LEGISLATIVE COUNCIL

Thursday 25 August 1994

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

QUESTION TIME

TRANSPORT STRATEGY

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

Leave granted.

The Hon. BARBARA WIESE: On page 17 of the Government's Passenger Transport Strategy released in January 1993 reference was made to the success of the Transit Authority in Vancouver, Canada, with a scheme to fit wheelchair lifts and ramps to 20 per cent of its bus fleet, which was then operated on well-publicised routes at specific times.

The Liberal Party's policy promised:

> . . . to initiate similar measures on a pilot basis in association with groups representing people with disabilities and the aged.

The Labor Party has been approached by one such disability advocacy group, which has received advice from the Minister for Transport that she no longer proposes to honour the commitment to people with disabilities that she made before the last election. Understandably, many of these people feel betrayed, as the Liberal Party won support from a number of them based on this undertaking. Will the Minister explain why she has broken her pre-election promise to people with disabilities?

The Hon. DIANA LAIDLAW: I am not aware of the group to which the honourable member refers. Certainly, I have provided no advice to any people who have come to see me on this matter that it is off the agenda. To the contrary, I have indicated that I cannot do everything that is outlined in the strategy, or indeed all our other policies, within six or eight months of being elected to government.

An honourable member interjecting:

The Hon. DIANA LAIDLAW: Yes, we have a four-year term in which to honour these commitments. The people with whom I have spoken are certainly aware of my commitment to making public transport more accessible. The Passenger Transport Board has already presented to me, after consideration by it, the names of people who will serve on the consumer group, and TransAdelaide continues to operate the disability advisory group. Both those groups are aware that public transport must become more accessible.

I know that there is debate within public transport circles about the cost of such an initiative. I understand that it will cost $40 000 per bus for such ramps. My view is that that is a good investment in terms of trialing this model, which I learnt about from representatives of disability groups when I met with them some time before the last election.

In addition, through the Transport Policy Unit, I have asked that a study be undertaken on how we can make passenger transport—and not only trains and buses but also taxis—more accessible to more people. In that sense, I have recently approved licences for 10 more Access Cabs. However, I want to look at going further than that in the future, and I have asked for this work to be undertaken.

Many people in the disability area are aware that in London and in other places around the world all taxis are accessible to people with disabilities, and this is one matter that I am keen to look at, at least in a preliminary sense.

It is a matter that I understand will be addressed by Ministers of Transport at a later date. If the group to which the honourable member refers has received such advice I regret that that is so because, as far as the Government and I are concerned, the trial is very much on the agenda. It will proceed. I have not been able to do so in the first six to eight months of Government. I am awaiting this further report through the Transport Policy Unit before we undertake, in consultation with the community, a number of initiatives in this area.

HIGHER EDUCATION ENTRANCE SCORES

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about higher education entrance scores.

Leave granted.

The Hon. CAROLYN PICKLES: The timing of changes to the way higher education entrance scores are calculated this year is worrying the South Australian Secondary Principals Association, which fears that the changes that schools were officially notified about last month could disadvantage students carrying over marks from 1993 to complete year 12 this year. I understand that under the new system these year 13 students could receive lower bonus points for subjects completed last year than they have been counting on for their university entry aggregate.

University entrance scores are assessed out of a total of 70. The best three subjects are marked out of 20, with the last two subjects being marked according to a so-called bonus system where a maximum five marks can be gained from each of the two subjects. These subjects are initially assessed with a score out of 20, along with the other subjects, before being converted to a score out of five. It is the formula for conversion from a score out of 20 to a score out of five which has been altered by the Higher Education Entry Committee.

Under the formula last year, an amount of bonus points was attributed as a whole number to specific groupings of marks between nought and 20. For example, if a student scored 20 points they would receive five bonus points; if a student received 17 to 19 points out of 20, the student would receive four bonus points, and so on.

The new formula allows for half marks to be attributed. The effect of this is to reduce the total number of bonus points per subject by between half a mark and one whole mark. This would not be so much of a problem if it applied to all subjects completed in 1994 only, in which case everyone would be on the same footing. But there are many year 13 students who have carried over from 1993 one or two subjects from their first attempt at year 12. These people have counted on a certain amount of bonus points being attributed to their carried over subjects.

The retrospective operation of the new formula would also prejudice adult matriculants or mature age matriculants who have taken their matriculation studies over several years. To eliminate this prejudice, it would require the Higher Education Entry Committee to rule that the changed formula will apply only to subjects completed in 1994 and subsequent years.

Will the Minister give an assurance that he will prevent the retrospective operation of a new formula for the interpretation of the raw data of matriculation assessment by the Higher Education Entry Committee so as to avoid prejudicing those students carrying over subjects from 1993?

The Hon. R.I. LUCAS: The honourable member misunderstands the powers of the Minister of Education in South Australia, no matter whom he or she might be. In relation to higher education entry, we have the position, first, of the universities which are powers unto themselves in relation to entry criteria and classification for their various courses and quotas and, secondly, of a Senior Secondary Assessment Board which again is not under the power and direction of the Minister for Education as a result of legislation drafted by the former Labor Government. I am aware of the concerns that the honourable member has raised this afternoon in this question.

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: Your question was whether I would ensure. Some concerns have been expressed along those lines by the Secondary Principals Association. I have already taken up the matter with the Senior Secondary Assessment Board, and I am seeking a response in relation to the position of two year (or second year) year 12 students in the sorts of circumstances as outlined by the honourable member. When I receive a reply I will be only too happy to forward a copy, or the substance of the reply, to the honourable member.

TELEPHONES, EMERGENCY

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Minister for Transport and for the Status of Women a question about transport safety in rural areas.

Leave granted.

The Hon. R.R. ROBERTS: Before asking my questions of the Minister, I will briefly explain that I have had some conversations in private with the Minister concerning a delicate matter, about which I do not wish to go into in any great deal. I am pleased with the response that I have received from the Minister regarding those discussions so far. I refer to an incident that occurred, on Monday 15 August of this month, on a country road: a sexual assault took place on a female traveller on National Highway No. 1. Because of the sensitive nature of those investigations and the nature of the whole inquiry, I do not wish to elaborate much more on that matter. What it did was heighten my attention to a problem which is becoming more profound in rural areas as time goes by. With the downturn in the rural economies and the lowering of commodity prices, farmers in particular have been forced to curb their employment and, in many instances, we find that women in particular in country areas are required to undertake more and more extensive journeys just to run the farms while the male spouse undertakes the activities on the farm.

On the road—and most members would realise I travel a lot on country highways—I am seeing more and more instances of females travelling on their own. On a number of occasions I have had cause to assist travellers who have found themselves in trouble, and I have been concerned for some time that there seems to be little infrastructure for people in these situations. With the building of the new National Highway No. 1 from Adelaide towards Port Wakefield, I have noticed (and I commend this design) that there are a few emergency phones. I am aware that through the Adelaide Hills there are quite a number of emergency phones from which travellers who find themselves in these circumstances can make an emergency call in a fairly secure way so that these females, in particular who, understandably, because of the past history of professions are not mechanically minded can get some relief in relative safety. Several issues are involved. We need to provide some relief. In view of the foregoing, I ask:

1. Will the Minister for Transport and for the Status of Women seek funds to ensure that emergency telephones are installed at acceptable intervals along our main highways?

2. Will she investigate systems for ensuring safe travelling practices for motorists, including the production of educational programs aimed particularly at our mobile female population?

3. Will she investigate with the Minister for Emergency Services the possibility of setting up a system whereby mobile telephones could be provided on a lease basis or for fee for women or men travelling long distances between major centres on their own?

The Hon. DIANA LAIDLAW: I thank the honourable member for his questions, and I applaud him for the thought that he has given to this matter. Some years ago, when I was returning from my sister's farm in the Barossa Valley, I had a puncture at about 11 p.m., late at night, on a dark road. I recall that I was quite terrified standing out there, hailing passing traffic, not sure who would stop to help and, if they did stop, wondering whether they were there to help me.

So, I understand entirely the circumstances that the honourable member has outlined. It is true that more and more women are travelling alone in the country not only because they need to go to the city to pick up spare parts, as the honourable member mentioned, but because, today, a second income is necessary on many farms. It is important in such circumstances that we seek to provide some support so that women can travel with peace of mind.

There is very little infrastructure of the nature of which the honourable member speaks. As my colleague the Hon. Caroline Schaefer has highlighted to me in the past, as we go farther north and west there is trouble with the mobile telephone network, the towers and the like, that are an essential part of the infrastructure for use of mobile phones. The Hon. Caroline Schaefer does a lot of travelling alone at night, and I know that she wants to install a mobile phone, just as I installed one in my car following the earlier incident to which I referred.

With respect to the installation of emergency telephones along highways, highways are a responsibility of the Federal Government and I will be pleased to raise this matter with the Federal Minister. Funds are provided to the Federal Government; however, the State Government is responsible for designing the road network, and it seeks approval from the Federal Government. I believe we should look at the installation of these telephones in the design, and I will speak to the department about that, as further work is to be undertaken on Highway 1 in the next few years.

In terms of educational programs, the RAA, following incidents in the Adelaide Hills earlier this year, highlighted this problem, telling women to stay in their car and, if they did hail someone, to get back in their car and lock their door and discuss the problem of getting assistance in that way. I will speak to the RAA to see what other measures can be taken in terms of educational programs and through the Office of Road Safety. Lastly, in terms of the Minister for

Emergency Services, I would be delighted to look at what would be involved in setting up a system of mobile telephones for lease. Perhaps Optus and Telecom, who are vying so hard for Government business at the moment, may well be prepared to co-operate in some sort of sponsorship scheme, but I will provide further replies to the honourable member.

VJ DAY

The Hon. T. CROTHERS: I seek leave to make a brief explanation before asking the Leader of the Government, representing the Premier, a question about a public holiday for VJ day to be granted in 1995 throughout the nation.

Leave granted.

The Hon. T. CROTHERS: In an article on page 4 of the *Advertiser* of Friday 18 August 1994 written by Chris Brice mention is made of the fact that 15 August 1995 will mark the fiftieth anniversary of the end of the Second World War in the Pacific area. Further, it is said that plans are already under way for the day to be one of national celebrations and remembrance, which will include victory parades and an attempt at the re-creation of the nature and feeling of the original celebrations in 1945.

The newspaper article goes on further to quote Mr Gregg Rudd, an adviser to the Veterans Affairs Minister, Mr Con Sciacca, who told the South Australian committee of the Federal Government inspired 'Australia Remembers—1945-1995' campaign that the celebrations of the fiftieth anniversary may extend to 15 August 1995 (which in that year will fall on a Tuesday) being declared a one-off national public holiday.

My question through the Leader to the Premier is as follows: in the event of 15 August 1995 being declared a national public holiday, will the Premier and the State Government lend their support to the Federal Minister for the declaration of that day as a one-off public holiday, to recognise the 50th year celebrations of victory in the Pacific, which people must remember absolutely concluded and ended World War II?

The Hon. R.I. LUCAS: I would be pleased to take up the honourable member's suggestion and question with the Premier and bring back an early reply.

WOMEN, ASSAULT

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before addressing a question to the Minister for the Status of Women regarding sexual assault of women.

Leave granted.

The Hon. SANDRA KANCK: I acknowledge in addressing this question to the Minister for the Status of Women that it could apply, in fact, to a number of portfolio areas but, having debated it with myself, I decided that she would probably be the most sympathetic and committed to the issue.

Members interjecting:

The Hon. SANDRA KANCK: All sensitive new age guys!

Members interjecting:

The PRESIDENT: Order! The member will ask her question.

The Hon. SANDRA KANCK: Last year I attended a weekend workshop organised by the Status of Women Committee of the United Nations Association of Australia (SA Division) on the subject of Violence Against Women: Rape—Why Are They Not Heard? At the workshop a list of recommendations was formulated and later published. Two of the recommendations were: first, that the police should provide details of where all sexual assaults have occurred in both metropolitan and rural areas, and the time of each assault. The women who attended the workshop believe that the police have at their disposal important information that would assist all women about potential problem sites for violence against women in the community.

For example, many women believed that toilet areas were of particular concern (a fact that was confirmed by a police officer in attendance) yet women's toilets are often placed in hotels near men's toilets and in areas of bad lighting. Furthermore, the women attending the workshop believe that this information should be spread within the community so that women would be aware of places of high risk, and so that, for example, planning laws could be effected or education campaigns for women be instituted.

Secondly, it was considered that there may be a lack of awareness within the community about the Sexual Assault Unit of the Police Force and that there is a need to better advertise its services. They recommended that the Government should have a 008 number for the unit and that the number be advised in all phone boxes throughout the State. My questions to the Minister are:

1. Will the Minister provide details of where and at what times sexual assault occurs around the State so that women are better informed to take active steps to avoid sexual assault?

2. Will the Minister recommend to Cabinet the provision of 008 numbers in all public telephone boxes to advertise the services of the Police Sexual Assault Unit?

The Hon. DIANA LAIDLAW: I understand that 50 per cent of sexual assaults in our community occur in the home—in fact, maybe even more—and that the offender is known to the victim. That message is very important for us to advertise so that women are aware of that fact. They are more vulnerable, possibly, because the sexual assault is by a person who they know and really have reason to trust and respect, but that is not always the case. So, in terms of the first recommendation from the conference and the first question from the honourable member, I am aware, in terms of domestic violence and sexual assault, that the Attorney-General has this matter under consideration and I will certainly support him, and I will take the matter up in terms of advertising and public education programs. I know that he is sensitive to this issue.

In terms of domestic violence, there was a commitment by the Government that we would be implementing a 008 number for the outreach service and the domestic violence unit. I am not aware whether that has been undertaken at this time but, when investigating that, I will do more work on the matter of steps that could be taken to implement a 008 number for the sexual assault unit within the Police Department. I think it is a good idea.

INDEPENDENT GAMING CORPORATION

The Hon. M.S. FELEPPA: I seek leave to make a brief explanation before asking the Leader of the Government a question about a ministerial statement.

Leave granted.

The Hon. M.S. FELEPPA: The Premier in his ministerial statement on Tuesday made an amazing admission of his

perception of the independence of the Independent Gaming Corporation. To quote him out of context, the Premier said:

> . . . the Independent Gaming Corporation, which represents hotel, hospitality and licensed club interests. . .

In taking the words out of context and emphasising 'represent', members will have an opinion why I am so concerned. If the Independent Gaming Corporation is seen by the Premier or, indeed, by the Government as representing anything other than the monitoring licence, then the independence of the corporation is destroyed. It was the independence of the monitoring licence that was uppermost in my mind when we debated the Gaming Machine Bill a couple of years ago, and now it seems that my fears have been shown to be true. The monitoring licence is in the hands of a corporation that is perceived by the Premier to exercise a conflict of interest by representing the interests of hotels, licensed clubs and the hospitality industry.

