42: Investigations

The Commissioner of Police must, at the request of the Commissioner, investigate and report on any matter relevant to the determination of an application under this proposed Act or a matter that might constitute proper cause for disciplinary action.

Clause 43: General defence

It is a defence to a charge of an offence against this proposed Act if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

Clause 44: Liability for act or default of officer, employee or agent

An act or default of an officer, employee or agent of a person carrying on a business will be taken to be an act or default of that person unless it is proved that the person could not be reasonably expected to have prevented the act or default.

Clause 45: Offences by bodies corporate

If a body corporate is guilty of an offence against this proposed Act, each director of the body corporate is, subject to the general defence under clause 43, guilty of an offence and liable to the same penalty as may be imposed for the principal offence.

Clause 46: Continuing offence

A person convicted of an offence against this proposed Act in respect of a continuing act or omission is liable, in addition to the penalty otherwise applicable, to a penalty for each day during which the act or omission continued, of not more than one-tenth of the maximum penalty prescribed for that offence. If the act or omission continues after the conviction, the person is guilty of a further offence against the provision and liable, in addition, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.

Clause 47: Prosecutions

Proceedings for an offence against this proposed Act must be commenced within two years after the date on which the offence is alleged to have been committed or, with the authorisation of the Minister, at a later time within five years after that date. A prosecution for an offence against this Act cannot be commenced except by the Commissioner, an authorised officer or a person who has the consent of the Minister to commence the prosecution.

Clause 48: Evidence

For the purposes of this proposed Act, a person who has sold, or offered or exposed for sale, 4 or more second-hand vehicles during a period of 12 months, will, in the absence of proof to the contrary, be presumed to have been a dealer during that period.

Clause 49: Service of documents

A notice or document required or authorised to be given to or served on a person may—

- be served on the person personally;
- be posted in an envelope addressed to the person at the person's last known address or, if the person is a licensed dealer, at the dealer's address for service;
- if the person is a licensed dealer, be left for the person at the dealer's address for service with someone apparently over the age of 16 years;
- be transmitted by facsimile transmission to a facsimile number provided by the person.

Clause 50: Annual report

The Commissioner must, on or before the 31 October in each year, submit to the Minister a report on the administration of this proposed Act during the period of 12 months ending on the preceding 30 June. The Minister must, within 6 sitting days after receipt of the report, cause a copy of the report to be laid before each House of Parliament.

Clause 51: Regulations

The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this proposed Act. The regulations may—

- require licensed dealers to comply with a code of conduct;
- require dealers to lodge with the Commissioner certificates evidencing the dealers' insurance coverage as required under proposed Part 2;
- fix fees to be paid in respect of any matter under this proposed Act and regulate the recovery, refund, waiver or reduction of such fees;
- exempt classes of persons or activities from the application of this proposed Act or specified provisions of this proposed Act;
- impose a penalty (not exceeding a division 7 fine ie: $2 000) for contravention of, or non-compliance with, a regulation.

SCHEDULE—*Repeal and Transitional Provisions*

The proposed schedule repeals the Second-hand Motor Vehicles Act 1983 and contains other provisions of a transitional nature.

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

ADJOURNMENT

At 6.21 p.m. the Council adjourned until Thursday 25 August at 2.15 p.m.