As the interests of the hotels, licensed clubs and the hospitality industry is a prerogative of the Hotel and Hospitality Industry Association and the Licensed Club Association then, by implication, the Independent Gaming Corporation falls under the influence of these two associations, which established the Independent Gaming Corporation. My questions are as follows. Is it the perception of the Premier and the Government that the Independent Gaming Corporation represents hotel, hospitality and licensed club interests, as the Premier clearly stated the other day? If so, what is the Government now prepared to do to guarantee the protection of the monitoring licence from the taint of corruption which is inherent in the Premier's statement? If not, will the Premier clarify what he meant by the Independent Gaming Corporation representing the interests of the hotels, licensed club and hospitality industry?

The Hon. R.I. LUCAS: I will be pleased to refer that question to the Premier. I hasten to say at this stage that I would ask the honourable member not to jump to too many conclusions or inferences from what the Premier might have said. I have not seen the comment to which the honourable member has referred. I will make myself familiar with it, have a discussion with the Premier and bring back a reply as soon as possible. I know that the honourable member will wait, and I will try to make sure that that is brought back as expeditiously as possible.

CAP FUNDING

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about CAP funding for Peterborough.

Leave granted.

The Hon. R.R. ROBERTS: I refer to a newspaper article in the *Flinders News*—a mid-northern publication which covers the Mid North, Port Pirie and surrounding areas. The article is headed 'Mayor slams "kick in the guts"'. They are strong words from Mayor Whittle of Peterborough. The article states:

> Peterborough has been 'kicked in the guts' by decisions that slash thousands of dollars in funding from its three schools, according to the Mayor, Ruth Whittle. Mrs Whittle spoke after almost 200 people attended a public meeting on Thursday [of last week] over the decision by an Adelaide committee to scrap the country areas program funding for the town. She said the schools—the high school, primary school and St Josephs Catholic Primary School—had received the funding, with schools at Orroroo, Yunta, Carrieton and Terowie, for 17 years. But she said this year the funding for Peterborough had ended because of criteria changes. 'They have changed the goalposts so we don't qualify', she said.

Words almost failed her, but not quite. The article continues:

> She said the funding was determined by an index committee set up by the State Government. The money came from the Federal Government to lessen the burden of isolation for some country schools. The money received by the schools has been used to enable students to travel to Adelaide to do work experience and participate in sport or cultural exchanges and camps. Over the years it has been used to buy and replace a bus used for this purpose by all the schools in the funding 'cluster'area.

The Minister for Education will receive a petition from the township of Peterborough. Mrs Whittle said that the index committee had changed its criteria to exclude funding for towns which had more than 2 000 people and which were within 150 kilometres of a major cultural centre of more than 10 000 people. In this case they have changed the criteria from Adelaide to Port Pirie. The statistics are worth looking at and, from your own experience in rural South Australia, Mr President, you would know some of the geography. However, I will explain some of it for members who are not fully aware.

Peterborough has 2 138 residents and was 19 kilometres outside the limit for the distance of a major cultural centre, namely, Port Pirie. That region in Peterborough has suffered over the past 10 or 15 years for one reason or another, including the rural downturn, of which we are all fully aware. The rationalisation of the railway system in Australia has affected Peterborough dramatically, and there have been changeovers in such things as power generation in Peterborough when it was connected to ETSA, with a significant number of jobs lost.

The town is facing considerable concern following the announcement prior to the last election (and this has been reinforced) that the Pipelines Authority will be sold, and this could affect another 43 jobs in Peterborough. With the spin off, that figure will probably be higher. This township in the centre of South Australia has many disadvantaged families. The services that have been provided have been most welcome and have given the opportunity for rural children to participate in the normal programs that one expects in metropolitan areas.

Some of the comments I have received from people who are outraged by this decision include statements that it is heartless and insensitive; offensive in terms of social justice; is a complete abrogation of community service obligations; abandons the promises of commitment to regional South Australia and decentralisation; fails to give proper recognition to the importance of rural South Australia to the economy; and is completely insensitive to the problems facing people living in country areas.

The Hon. R.I. Lucas: Who is saying that?

The Hon. R.R. ROBERTS: I have had a plethora of phone calls; I will give you the notes. My questions to the Minister on this serious issue are:

1. Will the Minister overturn the decision immediately?

2. Will the Minister provide this Council with copies of the community impact statements that have been touted by the Minister for State Development (Hon. John Olsen) at a number of local government gatherings. He has said that the Government will provide social impact and community impact statements before any Government services are reduced in country areas?

3. Will he provide those community impact statements which supposedly justify this outrageous decision?

The Hon. R.I. LUCAS: That is a lovely story, but let me give the honourable member some facts. First, no decision has been taken by me in relation to the Country Areas Program. Secondly, when the honourable member started talking about a plethora of phone calls—if that was the phrase he used—

The Hon. L.H. Davis: That was the give-away, wasn't it?

The Hon. R.I. LUCAS: Yes, that was the give-away. I was not sure about 'plethora of phone calls'. Nevertheless, whatever number that is in relation to this particular issue—

An honourable member interjecting:

The Hon. R.I. LUCAS: The honourable member, in referring to that plethora of phone calls, was indicating that this was insensitive to regional development and a swipe at country communities. I indicate that the Country Areas Program, as the honourable member suggested, is a Commonwealth-funded program. In 1994-95 it will have no less—and it might even be more—money being used for country communities to assist country schools. The number of schools that will be on the program in 1994-95 will be about 105, which is exactly the same number as in 1993-94. So, it is not a cutback: it is the same amount of money and the same number of schools.

The dilemma is that currently there are about 100 schools on the program, and they have been on the program for some time, and equally you have even more country schools which have not been on the program and which did not get a dollar out of the Country Areas Program under the previous Labor Government. It is a problem. There is a set sum of money that can be divided between amongst 100 or so schools, and the previous Government had a list of schools that were receiving money.

The schools that were on the program were delighted to be on it, but I can assure members that the 100 or 200 country schools in regional communities that were not put on the program by the Labor Government—some in the area represented, at least in some way, by the honourable member—are equally complaining loudly that they have not been allowed to get a share of the Country Areas Program funding.

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: Well, we might even get a plethora of phone calls in relation to that. However, that is the problem. It is not a cutback in funding for country communities, and it is not a cutback in the number of schools that can be assisted. Rather, it is a question, and a difficult one, about whether you say to those 100 schools that are getting the funding that they will be on the program forever and a day. Do you say to those schools, 'You were once on the program and you must stay on it forever. If you somehow missed out going on the program you must stay off if forever'?

That is the sort of logic that the Hon. Mr Roberts is putting to those country schools in his area that do not get a share of the Country Areas Program funding. It is fine for the Hon. Mr Roberts to defend a particular school—and there are a number, it is not just Peterborough—but there are also a number of schools that have been on the program for a number of years, and getting it, but at the same time not say anything to those country schools in equally disadvantaged communities that have not had a brass razoo from the Country Areas program for a decade or more.

The Hon. Mr Roberts is suggesting that they will never get a dollar out of that program. I said at the outset that no decision has yet been taken. A committee representing country interests, the department, parents, principals and a variety of other interest groups has met and made some recommendations. Those recommendations have been circulated to country schools. Those schools that are recommended to come off the list are complaining and complaining loudly. Those schools which are recommended to come on to the list—an equal number—are jumping with joy.

So, any decision that is taken to put another school back on the list will mean the removal of an existing school. I will correspond with the Hon. Mr Roberts, because if he wants three schools to go back on the list I will be asking him to recommend to me which three schools he believes ought to go off that list from his part of South Australia.

The Hon. L.H. Davis: You might not get a plethora of phone calls about that.

The Hon. R.I. LUCAS: I might not get a plethora from the Hon. Mr Roberts, I suspect. I suspect that I will not get even one phone call from the honourable member when those sorts of decisions are put on his table.

That is the position. I am aware of the sensitivity of this issue in relation to Peterborough. My officers and I have had discussions with them and they have a very good case, as do some of the other schools; I acknowledge that. However, in the end, we must make a decision, if it is not to be this year, that at some stage or other some of these 100 schools have to accept that other country schools deserve a fair share of the Commonwealth Country Areas Program money. They cannot just assume that because they were once on the program they must forever and a day stay on the program and that, because a Labor Government did not put other schools on the program, they are therefore perpetually locked out from getting a dollar from the Country Areas Program.

GRANGE COMMUNITY CENTRE

The Hon. G. WEATHERILL: I seek leave to make a brief explanation before asking the Minister of Transport, representing the Minister for Local Government Relations, a question about Grange Community Centre.

Leave granted.

The Hon. G. WEATHERILL: Earlier this year, the State Government decided to cut the centre's funding of $15 000 to $8 080 as from September 1994. The council then cut its contributions to the centre of $7 500. The management of the centre is absolutely sick and tired of fighting for funding in the area because this has been going on for some time. I have been to see the council and they say there is no logical reason that the council this year should not be able to give them a one-off offer of $20 000 to keep this centre open.

The centre is extremely important to the area, offering as it does $132 000 worth of volunteer work to the local community. The centre's services include adult education, parent support groups and recreation for people with intellectual disabilities. This is the only centre of its kind in the area. Each month it services about 1 500 people, many of whom would find it very difficult to go elsewhere.

Will the Minister look into funding for this important service to the Henley and Grange community? Will the Minister reinstate and increase funding rather than cut funding, and if not, why not?

The Hon. DIANA LAIDLAW: I will refer the question to the Minister and bring back a reply. I think it was to be referred to the Minister for Local Government Relations, but the funding issue is within the province of the Minister for Family and Community Services. So, I will refer the question to both Ministers.

HOME SAFELY

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about the *Home Safely* education kit.

Leave granted.

The Hon. ANNE LEVY: Some time ago I had sent to me a *Home Safely* education kit which, I am sure, was also sent to other members of Parliament. It states that it is a project for senior secondary students to encourage discussion about driving and alcohol. On looking at it, it seems to be a reasonable approach to the topic. However, it was produced by an English teacher from interstate. The educational advisers for the project, of whom there are reputedly five, are from Victoria, New South Wales and the ACT. There was no educational adviser from South Australia involved at all.

Furthermore, the kit was produced by the Distilled Spirits Industry Council of Australia Inc., which could hardly be regarded as a completely impartial body in this matter, although this does not mean that it has necessarily seen that self-interest is expressed in the kit. However, it does raise questions as to how independent the kit is of the self-interest of those who have funded it.

Furthermore, the kit says that it has been endorsed by various Federal and State Ministers for Health and Education. Has the Minister for Education seen this kit? Has he endorsed its use in South Australian schools, particularly in view of the fact that no South Australian was involved either in its production or in advising on its content? Is the kit being used in any school in South Australia, either in the Government or independent sector?

The Hon. R.I. LUCAS: The answer to the question about whether it is being used is 'Yes': it is being used in some schools. I recall seeing a copy of the kit some time earlier this year. My understanding is that it has the endorsement of the department. The honourable member should realise that curriculum matters are matters within the province of the Chief Executive Officer—

The Hon. Anne Levy: I was quoting from the kit. I know who approves curriculum. It says that it is endorsed by Ministers.

The PRESIDENT: Order!

The Hon. R.I. LUCAS: In relation to what is used in Government schools in South Australia, it does not matter what is on your kit; it is a question of whether or not, within the terms of the Act, the Chief Executive Officer of the Department for Education and Children's Services approves its use in schools. If that is the question that the honourable member referred to me, as I understood it, and not what was on her kit, I will have a discussion with my Chief Executive Officer in relation to whether or not it is authorised for use. I will check to see whether there is any correspondence. It is correct to say, as is on the back of the kit, from other Ministers in other States that Ministers sometimes correspond with groups and endorse in a general way the use of the kit in Government schools after advice from the Chief Executive Officer or Director-General of their respective departments. I will check those issues and bring back a reply.

RURAL INFRASTRUCTURE

The Hon. T.G. ROBERTS: I seek leave to ask the Minister representing the Minister for Industry, Manufacturing, Small Business and Regional Development a question about rural infrastructure.

Leave granted.

The Hon. T.G. ROBERTS: I have not had a plethora of phone calls about this question. During the break I drove to Yorke Peninsula, had a look at the problems and spoke to a number of people about specific problems in their region. I also spoke to a number of people in other regions. I am on a committee or task force in the Mallee-Murraylands regional area which is presenting a program for regional development to the Federal Government, anyone else who will listen and any Government department from which they can attract funds to support their application for the development of industry growth in the region. I am also on the Environment, Resources and Development Committee which has considered amendments to development plans put before it by regional Economic Development Boards in an effort to attract industry. I am aware of the efforts that are being made in regional areas to try to develop employment opportunities for people in the rural sector.

When you are sitting on various committees (and I guess you could call them strategy committees and parliamentary committees), you see a lot of overlapping energy being put by a lot people in regional areas into attracting virtually the same types of industries to their regions. There does not appear to be any overall coordination at a State level to attract some life into the regions that are obviously dying, and there does not appear to be a plan being implemented by the State Government to advise the regional Economic Development Boards as to which areas to try to expend their energies on. The major difficulties the regional Economic Development Boards are having are that not only is it competitive in a State sense to attract employment opportunities but also it is very competitive on a national level because the other States are having the same problems as South Australia.

Programs are being put forward in regional areas through labour adjustment programs. Those programs are being run by major unions in conjunction with employer bodies and State departments to try to attract programs suitable for redundant workers in major industries, that is, rail in terms of the transport industry and adjustment packages for the motor industry and others. They are having extreme difficulty in coordinating local, State and Federal input to attract appropriate funding to put these programs into place. The double jeopardy that rural areas have is that they are not only facing the dismantling of their own infrastructure as it stands now but they can no longer attract, because of that competitiveness, replacement industries to stop the drift of population away from regional areas into cities and major regional towns. The drift then continues, I suggest, out of this State and into some of those economic hot spots that exist nationally, and that is to Sydney, Queensland and in some cases Western Australia.

It is a major problem. Unless we can stop that drift from regional centres the State will suffer a major drift of population and skills. The extra problem that rural industries face is recession through drought. If you add that to the infrastructure adjustments that are being made nationally, plus the impact of drought, States have to try that much harder to provide infrastructure support for regional areas particularly on the Yorke Peninsula, Mid-North and Eyre Peninsula than the metropolitan area, although it is difficult enough for that area as well. My question is: will the Government adopt a positive regional development policy that encourages technology transfer, housing, and health and social welfare

support programs to allow for a more equal distribution of wealth in this State?

The Hon. R.I. LUCAS: I can say without fear of contradiction that the Minister's reply will be that he and the Government will adopt a positive regional development program. In his reply, I am sure that the Minister will be able to bring back a series of initiatives that the Minister, the department and Government are currently undertaking or are soon to undertake in that important area of regional development. The only other comment I would make about the shift of employment and economic activity from South Australia to the Eastern States, which was referred to by the honourable member in his explanation to his question, is in relation to the important question of cost differential between South Australia and the Eastern States, both in the cost of living and also in the wage and salary conditions in South Australia compared to those of the Eastern States (and the honourable member would have some influence upon some of his union colleagues on this matter).

If we are to be more competitive than our competitors in the Eastern States in some of these important areas, we will have to be cost competitive. Therefore, if we already have a lower cost of living, that sort of wage and cost differential that used to exist in South Australia for some time is an important feature of South Australia as a State remaining cost competitive in the national and the international context. Therefore, moves by friends and colleagues of the honourable member in the union movement for national award and uniform coverage across the nation with uniform rates of pay are issues that the honourable member and his union colleagues will have to consider, if at the same time they want to talk about South Australia's retaining cost advantages and being able to prevent the flow of economic activity from smaller States such as South Australia away from South Australia into the bigger markets of the eastern seaboard. I will refer that question to my colleague in another place and bring back a reply.

HOME-BASED WORK

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Industrial Affairs, a question about home-based work.

Leave granted.

The Hon. CAROLYN PICKLES: I understand that, in accordance with article 39 of the Standing Orders of the International Labour Conference, Governments are requested to consult the most representative organisations of employers and workers before finalising their replies to a questionnaire which has been sent to Governments by the ILO and to give reasons for their replies. I understand that the deadline for the replies to this questionnaire are to reach the ILO in Geneva by 30 September this year. I also understand that the United Trades and Labor Council of South Australia forwarded to the Minister its response to the questionnaire on 9 August and that it has made this document public.

This document contains some very specific recommendations on the subject of home-based work. I understand that the Federal position is being determined and that State responses will be taken into consideration for a national response. My questions to the Minister are: will the Government be supporting the establishment of an ILO convention and recommendation on home-based work to ensure equitable remuneration and conditions are available to home-base workers? Has the Government prepared its response to the ILO, and will the Government make its response public?

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

HANSARD BOUND VOLUME

The Hon. ANNE LEVY: Mr President, I seek leave to make a very brief explanation before directing a question to you, Sir, on the question of *Hansard*.

Leave granted.

The Hon. ANNE LEVY: Not long ago I received my copy of the bound volumes of *Hansard* for the 1992-93 year, the Forty-Seventh Parliament, Fourth Session, and on all four volumes of the session Fourth was spelt F-o-r-t-h. I am wondering whether there is anything we can do to have the bound volumes corrected so that this spelling error is not forever perpetuated in the *Hansards* of this Parliament. Has the matter of poor spelling been taken up with State Print and *Hansard* and, if not, why not?

The PRESIDENT: The answer is that I am aware of the mistake. It is a very expensive mistake to correct. It has been noted, and I would anticipate that it will not happen in the future—although, who knows, mistakes like that do get past proof readers, as I understand, quite frequently, as we see in our own papers. But I think State Print is apologetic about what has happened, and we will remind them, from the honourable member's question, of their obligations.

The Hon. Anne Levy: If State Print will give me a sticker I will be very happy.

The PRESIDENT: I will investigate the matter. I am advised that there is something to be stuck on the outside to try to correct it. But I will seek further advice and give the honourable member an answer.

BUDGET PAPERS

The Hon. R.I. LUCAS (Minister for Education and Children's Services): The budget was just held up by debate and discussion on the whys and wherefores of sticky labels over the top of *Hansard*.

The Hon. Anne Levy interjecting:

The Hon. R.I. LUCAS: I was fascinated; that is the first time a document error has ever occurred in the history of the Western World!

I seek leave to table a copy of the Budget Speech 1994-95, Financial Statement 1994-95, Estimates of Receipts and Payments 1994-95, Economic Conditions and the Budget 1994-95, Capital Works Program 1994-95, Lotteries Commission of South Australia—Annual Report 1994, South Australian Superannuation Fund Investment Trust—Annual Report 1994, State Government Insurance Commission—1993-94 Annual Report, Department of Treasury and Finance—Annual Report 1993-94, Bank of South Australia Limited (Bank SA)—1993-94 Results, Group Asset Management Division 1994—Operating Result, South Australian Asset Management Corporation (previously known as State Bank of South Australia)—Annual Results 1994.

Leave granted.

LAND AGENTS BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to regulate land agents; to repeal the Land Agents, Brokers and Valuers Act 1973; and for other purposes. Read a first time.

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

That this Bill be now read a second time.

Ideas about regulation have changed significantly over the past 20 years. Consideration of the role that regulation plays has assumed growing importance in recent times due to the greater pressures which exist for Australian and South Australian businesses to compete nationally and internationally as to prices, standards and service. Regulation by its very nature involves the imposition of additional costs and other burdens upon business by Government, in the administration of legislation. Such costs ultimately are passed onto consumers.

Whilst in opposition the Government received many complaints from associations representing land agents, conveyancers and valuers about the nature of and the effectiveness of the regulatory provisions relating to these occupations. The associations indicated a desire to play a more significant role in the administration of their industry and occupation. Shortly after taking up office, the Government instigated a review of the regulatory framework of all legislation in the Consumer Affairs Portfolio. A Legislative Review Team was appointed to conduct the Review and requested that they give priority to the review of the Land Agents, Brokers and Valuers Act.

Over many years the Real Estate Institute has played a significant role in the direction being taken by the real estate industry in this State. The Institute has clearly stated its preference for a more co-operative approach in the regulation of its profession. It has demonstrated a mature approach to issues concerning the real estate profession and the role that it plays in working with Government towards achieving high standards of behaviour and competence among land agents is acknowledged.

There are four key features of the Land Agents Bill. These are firstly, a recognition of the legitimate public interest in the continued imposition of education and probity standards for agents, but a simplification of the related bureaucracy. Secondly, the partial de-regulation of the controls on those employed by agents, with a compensating statutory duty of proper management and supervision of the business of an agent upon the corporation. Thirdly, the removal of anti-competitive restrictions on the licensing of corporate agents and fourthly the provision of mechanisms for the involvement of industry in the active enforcement of the duties of land agents including the monitoring of trust accounts.

The Bill introduces a system of registration for land agents. A registration system will be far more streamlined and efficient than the current licensing system. Registration is based on an administrative system, whereas licensing is based upon a quasi-judicial system which has regard to a person's fitness and propriety to hold a licence.

In essence registration requires an applicant to meet certain criteria before being granted registration. The administration costs associated with a registration system are less than for a licensing system. Resources can therefore be saved or diverted to other areas such as the enforcement of provisions of the Act, or for education and information purposes.

The Bill proposes that corporations will be entitled to register as a land agent. A statutory duty on the part of the corporation is provided which will require that a corporation with registration as a land agent, properly manage its agency business through a natural person who is a registered agent. Under the Bill liability will exist against both the directors of the corporation and the agent corporation for failure to properly supervise and manage the agent's business. The interests of consumers will therefore be protected under this system, and it removes the potentially anti-competitive restrictions upon corporate registration.

Under the Bill hotel brokers and real estate managers will no longer be regulated and sales representatives will no longer be required to be registered. The registration and licensing of these groups appear to add extra levels of regulation to the profession without any additional responsibility being attached to them or benefit to the public. The need for the current style of regulation of these occupations no longer exists in the 1990's, and their deregulation is supported by the Real Estate Industry and is also recommended in the Vocational Education, Employment and Training Committee report on partially registered occupations. Partial deregulation of these groups may enable the profession to move to a more efficient structure, yielding economies that could be passed onto consumers. The benefits flowing to consumers from such efficiencies are likely to outweigh the alleged consumer protection originally provided by regulation.

It is proposed in the Bill that the Commissioner have the power to delegate specific matters under the Act to industry organisations by means of a written agreement. This is a new and significant development. Government will be working with Industry to develop appropriate complaint resolution procedures and codes of conduct for real estate agents, to ensure that a balance exists between the rights of consumers and the responsibilities of agents. The Government favours the Institute taking a leading role in surveillance of its industry and will be working toward negotiating such an outcome upon suitable terms and conditions.

The Bill contains broad and extensive disciplinary provisions, including a power to discipline a land agent for a breach of an assurance that he or she may have entered into at the request of the Commissioner for Consumer Affairs, under the provisions contained in the Fair Trading Act 1987.

The substantive provisions of the existing legislation relating to trust accounts have been retained and an additional power has been given to the Commissioner to appoint a person as temporary manager of the business of the land agent to transact any urgent or uncompleted business of the agent under the circumstances prescribed in the Bill. This management provision reflects a similar provision contained in the Legal Practitioners Act 1936.

On 12 May 1994 the Land Agents Bill was introduced into Parliament for the first time for the purpose of public exposure and to facilitate further public comment during the recess of Parliament. The Bill has now been widely circulated for comment and the Legislative Review Team has received a number of submissions on this Bill.

As a consequence of the consultation process the new Bill contains an amendment in the form of an additional provision relating to sales representatives. This additional provision can be found in clause 11. It prohibits a person from holding themselves out, acting as, or remaining in the service of any person as, a sales representative unless he or she holds the qualifications prescribed by regulation or has been employed as a sales representative, manager or licensed agent under the current Act. Clause 11 also prohibits the employment of a person as a sales representative unless that person holds the

qualifications prescribed by regulation or has been employed as a sales representative, manager or licensed agent under the current Act. Penalties are prescribed for both the registered agent and the sales representative for a breach of these provisions. The aforesaid provisions will ensure a minimum standard of entry into the occupation of sales representative without the necessity for undue regulatory intervention.

One of the submissions the Government received in connection with this Bill was from the Real Estate Institute of South Australia Incorporated. The major issues raised by the Institute and the response of Government to these issues are as follows:

(a) The need for all registered agents to hold practising certificates. Practising certificates are seen as the imposition of another layer of regulation upon industry with no obvious benefit to consumers and, in any event, not in keeping with the Government's policy of reducing unnecessary regulation on industry.

(b) The need for the establishment of a Professional Standards Tribunal. It is the view of Government having examined the proposal which has been provided by the Institute that such a Tribunal would result in a cumbersome and unwieldy forum for the hearing of matters arising under the Bill and that the forum proposed in the Bill, namely the District Court (as a last resort for the resolution of complaints), would be a more cost effective and appropriate forum.

(c) The need for compulsory professional indemnity insurance for all registered agents. This is seen by Government as an unnecessary additional impost on industry, with no demonstrable benefit to either the agent or consumer protection. The Indemnity Fund covers any defalcation on the part of a registered agent. In any event, any fraudulent activity would most likely be dealt with in the criminal justice system. A clear need has therefore not been demonstrated for professional indemnity insurance.

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

Leave granted.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

Clause 3: Interpretation

'Court' is defined as the District Court of South Australia. The Court is given jurisdiction under the Bill—

- to deal with disciplinary matters;
- to determine appeals against decisions of the Commissioner with respect to the appointment of an administrator or temporary manager of an agent's trust accounts or business;
- to terminate the appointment of an administrator or temporary manager of an agent's trust account or business;
- to determine appeals against the Commissioner's assessment of compensation from the indemnity fund.

'Director' of a body corporate is given a wide meaning to encompass persons who control the body corporate. Under the Bill directors of a body corporate may be disciplined, or prosecuted for an offence, alongside the body corporate.

Clause 4: Meaning of agent

The definition of agent sets the scope of the Bill. An agent is defined as a person who carries on a business that consists of or involves—

- selling or purchasing or otherwise dealing with land or businesses on behalf of others, or conducting negotiations for that purpose; or
- selling land or businesses on his or her own behalf, or conducting negotiations for that purpose.

Land encompasses interests in land and strata titles. Dealing with land encompasses granting or taking leases or tenancies over land. Business includes an interest in a business or the goodwill of a business but excludes a share in the capital of a corporation. Sell includes auction and exchange.

A person is excluded from the definition of agent in so far as the person participates in any of the following activities:

- selling or purchasing or otherwise dealing with land or businesses on behalf of others, or conducting negotiations for that purpose, in the course of practice as a legal practitioner;
- selling land or businesses, or conducting negotiations for that purpose, through the instrumentality of an agent;
- engaging in mortgage financing. (Mortgage financing means negotiating or arranging loans secured by mortgage including receiving or dealing with payments under such transactions. Mortgage includes legal and equitable mortgages over land.)

Clause 5: Commissioner to be responsible for administration of Act

PART 2

REGISTRATION AND MANAGEMENT OF AGENT'S BUSINESS

Clause 6: Agents to be registered

It is an offence to carry on business as an agent or to hold oneself out as an agent without being registered.

A person who acts as an agent but who is not registered is not entitled to commission.

A registered agent must obtain a written authorisation to act as a person's agent and, if that authority is not obtained, the agent is not entitled to commission.

Clause 7: Application for registration

An application for registration as an agent must be in the form required by the Commissioner and must be accompanied by the relevant fee.

Clause 8: Entitlement to be registered

The requirements for registration of a natural person as an agent are as follows:

- the person must have the educational qualifications required by regulation; and
- the person must not have been convicted of an offence of dishonesty; and
- the person must not be 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; and
- the person must not be an undischarged bankrupt or subject to a composition or deed or scheme of arrangement with or for the benefit of creditors; and
- the person must not have been a director of a body corporate that has, within five years of the application for registration, been wound up for the benefit of creditors.

The requirements for registration of a body corporate as an agent are as follows:

The body corporate—

- must not be 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; and
- must not be being wound up or under official management or in receivership; and directors of the body corporate
- must not have been convicted of an offence of dishonesty; and
- must not be 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; and
- must not have been the director of a company that has, within five years of the application for registration, been wound up for the benefit of creditors.

Clause 9: Duration of registration and annual fees and returns

A registered agent must pay an annual fee and lodge an annual return. The agent's registration is liable to cancellation for non-compliance.

Clause 10: Incorporated agent's business to be properly managed and supervised

The business of an incorporated agent must be properly managed and supervised by a registered agent who is a natural person.

Clause 11: Qualifications of sales representatives

A person must not employ a person as a sales representative unless the person holds prescribed qualifications or was registered as a sales

representative or manager, or licensed as an agent, under the current Act.

PART 3
TRUST ACCOUNTS AND INDEMNITY FUND
DIVISION 1—PRELIMINARY

Clause 12: Interpretation of Part 3

DIVISION 2—TRUST ACCOUNTS

Clause 13: Trust money to be deposited in trust account

An agent is required to have a trust account and to pay all trust money into it. Money includes any cheque received by the agent on behalf of another.

Clause 14: Withdrawal of money from trust account

Money may be withdrawn from a trust account only for the purposes set out in this clause.

Clause 15: Payment of interest on trust accounts to Commissioner

Interest on trust accounts is to be paid to the Commissioner for payment into the indemnity fund maintained under the Bill.

Clause 16: Appointment of administrator of trust account

The Commissioner may appoint an administrator of an agent's trust account if the Commissioner knows or suspects on reasonable grounds that the agent—

- is not registered as required by law;
- has been guilty of a fiduciary default in relation to trust money;
- has operated on the trust account in such an irregular manner as to require immediate supervision;
- has acted unlawfully, improperly or negligently in the conduct of the business;
- in the case of a natural person—is dead or cannot be found or is suffering from mental or physical incapacity preventing the agent from properly attending to the agent's affairs;
- has ceased to carry on business as an agent;
- 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, is being wound up, is under official management or is in receivership.

Clause 17: Appointment of temporary manager

The Commissioner may, in conjunction with appointing an administrator of an agent's trust accounts, appoint a temporary manager of the agent's business for the purpose of transacting urgent or uncompleted business.

Clause 18: Powers of administrator or temporary manager

The administrator or manager is given powers with respect to the agent's documents and records and has any additional powers set out in the instrument of appointment.

Clause 19: Term of appointment of administrator or temporary manager

The term of appointment is a renewable term of up to 12 months but the appointment may be terminated sooner by the Commissioner or the Court.

Clause 20: Appeal against appointment of administrator or temporary manager

An agent may appeal against the appointment to the District Court within 28 days.

Clause 21: Keeping of records

An agent is required to keep detailed trust account records and to provide receipts to clients. The records are required to be kept for at least 5 years.

Clause 22: Audit of trust accounts

An agent's trust account must be regularly audited and the auditor's report lodged with the Commissioner. The agent's registration is liable to cancellation for non-compliance.

Clause 23: Appointment of examiner

The Commissioner may appoint an examiner in relation to the accounts and records, or the auditing, of an agent's trust account.

Clause 24: Obtaining information for purposes of audit or examination

An auditor or examiner of an agent's trust account is given certain powers with respect to obtaining information relating to the account.

Clause 25: Banks, etc., to report deficiencies in trust accounts

The report is to be made to the Commissioner.

Clause 26: Confidentiality

Confidentiality is to be maintained by administrators, temporary managers, auditors, examiners and other persons engaged in the administration of the Bill.

Clause 27: Banks, etc., not affected by notice of trust

Financial institutions are not expected to take note of the terms of any specific trust relating to a trust account but are not absolved from negligence.

Clause 28: Failing to comply with requirement of administrators, etc.

It is an offence to hinder etc. an administrator, temporary manager, auditor or examiner.

DIVISION 3—INDEMNITY FUND

Clause 29: Indemnity Fund

The Commissioner is to maintain an indemnity fund comprised of—

- the money standing to the credit of the current indemnity fund kept under the *Land Agents, Brokers and Valuers Act 1973*;
- interest paid by banks, building societies and credit unions to the Commissioner on trust accounts;
- money recovered by the Commissioner from an agent in relation to the agent's default;
- fines recovered as a result of disciplinary proceedings;
- interest accruing from investment of the fund;
- any other money required to be paid into the fund under the Bill or any other Act.

The fund is to be used for—

- the costs of administering the fund;
- compensation under the Bill;
- insurance premiums;
- educational programs conducted for the benefit of agents or members of the public, as approved by the Minister;
- for any other purpose specified by the Bill or any other Act.

Clause 30: Claims on indemnity fund

A person may claim compensation from the fund if the person has suffered pecuniary loss as a result of a fiduciary default of an agent and has no reasonable prospect of otherwise being fully compensated.

No compensation is payable if the default is that of an unregistered agent and the person should have been aware of the lack of registration.

Clause 31: Limitation of claims

The Commissioner may set a date by which claims relating to a specified fiduciary default or series of defaults must be made.

Clause 32: Establishment of claims

The Commissioner must notify the agent concerned of any claim for compensation and must listen to both the agent and the claimant on the matter. The Commissioner must determine the claim and notify the claimant and agent of the determination.

Clause 33: Claims by agents

An agent may make a claim for compensation from the fund if the agent has paid compensation to a person in respect of the fiduciary default of a partner or employee of the agent. The agent must have acted honestly and reasonably and all claims in respect of the default must have been fully satisfied.

No compensation is payable if the default is that of an unregistered agent and the person should have been aware of the lack of registration.

Clause 34: Personal representative may make claim

Clause 35: Appeal against Commissioner's determination

An appeal against the Commissioner's determination may be made to the District Court within 3 months by the claimant or agent.

Clause 36: Determination, evidence and burden of proof

Possible reductions for insufficiency of the indemnity fund are to be ignored in determining a claim.

Admissions of default may be considered in the absence of the agent making the admission.

Questions of fact are to be decided on the balance of probabilities.

Clause 37: Claimant's entitlement to compensation and interest

Interest is to be paid on the amount of compensation to which a claimant is entitled.

Clause 38: Rights of Commissioner

If a claim for compensation is paid out of the fund, the Commissioner is subrogated to the rights of the claimant against the person liable for the fiduciary default.

Clause 39: Insurance in respect of claims against indemnity fund

The Commissioner may insure the indemnity fund.

Clause 40: Insufficiency of indemnity fund

The Commissioner is given certain powers to ensure that the fund is distributed equitably taking into account all claims and potential claims, including the power to set aside a part of the fund for the satisfaction of future claims.

Clause 41: Accounts and audit

The fund is to be audited by the Auditor-General.

PART 4
DISCIPLINE

Clause 42: Interpretation of Part 4

Disciplinary action may be taken against an agent (including any person registered as an agent but not carrying on business as an agent and any former agent) or a director of an agent that is a body corporate (including a former director).

Clause 43: Cause for disciplinary action

Disciplinary action may be taken against an agent if—

- registration of the agent was improperly obtained;
- the agent has acted contrary to an assurance accepted by the Commissioner under the *Fair Trading Act 1987*;
- the agent or any other person has acted contrary to this Bill or the Land and Business (Sale and Conveyancing) Act 1994 or otherwise unlawfully, or improperly, negligently or unfairly, in the course of conducting, or being employed or otherwise engaged in, the business of the agent;
- in the case of an agent who has been employed or engaged to manage and supervise an incorporated agent's business—the agent or any other person has acted unlawfully, improperly, negligently or unfairly in the course of managing or supervising, or being employed or otherwise engaged in, that business;
- the agent has been convicted of an offence of dishonesty;
- the agent 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 agent 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 registered as an agent, the body corporate is being wound up, is under official management or is in receivership;
- the agent has otherwise ceased to be a fit and proper person to be registered as an agent.

Disciplinary action may be taken against a director of a body corporate if disciplinary action could be taken against the body corporate.

Disciplinary action may not be taken if it is not reasonable to expect the person to have been able to prevent the act or default.

Clause 44: Complaints

A complaint alleging grounds for disciplinary action against an agent may be lodged with the District Court by the Commissioner or any other person.

Clause 45: Hearing by Court

The Court is empowered to adjourn the hearing of a complaint to enable investigations to take place and to allow modification of a complaint.

Clause 46: Disciplinary action

Disciplinary action may comprise any one or more of the following:

- a reprimand;
- a fine up to $8 000;
- suspension or cancellation of registration;
  - if registration is suspended, the imposition of conditions as to the conduct of the agent's business at the end of the period of suspension;
- disqualification from obtaining registration;
- a ban on being employed or engaged in the industry;
- a ban on being a director of a body corporate agent.

A disqualification or ban may be permanent, for a specified period or until the fulfilment of specified conditions.

Clause 47: Contravention of orders

It is an offence to breach the terms of an order banning a person from the industry or from being a director of a body corporate in the industry. It is also an offence to breach conditions imposed by the Court.

PART 5
MISCELLANEOUS

Clause 48: Delegation

The Commissioner and the Minister may delegate functions or powers under this Bill.

Clause 49: Agreement with professional organisation

An industry body may take a role in the administration or enforcement of the Bill by entering an agreement to do so with the Commissioner. The Commissioner may only act with the approval of the Minister. The Commissioner may delegate relevant functions or powers to the industry body.

Clause 50: Exemptions

The Minister may grant exemptions from compliance with specified provisions of the Bill. An exemption must be notified in the *Gazette*.

Clause 51: Register of agents

The Commissioner must keep a register of agents available for public inspection.

Clause 52: Commissioner and proceedings before Court

The Commissioner is to be a party to all proceedings.

Clause 53: False or misleading information

It is an offence to make a false or misleading statement in any information provided, or record kept, under the Bill.

Clause 54: Statutory declaration

The Commissioner is empowered to require verification of information by statutory declaration.

Clause 55: Investigations

The Commissioner may ask the Commissioner of Police to conduct relevant investigations.

Clause 56: General defence

A defence is provided for a person who commits an offence unintentionally and who has not failed to take reasonable care to avoid the commission of the offence.

Clause 57: Liability for act or default of officer, employee or agent

An employer or principal is responsible for the acts and defaults of his or her officers, employees or agents unless the employer or principal could not be reasonably expected to have prevented the act or default.

Clause 58: Offences by bodies corporate

Each director of a body corporate (as widely defined) is liable for the offence of the body corporate.

Clause 59: Continuing offence

If an offence consists of a continuing act or omission, a further daily penalty is imposed.

Clause 60: Prosecutions

The period for the commencement of prosecutions is extended to 2 years, or 5 years with the authorisation of the Minister. Prosecutions may be commenced by the Commissioner or an authorised officer under the *Fair Trading Act* or, with the consent of the Minister, by any other person.

Clause 61: Evidence

Evidentiary aids relating to registration, appointment of an administrator, temporary manager or examiner and delegations are provided.

Clause 62: Service of documents

Service under the Bill may be personal or by post or by facsimile if a facsimile number is provided. In the case of service on a registered agent, service on a person apparently over 16 at the agent's address for service notified to the Commissioner is also acceptable.

Clause 63: Annual report

The Commissioner is required to report to the Minister annually on the administration of the Bill and the report must be laid before Parliament.

Clause 64: Regulations

The regulation making power contemplates, among other things, codes of conduct (which may be incorporated into the regulations as in force from time to time) and regulations fixing agent's charges or otherwise regulating those charges.

Schedule: Repeal and transitional provisions

The *Land Agents, Brokers and Valuers Act 1973* is repealed.

Transitional provisions are provided in relation to—

- licensed agents and registered managers becoming registered agents;
- the continued effect of approvals, appointments, orders and notices;
- mortgage financiers (These provisions are equivalent to those contained in the Land Agents, Brokers and Valuers (Mortgage Financiers) Amendment Act 1993 but not yet in operation).

The Hon. ANNE LEVY secured the adjournment of the debate.

CONVEYANCERS BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to regulate conveyancers; and for other purposes. Read a first time.

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

That this Bill be now read a second time.

Conveyancers are relied upon by consumers to provide an expert service in relation to the conveyance of real estate. The sale or purchase of real estate can often be the single most important financial transaction a consumer makes and a high

degree of reliance is placed upon the conveyancer's skills and expertise. In many instances, consumers place funds in the trust accounts of conveyancers and high standards of probity must be maintained in relation to those funds.

Although the occupation of non-solicitor conveyancing (landbroking) has been in existence for over one hundred years in this State, it is not until relatively recent times that conveyancing as a profession has taken a more professional approach. This is due to a number of factors including the development of competency based standards, the establishment of the Australian Institute of Conveyancers and the pressures placed upon the profession to gain a more competitive edge in the current economic climate.

Conveyancing is undergoing enormous change in Australia. In the past year conveyancers in this State and in Western Australia have seen their national ranks grow with the introduction of non-solicitor conveyancers in the Northern Territory and in New South Wales. Interest has also been expressed in introducing similar measures in Victoria and Queensland. It is possible that through the mechanism of mutual recognition we will eventually see non-solicitor conveyancing in all States and Territories. The Government has concerns about mutual recognition and, in particular, about ensuring that standards are maintained in the State. The work being done by the institute in relation to competency standards will go a long way towards this goal.

The changing nature of conveyancing through the introduction of such innovations as electronic conveyancing and the moves towards community titles means that conveyancing is a dynamic as well as a growing profession. The institute has played a significant role in seeking change and accountability in the profession. The profession can be regarded as one with a high degree of sophistication and is one which is clearly committed to the maintenance of high standards of skill and behaviour. The local division of the institute is extremely keen to become more involved in the maintenance of these standards and sees a clear role for itself to work with Government in establishing entry standards and in resolving consumer issues. The Bill provides a scheme of regulation which can accommodate such a role. One of the reasons that the Legislative Review Team was asked to give priority to this Bill was because the institute made representations to the Government for it to play a more significant part in the regulation of the profession. The Government is satisfied that the institute can fulfil a useful role in maintaining standards in the profession and in protecting the interests of consumers.

As indicated in relation to land agents, the Legislative Review Team considered it appropriate to retain a scheme of regulation but it did not consider that the current scheme could be maintained. This Bill also provides for the registration of conveyancers and a recognition of the public interest component necessary in relation to standards for conveyancers. Similarly the Bill introduces mechanisms allowing for the involvement of industry in the active enforcement of the duties of conveyancers, including the monitoring of trust accounts.

The Bill introduces a system of registration for conveyancers. This system will be far more streamlined and efficient than the current licensing system and, as with land agents, will require an applicant to meet certain criteria before being granted registration. It is also envisaged that the administration costs associated with a registration system will be less than for a licensing system, allowing resources to be utilised for other purposes.

The Bill proposes that corporations will be entitled to register as a conveyancer and the present system of regulation which provides considerable accountability upon corporations will be continued.

It is proposed in the Bill that the Commissioner have the power to delegate specific matters under the Act to industry organisations by means of a written agreement. This is a new and significant development. Government will be working with industry to develop appropriate complaint resolution procedures and codes of conduct for conveyancers to ensure that a balance exists between the rights of consumers and the responsibilities of conveyancers. It is hoped that a great deal of surveillance of conveyancers can be delegated to the institute after appropriate procedures have been negotiated.

A new provision is introduced into the Bill requiring conveyancers to have professional indemnity insurance. The institute was particularly keen to have such insurance made compulsory as it sees it as a necessary component of ensuring the highest possible standards in the profession.

The Bill contains broad and extensive disciplinary provisions, including a power to discipline a conveyancer for a breach of an assurance that he or she may have entered into, at the request of the Commissioner for Consumer Affairs, under the provisions contained in the Fair Trading Act 1987.

The substantive provisions of the existing legislation relating to trust accounts have been retained and an additional power has been given to the Commissioner to appoint a person as temporary manager of the business of the conveyancer to transact any urgent or uncompleted business under the circumstances prescribed in the Bill. This management provision reflects a similar provision contained in the Legal Practitioners Act 1936.

On 12 May 1994 the Conveyancers Bill was introduced to Parliament for the first time for the purpose of public exposure and to facilitate further public comment during the recess of Parliament. The Bill has now been widely circulated for comment and the Legislative Review Team has received a number of submissions on this Bill.

A number of minor amendments have been made to the Bill as a consequence of the consultation process. These include an amendment to clause 18 to make it clear that an administrator may be appointed to administer an agent's trust account in situations where the agent has acted contrary to the Act. In situations where for example a conveyancer has been operating as a conveyancer without a policy of professional indemnity insurance or has had his or her registration suspended as a consequence of disciplinary proceedings an administrator may be appointed to administer the agent's trust account. This amendment has also been incorporated into the Land Agents Bill 1994.

Another amendment which has been made to the Bill is to clause 59. This clause has been amended to include a provision which in effect extends the period of time in which prosecutions can be commenced from two years to five years. It is proposed that the approval of the Minister must be obtained for proceedings for an offence against the Act, which are intended to be commenced at a later time than two years and up to five years (inclusive) from the date on which the offence is alleged to have been committed. This amendment has also been incorporated into the Land Agents Bill 1994, the Land Valuers Bill 1994 and the Land and Business (Sale and Conveyancing) Bill 1994. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

Clause 3: Interpretation

A conveyancer is defined as a person who carries on a business that consists of or involves the preparation of conveyancing instruments for fee or reward, excluding a legal practitioner. A conveyancing instrument has the same meaning as "instrument" in the *Real Property Act* (*ie* "every document capable of registration under the provisions of any of the Real Property Acts, or in respect of which any entry is by any of the Real Property Acts directed, required, or permitted to be made in the Register Book").

'Court' is defined as the District Court of South Australia. The Court is given jurisdiction under the Bill—

- to deal with disciplinary matters;
- to determine appeals against decisions of the Commissioner with respect to the appointment of an administrator or temporary manager of a conveyancer's trust accounts or business;
- to terminate the appointment of an administrator or temporary manager of a conveyancer's trust account or business;
- to determine appeals against the Commissioner's assessment of compensation from the indemnity fund.

'Director' of a body corporate is given a wide meaning to encompass persons who control the body corporate. Under the Bill directors of a body corporate may be disciplined, or prosecuted for an offence, alongside the body corporate.

Clause 4: Commissioner to be responsible for administration of Act

PART 2

REGISTRATION OF CONVEYANCERS

Clause 5: Conveyancers to be registered

It is an offence to carry on business as a conveyancer or to hold oneself out as a conveyancer without being registered.

Clause 6: Application for registration

An application for registration as a conveyancer must be in the form required by the Commissioner and must be accompanied by the relevant fee.

Clause 7: Entitlement to be registered

The requirements for registration of a natural person as a conveyancer are as follows:

A natural person—

- must have the educational qualifications required by regulation; and
- must not have been convicted of an offence of dishonesty; and
- must not be 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; and
- must not be an undischarged bankrupt or subject to a composition or deed or scheme of arrangement with or for the benefit of creditors; and
- must not have been the director of a company that has, within five years of the application for registration, been wound up for the benefit of creditors.

The requirements for registration of a company as a conveyancer are as follows:

A company—

- must not be 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; and
- must not be being wound up or under official management or in receivership; and

directors of the company—

- must not have been convicted of an offence of dishonesty; and
- must not be 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; and
- must not have been the director of a company that has, within five years of the application for registration, been wound up for the benefit of creditors.

A company is not entitled to be registered as a conveyancer unless the memorandum and articles of association of the company contain stipulations so that—

- the sole object of the company must be to carry on business as a conveyancer;
- the directors of the company must be natural persons who are registered conveyancers (but where there are only two directors one may be a registered conveyancer and the other may be a prescribed relative of that conveyancer);
- no share in the capital of the company, and no rights to participate in distribution of profits of the company, may be owned beneficially except by—
  - a registered conveyancer who is a director or employee of the company; or
  - a prescribed relative of a registered conveyancer who is a director or employee of the company; or
  - an employee of the company;
  - not more than 10 per cent of the issued shares of the company may be owned beneficially by employees who are not registered conveyancers;
  - the total voting rights exercisable at a meeting of the members of the company must be held by registered conveyancers who are directors or employees of the company;
  - no director of the company may, without the prior approval of the Commissioner, be a director of another company that is a registered conveyancer;
  - the shares in the company beneficially owned by any person must be—
  - redeemed by the company; or
    - transferred to a person who is to become a director or employee of the company or to the trustee of such a person; or
    - distributed among the remaining members of the company,

  in accordance with the memorandum and articles of association of the company,
    - in the case of shares beneficially owned by the person as a registered conveyancer who is a director or employee of the company or as a prescribed relative of such a conveyancer—on the conveyancer ceasing to be a registered conveyancer or a director or employee of the company;
    - in the case of shares beneficially owned by the person as the spouse of a registered conveyancer—on the dissolution or annulment of their marriage or, in the case of a putative spouse, on the cessation of cohabitation with the registered conveyancer;
    - in the case of shares beneficially owned by a person as an employee of the company—on the person ceasing to be an employee of the company.

Clause 8: Duration of registration and annual fee and return

A registered conveyancer must pay an annual fee and lodge an annual return. The conveyancer's registration is liable to cancellation for non-compliance.

Clause 9: Requirements for professional indemnity insurance

Conveyancers must take out professional indemnity insurance as required by regulation.

PART 3

PROVISIONS REGULATING INCORPORATED CONVEYANCERS

Clause 10: Non-compliance with memorandum or articles

A registered conveyancer that is a company is guilty of an offence if the stipulations required to be included in its memorandum and articles are not complied with.

Clause 11: Alteration of memorandum or articles of association

A registered conveyancer that is a company is guilty of an offence if it alters its memorandum or articles so that they do not comply with the requirements of Part 2.

Clause 12: Companies not to carry on conveyancing business in partnership

Companies require the approval of the Commissioner to carry on business as a conveyancer in partnership with another person.

Clause 13: Joint and several liability

Directors are jointly and severally liable with the company in respect of civil liabilities incurred by a company that is a registered conveyancer.

PART 4

TRUST ACCOUNTS AND INDEMNITY FUND

DIVISION 1—PRELIMINARY

Clause 14: Interpretation of Part 4

DIVISION 2—TRUST ACCOUNTS

Clause 15: Trust money to be deposited in trust account

A conveyancer is required to have a trust account and to pay all trust money into it. Money includes any cheque received by the conveyancer on behalf of another. Money received in the course of mortgage financing is excluded from the concept of trust money. (Mortgage financing means negotiating or arranging loans secured by mortgage including receiving or dealing with payments under such transactions. Mortgage includes legal and equitable mortgages over land.)

Clause 16: Withdrawal of money from trust account

Money may be withdrawn from a trust account only for the purposes set out in this clause.

Clause 17: Payment of interest on trust accounts to Commissioner

Interest on trust accounts is to be paid to the Commissioner for payment into the indemnity fund maintained under the Bill.

Clause 18: Appointment of administrator of trust account

The Commissioner may appoint an administrator of a conveyancer's trust account if the Commissioner knows or suspects on reasonable grounds that the conveyancer—

- is not registered as required by law;
- has been guilty of a fiduciary default in relation to trust money;
- has operated on the trust account in such an irregular manner as to require immediate supervision;
- has acted unlawfully, improperly or negligently in the conduct of the business;
- in the case of a natural person—is dead or cannot be found or is suffering from mental or physical incapacity preventing the conveyancer from properly attending to the conveyancer's affairs;
- has ceased to carry on business as a conveyancer;
- 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, is being wound up, is under official management or is in receivership.

Clause 19: Appointment of temporary manager

The Commissioner may, in conjunction with appointing an administrator of a conveyancer's trust accounts, appoint a temporary manager of the conveyancer's business for the purpose of transacting urgent or uncompleted business.

Clause 20: Powers of administrator or temporary manager

The administrator or manager is given powers with respect to the conveyancer's documents and records and has any additional powers set out in the instrument of appointment.

Clause 21: Term of appointment of administrator or temporary manager

The term of appointment is a renewable term of up to 12 months but the appointment may be terminated sooner by the Commissioner or the Court.

Clause 22: Appeal against appointment of administrator or temporary manager

A conveyancer may appeal against the appointment to the District Court within 28 days.

Clause 23: Keeping of records

A conveyancer is required to keep detailed trust account records and to provide receipts to clients. The records are required to be kept for at least 5 years.

Clause 24: Audit of trust accounts

A conveyancer's trust account must be regularly audited and the auditor's report lodged with the Commissioner. The conveyancer's registration is liable to cancellation for non-compliance.

Clause 25: Appointment of examiner

The Commissioner may appoint an examiner in relation to the accounts and records, or the auditing, of a conveyancer's trust account.

Clause 26: Obtaining information for purposes of audit or examination

An auditor or examiner of a conveyancer's trust account is given certain powers with respect to obtaining information relating to the account.

Clause 27: Banks, etc., to report deficiencies in trust accounts

The report is to be made to the Commissioner.

Clause 28: Confidentiality

Confidentiality is to be maintained by administrators, temporary managers, auditors, examiners and other persons engaged in the administration of the Bill.

Clause 29: Banks, etc., not affected by notice of trust

Financial institutions are not expected to take note of the terms of any specific trust relating to a trust account but are not absolved from negligence.

Clause 30: Failing to comply with requirement of administrators, etc.

It is an offence to hinder etc. an administrator, temporary manager, auditor or examiner.

DIVISION 3—INDEMNITY FUND

Clause 31: Indemnity Fund

The Commissioner is to pay into the indemnity fund maintained under the *Land Agents Act 1994* (currently a Bill)—

- interest paid by banks, building societies and credit unions to the Commissioner on trust accounts;
- money recovered by the Commissioner from a conveyancer in relation to the conveyancer's default;
- fines recovered as a result of disciplinary proceedings;
- any other money required to be paid into the fund under the Bill or any other Act.

The fund is to be used for—

- compensation under the Bill;
- insurance premiums;
- educational programs conducted for the benefit of conveyancers or members of the public, as approved by the Minister;
- for any other purpose specified by the Bill or any other Act.

Clause 32: Claims on indemnity fund

A person may claim compensation from the fund if the person has suffered pecuniary loss as a result of a fiduciary default of a conveyancer and has no reasonable prospect of otherwise being fully compensated.

No compensation is payable if the default is that of an unregistered conveyancer and the person should have been aware of the lack of registration.

Clause 33: Limitation of claims

The Commissioner may set a date by which claims relating to a specified fiduciary default or series of defaults must be made.

Clause 34: Establishment of claims

The Commissioner must notify the conveyancer concerned of any claim for compensation and must listen to both the conveyancer and the claimant on the matter. The Commissioner must determine the claim and notify the claimant and conveyancer of the determination.

Clause 35: Claims by conveyancers

A conveyancer may make a claim for compensation from the fund if the conveyancer has paid compensation to a person in respect of the fiduciary default of a partner or employee of the conveyancer. The conveyancer must have acted honestly and reasonably and all claims in respect of the default must have been fully satisfied.

No compensation is payable if the default is that of an unregistered conveyancer and the person should have been aware of the lack of registration.

Clause 36: Personal representative may make claim

Clause 37: Appeal against Commissioner's determination

An appeal against the Commissioner's determination may be made to the District Court within 3 months by the claimant or conveyancer.

Clause 38: Determination, evidence and burden of proof

Possible reductions for insufficiency of the indemnity fund are to be ignored in determining a claim.

Admissions of default may be considered in the absence of the conveyancer making the admission.

Questions of fact are to be decided on the balance of probabilities.

Clause 39: Claimant's entitlement to compensation and interest

Interest is to be paid on the amount of compensation to which a claimant is entitled.

Clause 40: Rights of Commissioner

If a claim for compensation is paid out of the fund, the Commissioner is subrogated to the rights of the claimant against the person liable for the fiduciary default.

Clause 41: Insurance in respect of claims against indemnity fund

The Commissioner may insure the indemnity fund.

Clause 42: Insufficiency of indemnity fund

The Commissioner is given certain powers to ensure that the fund is distributed equitably taking into account all claims and potential

claims, including the power to set aside a part of the fund for the satisfaction of future claims.

Clause 43: Accounts and audit

The fund is to be audited by the Auditor-General.

PART 5
DISCIPLINE

Clause 44: Interpretation of Part 5

Disciplinary action may be taken against a conveyancer (including any person registered as a conveyancer but not carrying on business as a conveyancer and any former conveyancer) or a director of a conveyancer that is a body corporate (including a former director).

Clause 45: Cause for disciplinary action

Disciplinary action may be taken against a conveyancer if—

- registration of the conveyancer was improperly obtained;
- the conveyancer has acted contrary to an assurance accepted by the Commissioner under the *Fair Trading Act 1987*;
- the conveyancer or any other person has acted contrary to this Bill or otherwise unlawfully, or improperly, negligently or unfairly, in the course of conducting, or being employed or otherwise engaged in, the business of the conveyancer;
- the conveyancer has been convicted of an offence of dishonesty;
- the conveyancer 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 conveyancer 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 registered as a conveyancer, the body corporate is being wound up, is under official management or is in receivership;
- the conveyancer has otherwise ceased to be a fit and proper person to be registered as a conveyancer.

Disciplinary action may be taken against a director of a body corporate if disciplinary action could be taken against the body corporate.

Disciplinary action may not be taken if it is not reasonable to expect the person to have been able to prevent the act or default.

Clause 46: Complaints

A complaint alleging grounds for disciplinary action against a conveyancer may be lodged with the District Court by the Commissioner or any other person.

Clause 47: Hearing by Court

The Court is empowered to adjourn the hearing of a complaint to enable investigations to take place and to allow modification of a complaint.

Clause 48: Disciplinary action

Disciplinary action may comprise any one or more of the following:

- a reprimand;
- a fine up to $8 000;
- suspension or cancellation of registration;
- if registration is suspended, the imposition of conditions on the conduct of the conveyancer's business at the end of the period of suspension;
- disqualification from obtaining registration;
- a ban on being employed or engaged in the industry;
- a ban on being a director of a body corporate conveyancer.

A disqualification or ban may be permanent, for a specified period or until the fulfilment of specified conditions.

Clause 49: Contravention of orders

It is an offence to breach the terms of an order banning a person from the industry or from being a director of a body corporate in the industry. It is also an offence to breach conditions imposed by the Court.

PART 6
MISCELLANEOUS

Clause 50: Delegation

The Commissioner and the Minister may delegate functions or powers under this Bill.

Clause 51: Agreement with professional organisation

An industry body may take a role in the administration or enforcement of the Bill by entering an agreement to do so with the Commissioner. The Commissioner may only act with the approval of the Minister. The Commissioner may delegate relevant functions or powers to the industry body.

Clause 52: Exemptions

The Minister may grant exemptions from compliance with specified provisions of the Bill. An exemption must be notified in the *Gazette*.

Clause 53: Register of conveyancers

The Commissioner must keep a register of conveyancers available for public inspection.

Clause 54: Commissioner and proceedings before Court

The Commissioner is to be a party to all proceedings.

Clause 55: False or misleading information

It is an offence to make a false or misleading statement in any information provided, or record kept, under the Bill.

Clause 56: Statutory declaration

The Commissioner is empowered to require verification of information by statutory declaration.

Clause 57: Investigations

The Commissioner may ask the Commissioner of Police to conduct relevant investigations.

Clause 58: General defence

A defence is provided for a person who commits an offence unintentionally and who has not failed to take reasonable care to avoid the commission of the offence.

Clause 59: Liability for act or default of officer, employee or agent

An employer or principal is responsible for the acts and defaults of his or her officers, employees or agents unless the employer or principal could not be reasonably expected to have prevented the act or default.

Clause 60: Offences by companies

Each director of a body corporate (as widely defined) is liable for the offence of the body corporate.

Clause 61: Continuing offence

If an offence consists of a continuing act or omission, a further daily penalty is imposed.

Clause 62: Prosecutions

The period for the commencement of prosecutions is extended to 2 years or 5 years, with the authorisation of the Minister. Prosecutions may be commenced by the Commissioner or an authorised officer under the *Fair Trading Act* or, with the consent of the Minister, by any other person.

Clause 63: Evidence

Evidentiary aids relating to registration, appointment of an administrator, temporary manager or examiner and delegations are provided.

Clause 64: Service of documents

Service under the Bill may be personal or by post or by facsimile if a facsimile number is provided. In the case of service on a registered conveyancer, service on a person apparently over 16 at the conveyancer's address for service notified to the Commissioner is also acceptable.

Clause 65: Annual report

The Commissioner is required to report to the Minister annually on the administration of the Bill and the report must be laid before Parliament.

Clause 66: Regulations

The regulation making power contemplates, among other things, codes of conduct (which may be incorporated into the regulations as in force from time to time).

Schedule: Transitional Provisions

Transitional provisions are provided in relation to—

- licensed land brokers becoming registered conveyancers;
- the continued effect of approvals, appointments, orders and notices;
- mortgage financiers (These provisions are equivalent to those contained in the *Land Agents, Brokers and Valuers (Mortgage Financiers) Amendment Act 1993* but not yet in operation).

The Hon. ANNE LEVY secured the adjournment of the debate.

LAND VALUERS BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to regulate land valuers; and for other purposes. Read a first time.

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

That this Bill be now read a second time.

The Land Valuers Bill represents a major change from the present situation. No significant changes have occurred in relation to the regulation of the activities of valuers since the introduction of the Land Valuers Licensing Act 1969. However, since that time the nature of the valuing profession and the importance of the role that valuing has achieved in the business community has greatly changed. Significantly, the valuer plays a key role in the commercial sector and a great deal of reliance is placed upon realistic and soundly based valuations. To cope with this greater role, the profession has demonstrated a keen interest in moving towards higher standards of behaviour and accountability amongst its members. The profession is one which can be regarded as being remarkably stable and one which enjoys a high degree of professionalism amongst its members.

There is an extremely low incidence of complaints against valuers and formal disciplinary action has not been taken against any valuers for some time. One of the reasons for this occurring is the fact that the Australian Institute of Valuers and Land Economists maintains a high rate of membership amongst licensed valuers and that peer review aims to maintain high standards within the profession.

In reviewing the need for legislative intervention in the regulation of the activities of valuers, the Legislative Review Team established by the Government did not consider that it was necessary or desirable to continue the present system of Government licensing. Given the relatively high rate of compliance and the fact that in practical terms most valuations are done for business, the impact upon general consumers will be minimal. The majority of valuers' clients are banks, legal practitioners, finance companies and other financial intermediaries that seek a valuation for the purposes of loan assessment. It should also be noted that those parties which most often use the services of valuers are well placed to be aware of the general value of property being transacted. Any concerns such clients might have about valuations can be addressed by gaining further advice or further valuations.

The Vocational Education, Employment and Training Committee in its 1993 Report on partially regulated occupations in Australia recommended that the valuing profession should be deregulated as it also considered that the risk to the general public would not be great. Ordinary consumers rarely call upon the services of valuers and there would appear to be little concern that they would be disadvantaged by the deregulation of valuers.

Other methods of maintaining industry standards are available to the valuing profession. The Institute is initiating the development of competency based standards and is working with the Trade Practices Commission to develop a code of conduct. In light of these developments it is no longer considered appropriate for the Government to continue as the regulator of the valuing profession. Government's role should be limited to providing advice and supporting the profession's moves towards greater self-determination.

The Land Valuers Bill provides a system of 'negative licensing' that provides an effective regime for the protection of consumers without the significant expense that a traditional positive licensing regime would involve. The Bill replaces the existing licensing system with provisions aimed at protecting persons from the unlawful, negligent or unfair practices of land valuers. Under section 5 such behaviour would be the subject of disciplinary action, and a possible outcome of such disciplinary action could be that a person is barred from working as a land valuer.

In addition to the disciplinary provisions contained in the Bill, the Commissioner can also obtain assurances from persons whose behaviour warrants concern under the provisions of the Fair Trading Act 1987. The Bill also provides for a code of conduct to be developed with the Commissioner.

On 12 May 1994 the Land Valuers Bill was introduced into Parliament for the first time for the purpose of public exposure and to facilitate further public comment during the recess of Parliament. The Bill has now been widely circulated for comment and the Legislative Review Team has received a considerable number of submissions on this Bill.

As a consequence of the consultation process an additional clause has been incorporated into the Bill which will make it an offence for a person to carry on business or hold himself or herself out as a land valuer unless he or she holds the qualifications required by regulation or has been licensed as a land valuer under the existing Act. In addition, a further clause has been included which imposes a statutory duty upon a land valuer that is a body corporate to ensure that the business is properly managed and supervised by a natural person who holds the qualifications required by regulation or has been licensed as a land valuer under the existing Act. These provisions will have the effect of ensuring that there is a minimum educative standard for entry into the occupation of valuer. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Clause 1: Short title

Clause 2: Commencement

Clause 3: Interpretation

A land valuer is defined as a person who carries on a business that consists of or involves valuing land. The definition includes a person who formerly carried on such a business so that disciplinary proceedings may be taken against such a person.

'Court' is defined as the District Court of South Australia. The Court is given jurisdiction under the Bill to deal with discipline of land valuers.

'Director' of a body corporate is given a wide meaning to encompass persons who control the body corporate. Under the Bill directors of a body corporate may be disciplined, or prosecuted for an offence, alongside the body corporate.

Clause 4: Commissioner to be responsible for administration of Act

Clause 5: Qualifications required to carry on business as land valuer

A land valuer is required to hold prescribed qualifications or to have been licensed as a land valuer under the existing Act.

Clause 6: Incorporated land valuer's business to be properly managed and supervised

In the case of a body corporate, the land valuing business must be managed and supervised by a person who holds the prescribed qualifications or has been licensed as a land valuer under the existing Act.

Clause 7: Cause for disciplinary action

Disciplinary action may be taken against a land valuer if—

- the land valuer has acted contrary to an assurance accepted by the Commissioner under the Fair Trading Act 1987;
- the land valuer or any other person has acted unlawfully, improperly, negligently or unfairly, in the course of conducting, or being employed or otherwise engaged in, the business of the land valuer.

Disciplinary action may be taken against a director of a body corporate that is a land valuer if disciplinary action could be taken against the body corporate.

Disciplinary action may not be taken if it is not reasonable to expect the person to have been able to prevent the act or default.

Clause 8: Complaints

A complaint alleging grounds for disciplinary action against a land valuer may be lodged with the District Court by the Commissioner

or any other person.

Clause 9: Hearing by Court

The Court is empowered to adjourn the hearing of a complaint to enable investigations to take place and to allow modification of a complaint.

Clause 10: Disciplinary action

Disciplinary action may comprise any one or more of the following:

- a reprimand;
- a fine up to $8 000;
- a ban on carrying on the business of a land valuer;
- a ban on being employed or engaged in the industry;
- a ban on being a director of a body corporate land valuer.

A ban may be permanent, for a specified period or until the fulfilment of specified conditions.

Clause 11: Contravention of prohibition order

It is an offence to breach the terms of an order banning a person from carrying on the business of a land valuer or being employed or engaged in the industry or from being a director of a body corporate in the industry.

Clause 12: Register of disciplinary action

The Commissioner must keep a register of disciplinary action taken against land valuers available for public inspection.

Clause 13: Commissioner and proceedings before Court

The Commissioner is to be a party to all proceedings.

Clause 14: Investigations

The Commissioner may ask the Commissioner of Police to conduct relevant investigations.

Clause 15: Delegation by Commissioner

The Commissioner may delegate functions and powers under the Bill to a public servant or, with the consent of the Minister, to any other person.

Clause 16: Exemptions

The Minister may grant exemptions from compliance with specified provisions. Exemptions must be notified in the *Gazette*.

Clause 17: Liability for act or default of officer, employee or agent

An employer or principal is responsible for the acts and defaults of his or her officers, employees or agents unless the employer or principal could not be reasonably expected to have prevented the act or default.

Clause 18: Offences by bodies corporate

Each director of a body corporate (as widely defined) is liable for the offence of the body corporate.

Clause 19: Prosecutions

The period for the commencement of prosecutions is extended to 2 years, or 5 years with the authorisation of the Minister. Prosecutions may be commenced by the Commissioner or an authorised officer under the *Fair Trading Act* or, with the consent of the Minister, by any other person.

Clause 20: Evidence

Evidentiary aids relating to qualifications and licensing under the current Act are included.

Clause 21: Annual report

The Commissioner is required to report to the Minister annually on the administration of the Bill and the report must be laid before Parliament.

Clause 22: Regulations

The regulation making power contemplates, among other things, codes of conduct (which may be incorporated into the regulations as in force from time to time).

Schedule: Transitional provisions

An order of the Tribunal suspending a land valuer's licence or disqualifying a person from holding a land valuer's licence is converted into an order of the Court prohibiting the person from carrying on, or from becoming a director of a body corporate carrying on, the business of a land valuer.

The Hon. ANNE LEVY secured the adjournment of the debate.

LAND AND BUSINESS (SALE AND CONVEYANCING) BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to regulate the sale of land and business and the preparation of conveyancing instruments; and for other purposes. Read a first time.

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

That this Bill be now read a second time.

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

Leave granted.

The *Land Agents, Brokers and Valuers Act 1973* contains a number of important provisions which regulate the conduct of persons dealing with the transfer of land. These include provisions relating to the conduct of the business of a Land Agent and provisions dealing with contracts for the sale of land or businesses.

These provisions are an important mode of regulating the behaviour of land agents and also regulating the contractual procedure involved in the purchase of what is for most people the most expensive acquisition of their life, namely the purchase of land or a business.

The Bill encapsulates these provisions in one complete package. The provisions contained in the Bill largely reflect existing provisions in the Act.

The *Land Agents Brokers and Valuers Act 1973* also contains provisions designed to regulate the conduct of rental accommodation referral businesses. These businesses provide a service relating to the availability of rental accommodation. These provisions have been removed from the substantive legislation and it is intended that they be incorporated into a Code of Conduct which will be administered under the provisions of the *Fair Trading Act 1987*. This ensures a continuation of the consumer protection currently available in the Act.

On 12 May 1994 the *Land and Business (Sale and Conveyancing) Bill* was introduced into Parliament for the first time for the purposes of public exposure and to facilitate further public comment during the recess of Parliament. The Bill has now been widely circulated for comment and the Legislative Review Team has received a considerable number of submissions on this Bill.

An amendment has been made to clause 8 of the original Bill. The clause has been amended to include a provision which will prevent a vendor who is also a qualified accountant from signing his or her own certificate of particulars, thereby providing independent scrutiny of the particulars and avoiding the potential for a conflict of interest to arise in this situation.

One of the issues raised during the consultation process was whether the Government proposed to undertake a review of the vendor disclosure statements contained in forms 18 and 19 of the Regulations under the existing *Land Agents, Brokers and Valuers Act 1973* and, by implication, the wording of clauses 7 to 12 of the Bill which reflect sections 90 and 91 of the current Act.

A Working Party was established in 1987 by the previous Government to review Forms 18 and 19 of the Regulations. The Government has been informed that this working party has met approximately monthly since 1987 and has during this time recommended some changes to sections 90 and 91 but has not conducted a major review of these sections.

In light of this fact the Government has decided to abolish the existing Working Party and to reconstitute a new committee which will include representation by relevant Government agencies and organisations such as the Law Society and the Australian Institute of Conveyancers who are currently not represented.

The new Committee will go back to basics in looking at clauses 7 to 12 and they will be required to make recommendations on major changes to access and delivery of prescribed information. This Committee will have a strict time frame in which to conduct its review and it is proposed that detailed consultations will occur with the key stakeholders on the Committee's proposals. In the interim it is the intention of Government to introduce clauses 7 to 12 and to review the wording of these provisions once the Committee has completed the review.

Land and Business (Sale and Conveyancing) Bill 1994		*Land Agents, Brokers and Valuers Act 1973*	
clause 3	*Interpretation*	sections 6(1), 86(1) and (2) and 87A(1) and (2)	The relevant definitions from the general interpretation section and the interpretation sections in Part 10 Divisions 1 and 2 have been brought together.
clause 4	*Meaning of small business*	section 87A(1) "small business" and (2)	
PART 2	*CONTRACTS FOR SALE OF LAND OR BUSINESSES*	PART 10 DIVISION 2	
clause 5	*Cooling-off*	section 88	The amount of deposit in respect of the sale of land or a small business that may be retained by the vendor if the sale contract is rescinded during cooling-off is increased from $50 to $100. The provision contained in clause 5(2)(b) has been altered to take account of the removal of the requirement for an agent to have a registered office by the *Land Agents Bill*.
clause 6	*Abolition of instalment contracts*	section 89	
clause 7	*Particulars to be supplied to purchaser of land before settlement*	section 90	
clause 8	*Particulars to be supplied to purchaser of small business before settlement*	section 91	This provision has been altered to provide that a vendor who is a qualified accountant must ensure that the required statements are verified by an independent accountant.
clause 9	*Verification of vendor's statement*	section 91A	
clause 10	*Variation of particulars*	section 91B	
clause 11	*Auctioneer to make statements available*	section 91C	
clause 12	*Councils and statutory authorities to provide information*	section 91D	
clause 13	*False certificate*	section 91E	
clause 14	*Offence*	section 91F	
clause 15	*Remedies*	section 91G	
clause 16	*Defences*	section 91H	
clause 17	*Service of vendor's statement, etc.*	section 91I	This provision has been altered to take account of the fact that no general service provision (as in the current Act) is included in this Bill.
PART 3	*SUBDIVIDED LAND*	PART 10 DIVISION 1	
clause 18	*Obligations and offences in relation to subdivided land*	section 86	The definitions related to subdivided land included in section 86(1) and (2) are incorporated in clause 3, the general interpretation provision.
clause 19	*Inducement to buy subdivided land*	section 87	
PART 4	*AGENTS' OBLIGATIONS*	PART 6	The requirements set out in sections 36 to 41 are not included.
clause 20	*Copy of documents to be supplied*	section 44	
clause 21	*Authority to act*	section 45(1) and (2)	

clause 22	*No agent's commission where contract avoided or rescinded*	section 45(3) to (4)	
clause 23	*Agent and employees not to have interest in land or business that agent commissioned to sell*	section 46	This provision has been altered to take account of the removal of the requirement for managers and sale representatives to be registered by the *Land Agents Bill*. The penalty has been altered to fit into the divisional penalty scheme.
clause 24	*Agent not to pay commission except to employees or another agent*	section 47	This provision has been altered for the same reasons as the previous provision.
PART 5	*PREPARATION OF CONVEYANCING INSTRUMENTS*	PART 7 DIVISION 3	The terminology has been altered in this Part. Conveyancing instrument is used in preference to instrument relating to a dealing in land. The term ties in with the *Conveyancers Bill*.
clause 25	*Part 5 subject to transitional provisions*		This is a new provision to take account of the transitional provisions included in the schedule. In the current Act transitional provisions appear in section 61 (1a), (4), (5) and (6).
clause 26	*Interpretation of Part 5*	section 61(3) and (13)	
clause 27	*Preparation of conveyancing instrument for fee or reward*	section 61(1)	
clause 28	*Preparation of conveyancing instrument by agent or related person*	section 61(2)	
clause 29	*Procuring or referring conveyancing business*	section 61(7) to (10)	
clause 30	*Effect of contravention*	section 61(11) and (12)	
PART 6	*MISCELLANEOUS*		
clause 31	*Exemptions*	section 7(2)	
clause 32	*No exclusions, etc., of rights conferred or conditions implied by Act*	section 92	
clause 33	*Civil remedies unaffected*	section 103	
clause 34	*Misrepresentation*	section 104	
clause 35	*False representation*	section 98	The penalty has been altered to fit into the divisional penalty scheme.
clause 36	*Prohibition of auction sales on Sundays*	section 98A	The penalty has been increased from $500 to $2 000.
clause 37	*Liability for act or default of officer, employee or agent*	section 99	This provision has been altered to bring it into line with similar provisions in the *Land Agents Bill*, the *Conveyancers Bill* and the *Land Valuers Bill*.
clause 38	*Offences by bodies corporate*	section 100	
clause 39	*Prosecutions*	section 101	The period for commencement of prosecutions has been extended from 12 months to 2 years, or 5 years with the authorisation of the Minister, in line with similar provisions in the *Land Agents Bill*, the *Conveyancers Bill* and the *Land Valuers Bill*.
clause 40	*Regulations*	section 107	Relevant provisions only included.

Schedule	*Transitional Provisions*	section 61(1a), (4), (5) and (6)	These transitional provisions have been altered to take account of the different time frame. In addition, the power of the Tribunal to vary or revoke exemptions has been transferred to the Commissioner for Consumer Affairs.

The Hon. ANNE LEVY secured the adjournment of the debate.

HANSARD BOUND VOLUME

The PRESIDENT: I inform honourable members that, following the Hon. Anne Levy's question about the mistake made in the bound copies of *Hansard*, State Print has advised that a patch will be provided to amend the bound copies for both Houses and that the cost will be borne by State Print.

POLLUTION OF WATERS BY OIL AND NOXIOUS SUBSTANCES (CONSISTENCY WITH COMMONWEALTH) AMENDMENT BILL

The Hon. DIANA LAIDLAW (Minister for Transport) obtained leave and introduced a Bill for an Act to amend the Pollution of Waters by Oil and Noxious Substances Act 1987. Read a first time.

The Hon. DIANA LAIDLAW: I move:

That this Bill be now read a second time.

The Pollution of Waters by Oil and Noxious Substances Act 1987 incorporates into State legislation, Annexes I and II of the International Maritime Organisation's, International Convention for the Prevention of Pollution from Ships (commonly referred to as MARPOL 73/78). The Act mirrors similar Commonwealth legislation and applies to the territorial seas adjacent the State and waters within the limits of the State. Similar amendments to the Commonwealth Protection of the Sea (Prevention of Pollution from Ships) Act 1983 were brought into operation on 6 July 1993.

The Bill has four objectives. First, to remove the definition of and references to "harbor master" in sections 3, 6 and 35 of the Act and to substitute references to "port manager", a title now used throughout the State.

Second, to reduce the allowable instantaneous rate of discharge from cargo spaces of oil tankers from 60 litres per nautical mile to 30 litres per nautical mile when oil tanker's comply with certain requirements and are not within a special area and are more than 50 miles from the nearest land.

The oil content of effluent from machinery spaces of ships will be reduced from 100 parts per million to 15 parts per million even if the discharge is made more than 12 miles from the coast. Ships are to be fitted with 15 parts per million filtering equipment instead of 100 parts per million oily water separators presently required. Filtering equipment on ships of 10 000 gross tons and above is to be provided with alarm arrangements and automatic stopping devices when the oil content exceeds 15 parts per million instead of the recording device presently required. Ships delivered before July 1993 have until July 1998 to comply with these provisions.

Third, to require Australian ships of 400 gross tons or more and Australian tankers with a gross tonnage of less than 400 but not less than 150 to keep on board a shipboard oil pollution emergency plan. The shipboard emergency plan must be in the prescribed form and will include procedures to be followed in notifying a prescribed incident, a list of authorities or persons to be notified, a detailed description of the action to be taken to reduce or control any discharge from the ship and the procedures to be followed for co-ordinating with the authorities that have been contacted any action taken in combating the pollution and the person on board the ship through whom all communications are to be made. The master of the ship and the owner of the ship are both guilty of an offence if a ship, to which this section applies, does not have on board a shipboard oil pollution emergency plan. The maximum penalty is $50 000.

Fourth, to expand existing requirements for the evidence of an analyst and clarify the details to be included on an analyst's certificate for it to be admissible as evidence in any proceeding for an offence against a provision of the Act. The required notice which must be given to a prosecutor when an analyst is required to be called is also stated.

The Bill also makes a minor amendment to the manner in which permission may be given to transfer oil at night by allowing that permission to be given in individual cases or generally in specified circumstances (without restriction). I commend the Bill to the Council and seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

Clause 3: Amendment of s. 3—Interpretation

The definition of "harbor master" is deleted. A definition of "port manager" is inserted instead and cross references updated.

Clause 4: Amendment of s. 6—Delegation

The references to harbor master are updated to port manager.

Clause 5: Amendment of s. 8—Prohibition of discharge of oil or oily mixtures into State waters

The exemption given in section 8(4)(a) to certain oil tankers more than 50 nautical miles from land with an instantaneous rate of discharge of oil content from cargo spaces of not more than 60 litres per nautical mile is limited to such tankers with a discharge of not more than 30 litres per nautical mile.

The exemption given in section 8(4)(b) to certain ships other than oil tankers more than 12 nautical miles from land discharging oil or oily mixture with an oil content less than 100 parts per million is limited to ships with a discharge with an oil content of 15 parts per million and is applied to ships within 12 nautical miles of land. Such ships are required to carry equipment as specified in certain regulations. The nature of the equipment that can be required to be carried is currently limited to an oil discharge monitoring and control system, oily water separating equipment, oil filtering equipment or other installation. This limitation is removed.

Ships delivered before 6 July 1993 have until 6 July 1998 to comply with these more stringent requirements.

Clause 6: Insertion of s. 10A—Shipboard oil pollution emergency plan

The new section requires Australian ships of 400 tonnes or more and Australian oil tankers of 150 tonnes or more to keep on board a shipboard oil pollution emergency plan in the form required by the regulations.

Clause 7: Amendment of s. 35—Transfer of oil at night

The references to harbor master are updated to port manager. New subsection (2) allows a permission to transfer oil at night to be given generally in specified circumstances and not just, as currently provided, where transfer happens at the same place on a frequent and regular basis.

Clause 8: Amendment of s. 39—Evidence of analyst

Section 39 is an evidentiary provision relating to evidence of analysts appointed by the Minister. The amendment expands the matters that may be certified by an analyst. The amendment also requires 5 days notice to the prosecution if the defence requires the personal attendance of an analyst at court.

The Hon. BARBARA WIESE secured the adjournment of the debate.

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE BILL

Adjourned debate on second reading.
(Continued from 11 August. Page 115.)

The Hon. A.J. REDFORD: I support the second reading of the Bill. At the outset I pay tribute to what has happened in past times regarding the issue of palliative care. The very fact that there is an absence of litigation and an absence of incursion by courts and other appropriate authorities in the area is high tribute indeed to our health care workers, palliative care workers, medical practitioners and families. Indeed, one might be forgiven for thinking that there is no need for this legislation. However, we must take advice from those involved in this area, particularly those at the coalface such as medical practitioners and other health care supporters, as to why there is a need for this legislation. I will not go over the areas already covered by other speakers, some of whom have spoken on more than one occasion on this topic.

The Hon. Diana Laidlaw: In other sessions.

The Hon. A.J. REDFORD: In other sessions of Parliament. However, there are some specific issues on which I have not yet made up my mind but will be making up my mind during the Committee stage. The legislation seems to be in much better shape now than it was in the previous Parliament, and it is a good example of how well the legislative process can work.

I have not filed any amendments, but I expect to do so in due course. However, I ask members not to think that I necessarily agree with some of those amendments. They will enable good discussion and clarification of some of the issues and questions that I have relating to the Bill. I will quickly list some of those concerns.

First, the Bill is silent on what would happen in circumstances where parents may be fighting. In particular, I refer to clause 11. Unfortunately, in today's society divorce is all too common. Clause 11 sets out certain provisions regarding consent to be given by parents or a parent in relation to the administration of medical treatment to a child. In my experience, that issue has not bogged down the courts, although there have been a few occasions on which the Family Court has intervened and given directions as to how certain treatments should occur in relation to children, particularly those who are mentally ill. It may be that I am tilting at windmills, but I think we should decide what should happen in a situation where parents disagree or leave it to the good common sense of the people involved in this area to resolve in the same way as has occurred in the past.

My second point relates to clause 11(2)(b) which refers to the consent of the child. Perhaps I am tilting at windmills or jumping at shadows, but I am concerned about a situation where there is an obvious need for medical treatment, the parents disagree that that treatment is necessary and the child also disagrees with that course of action. One only need consider a situation involving some religions which would refuse or deny the right to a blood transfusion. It is difficult to imagine a child having the ability to consent to treatment unless it is in the best interest of the child, and then the question arises as to who should determine that best interest. There are occasions when such a decision should perhaps be taken out of the hands of the parents. I might add that clause 12 does obviate against some of the problems that I have pointed out.

I refer to clause 6 and a drafting issue concerning the anticipatory grant or refusal of consent to future medical treatment. I think that the clause is saying that it is a presumption that the direction should be followed rather than prescriptive. In other words, if there is a direction in existence then the health carers are entitled to presume that it is correct, but it should have no higher status than that. I know this has been covered before, but situations and circumstances change. To make it prescriptive—and I am not sure that the clause is prescriptive—could lead to a great deal of injustice.

I am also concerned about the form in the schedule. The form is pretty open and enables people to be their own lawyer, so to speak, in terms of the direction. I have no problem with that, but I think there is a real concern where the direction in the form is not clear or is ambiguous. There should be some consideration as to what legislative prescription we should insert if the direction in the form is ambiguous or unclear. There are several options in relation to that: the matter could be referred to the Guardianship Board, or it could be dealt with as if there were no direction. I think that the form should, just so that it is absolutely and abundantly clear—and I am not saying that I am against euthanasia; I know this is not a euthanasia Bill—provide that a direction must not be inconsistent with those items referred to in clause 17, which in this Bill specifically excludes the possibility of euthanasia.

I now refer to medical powers of attorney. I must say that I am not sure why the Bill specifically excludes the opportunity for a joint exercise of power. I cannot see why, if we have parents jointly making decisions on behalf of children, we cannot have joint agents making decisions on behalf of ourselves as adults, having regard to the fact that they come into play only when we are not in a position to make a decision ourselves. It may well be that there are elements within the community that would feel more comfortable in the granting of a medical power of attorney if they could grant it to two people.

I believe that there should be a provision in the form in which a person granting a medical power of attorney can set out circumstances in which that medical power of attorney can be revoked. One good example is that, if I filled out a medical power of attorney, I would insert a clause whereby upon my separation or divorce—in the unfortunate event that that might occur—that power of attorney would be automatically revoked. There may well be other conditions where one might want to revoke a power of attorney and one may want to set that out in the document itself. I think that there ought to be some provision in the form at least, and perhaps even in the legislation, enabling a person granting that power to do so.

I would be indebted to any of my colleagues who can tell me whether or not someone who has a pecuniary association with the person granting the power can be an agent. One category I can think of is a beneficiary under a will, because I could imagine a situation where someone who is appointed as an agent and stands to gain a significant sum as a result of a person's death is perhaps more encouraged about a course of action in terms of treatment than another course of action.

I can think of situations where insurance policies are about to expire and one knows that they cannot be renewed when the person is in a certain state of health. A person might be guided by that situation rather than what is in the best interests of the patient. On the other hand, and I say this quite strongly, I could imagine a situation where one leaves all their estate to their spouse and, in fact, would be most desirous of having their spouse make that decision. I would not like to see any specific clause which would exclude, for argument's sake, the right of one's spouse to be an agent under a medical power of attorney simply because they stand to benefit from the will.

That is a matter that needs some thought. It may be that at the end of the day we cannot resolve it and, if that is the case, it surely must go back to the good commonsense of the medical practitioner and the health care givers at the time. In fact, that probably can happen from time to time today. It is something that we have a duty to look at and consider. The other issues relate to clauses 14 and 15. They specifically relate to medical practice and the obligations on a medical practitioner's duties. I have no quibble with clause 14. It would appear to me that that sets out the current position and the common law position as to the responsibility of a medical practitioner to explain to people the consequences and options in relation to medical treatment.

However, in clause 15 I query the exclusion of criminal liability for any act or omission done or made with the consent of the patient in good faith in accordance with proper professional standards, etc. I query whether or not, in a criminal context—and I confine my comments to this—a medical practitioner involved in some form of euthanasia could avoid criminal liability. As a lawyer I have often been criticised—in fact, lawyers are often criticised for all the sins of the profession and all the sins of the judiciary.

An honourable member: And some aren't even sins.

The Hon. A.J. REDFORD: Some are not even sins, or purported sins. I refer to a piece of legislation that goes through this place and everybody believes that a certain consequence ought to apply and then, by the time the lawyers and the courts get through with it, there is a consequence that perhaps some of us here never intended. I could imagine quite a substantial argument being made if I represented a medical practitioner who was perhaps involved in an assisted suicide or an act of euthanasia, using section 15 as a defence. I just wonder whether or not the criminal liability issue ought to be left with the criminal law rather than inserted or buried inside this legislation.

I also do not believe that medical practitioners should be outside the normal law and have less than the normal responsibility of everyone else in this community, particularly when one considers that mistakes in this area are very common. Because I propose to remove the criminal liability aspect, I will be most interested to hear the debate on that particular issue, and I would state here that I have not yet made up my mind one way or another on that topic; I really only flag it as an area of concern. Clause 16 states:

> . . . even though an incidental effect of the treatment is to hasten the death of the patient.

I wonder whether it should read—and I know it was inserted there before—'incidental and unintended effect of the treatment is to hasten the death of the patient'. At the end of the day, if it is unintended, there are other protections within the Bill and, in particular, clause 17. The other query I have concerns the position of close relatives to a person who has not granted any medical power of attorney or who has not given any direction. Is that to be left to the current—

The Hon. Anne Levy: It would be the same as now.

The Hon. A.J. REDFORD: Yes, that is my question: is that to be left to the current practice and what occurs now, or is it appropriate for this place to have a look at that issue? I just flag that as something that needs to be considered because we may say, 'Let us just leave it as it is; there have not been too many complaints,' or it may be something in which we want to get involved—I must say that I prefer the former. I strongly support the basic and fundamental principles of this Bill. I refer this place to a letter received by me—I assume it was a circular letter, so I will not read it into the record—from the Council on the Ageing, in particular Darryl Bullen, setting out the six fundamental principles that the Council on the Ageing wants, although I sound a note of caution in regard to the fifth one of those which provides that there should be a limited right of appeal against the decision of an agent on the grounds that the agent is not carrying out the wishes of the patient.

I wonder whether or not it might be more prudent, more cautious and more wise to extend a limited right of appeal or give the Guardianship Board some role of supervision on the question of whether or not a direction or a medical power of attorney has been revoked. I know that the Act provides that they must be in writing, but my experience is that people can revoke things quite unequivocally; they do not put them in writing or they are not recorded, and we may have situations where an allegation is made that that power of attorney was revoked, and that would leave the decision on that particular topic entirely in the hands of a care giver, and I wonder whether the care givers really want that responsibility or whether they might want the opportunity to refer issues of that sort off to the Guardianship Board. As I read the legislation now that opportunity does not exist.

In closing, I thank all those people who made submissions to me. I am also indebted to my colleagues. Much was said in the last two sessions of Parliament on this particular topic and certainly many important issues were flagged. If I can single out one person, I thank Mary Gallnor who has presented her viewpoints forthrightly to me and she certainly got my thought processes working on the topic. I commend the second reading of this Bill.

The Hon. ANNE LEVY: In rising to support the second reading of this Bill, I will be very brief because I spoke when the Bill was before the Council prior to the election. I stated then, and I am quite happy to restate it, that I fully support the general principles of this Bill. Unlike the Hon. Mr Redford, I think this Bill is far worse than the initial Bill. I hope that some of the amendments made in this place will be reversed when we are in Committee. This Bill is basically a Committee Bill, and I imagine that detailed discussion of various matters will take place more in Committee than in the second reading debate.

However, comparing the Bill before us with the Bill as it came into this Council initially, I feel two points deserve comment. The involvement of the Guardianship Board is totally unnecessary and really most insulting, both to the person concerned and to their agent. If someone wishes to appoint an agent to act on their behalf—and it is certainly not compulsory to appoint an agent—by doing so, they are expressing their confidence in the judgment and integrity of that agent. I find it most objectionable that decisions of that agent can be appealed against, taken to the Guardianship

Board and, hence, overridden. If I appoint an agent to act on my behalf, I am indicating my trust in that person, and it is not the function of the State to take any measures to override my trust and confidence in the person whom I have appointed to act as my agent. If someone does not trust their agent, they should not appoint them.

The Hon. A.J. Redford: What if you've changed your mind? What's your argument about that issue?

The Hon. ANNE LEVY: Well, it is easy enough to revoke if there has been a change of mind. In fact, the Bill makes it very easy to revoke any such appointment of an agent. It is not difficult and, if an individual loses confidence and trust in a person, they will not appoint them as an agent or they will revoke their appointment as an agent.

The Hon. Diana Laidlaw: They would have to change their will.

The Hon. ANNE LEVY: Well, they might, but they might not. They might still be prepared to leave some of their estate to a person without necessarily trusting them to be their agent. But if I trust someone to be my agent in matters of life and death, it seems to me the grossest invasion of my wishes to then have the Guardianship Board able to query the decisions of the agent I have appointed. The agent knows me far better than any member of the Guardianship Board ever could.

The Hon. A.J. Redford interjecting:

The Hon. ANNE LEVY: If I have changed my mind and no longer have the confidence in that agent then I will revoke their agency.

The Hon. A.J. Redford: That might not occur to them. It happens with wills every day of the week: people die having not made a will for 20 or 30 years.

The Hon. ANNE LEVY: When people are diagnosed as having terminal illnesses, they think seriously about these matters. If they make a will or appoint a medical agent at that time, they are certainly taking the matter very seriously and have decided—

The Hon. A.J. Redford interjecting:

The Hon. ANNE LEVY: If someone appoints an agent when they know they have a terminal illness, that is their considered opinion at that time. If they appointed an agent 20 years before, the fact that they are told they have cancer will make them consider very seriously whether they still want that same person to be their agent, whether they wish to revoke that agency or appoint someone else as their agent, or whether they will not have any agent at all. There is certainly nothing like the knowledge of being affected with a serious disease to make people think very carefully about these issues. I object to the Guardianship Board having the power to override an agent who has been appointed with due consideration and care by an individual.

The other provision in the legislation which I strongly object to is the fact that the age of consent for general medical treatment has been raised from 16 to 18 years. The Opposition has received material which indicates that the age of consent for medical treatment in this State has been 16 years since 1986. In fact, that is not correct. The age of consent for medical treatment in this State dates back to the late 1970s or maybe 1983. This Parliament passed legislation making the age of consent for medical treatment 16 years to apply to all individuals in this State. It may be that this Parliament feels that, to appoint an agent to make the life and death decisions which this Bill is dealing with, an individual should be 18. If that is the decision of the Parliament, I have no quarrel with it. However, in terms of general consent for medical treatment—to be able to consent to have your ingrown toenails fixed, to have a prescription for the pill or to have any minor medical treatment—that this Parliament should raise the age from the current age of 16 to 18 I find totally untenable.

I hope there will be amendments moved to that effect. I hope to discuss with other colleagues whether they are planning such amendments because, if not, I will certainly move them. I am distinguishing quite clearly between the age of consent for general medical treatment, which to me is a separate issue, and the age of consent for appointing an agent—for making the life and death decisions which are what this Bill is really about. It is quite wrong that in the process this legislation should be changing the general age of medical consent from 16 to 18 years. I indicate that, if in Committee the existing law is not restored—if the age for consent for general medical treatment is not restored to 16 years—I will vote against the third reading of this Bill.

I do not want to be party to going backwards and raising the age of consent for general medical treatment from 16 to 18. The age of consent for general medical treatment in this State for many years has been 16. In New South Wales, the age of consent for general medical treatment is 14 years; in all others States, it is 16. I do not want to be party to raising the age of consent for general medical treatment from 16 to 18. I reiterate: this is a quite separate issue from the matters with which this Bill deals. The Bill deals with very important issues, but they are not of an everyday occurrence and do not affect many individuals in their everyday life—or so we would hope. It deals with particular issues of palliative care and consent where life and death treatment is involved. That is totally different from the age of consent for general medical treatment.

I feel very strongly about this issue and I am not prepared to see us go backwards, thereby putting all 16 and 17 year olds in an untenable position where they require parental consent for the slightest medical treatment, something which for many years in this State they have not had to have. I support the second reading, but I certainly look forward to amendments during Committee which I hope will improve the legislation.

The Hon. CAROLYN PICKLES: I support the second reading. I wish to make a few brief comments to indicate my support for the general principles of this legislation, as I did when the Bill was introduced before the election. I would like to thank the people who have written to me regarding this issue, particularly the Palliative Care Council of South Australia. I note that the Hon. Jennifer Cashmore was the Chairperson of that organisation; indeed, she was the person who moved for the establishment of a select committee on this issue in December 1990.

It is interesting to look at the history of this piece of legislation. A motion to establish a select committee was moved in 1990. The first report of that select committee was tabled in October 1991. On 6 May 1992, a second report and a draft Bill were tabled, and three months was allowed for formal submissions on the Bill, 31 of which were overwhelmingly supportive. On 19 November 1992, the final report on the Bill incorporating the responses to those submissions was tabled. On 26 November 1992, the Bill was introduced in the Parliament. It lay on the table during the Christmas recess, and the second reading debate commenced on 16 February 1993.

On 18 February 1993, the Bill passed the House of Assembly following a conscience vote of all members of that

Chamber: 37 in favour; 3 against; 2 paired; and 5 members absent. On 2 March 1993, the Bill was introduced into the Legislative Council. On 6 May, the Parliament rose and the Bill lapsed in the second reading stage. Parliament resumed on 3 August 1993. On 5 August 1993, the second reading debate resumed in the Legislative Council. On 12 October the Bill passed the second reading stage and entered the Committee stage. On 2 November 1993, both Houses passed a select committee resolution requiring the Minister of Health to report annually to Parliament on or before 31 August noting progress on the implementation of the select committee's recommendations on policy and the effectiveness of prevailing legislation.

On 2 November 1993 Parliament was prorogued and the election took place. On 11 August 1994 the Bill was introduced into the Council by the Hon. Ms Laidlaw. I was very pleased to see the reintroduction of that Bill. So, we have been looking at this issue for about four years, and I am looking forward to the Council's finally passing the Bill in a sensible form.

I support the comments made by the Hon. Ms Levy. The two issues she raised caused me a great deal of concern when the Bill was left in the form it was when Parliament was prorogued. I do not support either of those measures that were left in the Bill and will be voting against them.

This issue is very important, but it is about personal choice. No-one is saying, 'You are going to be forced to sign anything.' It is about whether people wish to do so. If they do, they do so, and, if they do not, they do not do it. As the Hon. Mr Redford has some problem about people making some kind of statement when they are young and might wish to change their mind later on, this is all about making that free choice and changing your mind. There can be in-built mechanisms to ensure that there is no difficulty with this.

I favour a much stronger piece of legislation, and I hope the day will come when some honourable member introduces it; I would be happy to support it. If it does not get introduced soon, I might introduce it myself. I fail to see why we as adult human beings cannot make a decision about the way that we die. We have no choice about the way we are born, but we should have a choice about the way we die. We should be able to die in dignity and in peace, and we should be allowed to ask people whom we trust and love to make those decisions for us if we are unable to do so ourselves.

I have no trouble with naming any number of my relatives and friends to take those decisions on my behalf. As to people who are nervous about that, I sometimes wonder whether they have strange relationships indeed. I support the second reading.

The Hon. R.D. LAWSON: Unlike most members of this Council, I was not a member when this measure was debated previously in an earlier Parliament. However, I have read the report of the debates and I have read also the two interim reports and the final report of the Select Committee on the Law and Practice Relating to Death and Dying.

Although this Bill deals with medical treatment and palliative care, it actually addresses several discrete issues, namely, medical directions in advance, consent to treatment, medical powers of attorney, treatment of children, emergency treatment, duty to explain and the care of the dying. These are all important and diverse issues.

I regard the last of them—care of the dying—as perhaps the most important. It is fairly clear from reading the previous debates that most if not all members of this Council share that view. Like most members and I suppose most adult members of the community generally, I have had some personal experience of the trauma and difficulty of making medical decisions for others or assisting others to make decisions themselves. It can be a most distressing process.

In his speech on the second reading of an earlier version of the Bill my colleague the Hon. Jamie Irwin gave the Council a very personal account of his own experience in this area. So, too, did the Hon. Anne Levy. They reached different conclusions from their experiences. The reading of their experiences and those of all of the other members who spoke has provided assistance to me in formulating my attitude to this Bill.

Another influence has been my own legal professional experience. Over the years I have acted in a number of cases for medical practitioners and others in which the central question has been whether the practitioner was under a duty to explain a particular risk, or whether he or she had discharged that duty.

The issues raised by the current Bill have given rise to a very substantial body of recent case law in England and, on occasion, I have had to study it. I propose to mention a few of the cases later, but the significance of the cases is that they illustrate the very real practical problems which arise, and they serve to highlight some of the legal and ethical difficulties which arise. Moreover, they demonstrate the need for legislation of the kind proposed.

I mention these matters not for the purpose of suggesting that I am especially qualified to express views on this measure. Like every other member, I bring to this issue not only my experience but also my own philosophies and prejudices which are, no doubt, wrought from all the social, intellectual, religious, spiritual and other influences which have shaped my attitudes, whether consciously or unconsciously, and in that, of course, I am not alone.

I should also say that we in South Australia are not alone in experiencing the problems which are addressed in this legislation. The same problems are being experienced in other States, in the United Kingdom, in New Zealand and elsewhere. The problems are being resolved by legislators in courts and others (professionals) in a principled way, and we should look to the approaches of others and the solutions which they have adopted.

The general approach in England has been to leave to the courts the development of common law principles in this area. That approach has difficulties. In order to determine the true principle it is often necessary to analyse a number of judgments. One has to find the *ratio decidendi* of the cases. That is the common principle accepted by those judges who comprise the majority. It is easy if one judge delivers a judgment and others merely agree, but that does not often happen in this area. Thus, we frequently find several judges each expressing the same principle, or a slightly different principle in a different way, and debates ensue as to whether or not they are, in fact, expressing the same principle.

Over time these principles tend to be refined so that, ultimately, a settled body of law develops and it is possible for a lawyer to advise his or her client on a precise formulation of the applicable principle in a particular situation.

However, in the area of medical treatment those at the coalface do not often enjoy the luxury of the time to reflect upon these interesting issues. They need certainty, and it is only legislation which can provide that certainty. More important, it is only legislation which can give them protec-

tion from spurious claims—and this legislation does contain a measure of such a protection.

We hear in this place, and in the community generally, criticism of the High Court of Australia, especially in relation to its decision in relation to native title and certain other matters. It seems to me, as I have said previously, that some of that criticism is misplaced. If Parliaments had bitten the bullet in the first place, if Parliaments had discharged their functions and made appropriate laws, the area would not have been left open for judges to make decisions based upon the particular facts of a case before them. Judges must decide cases on the basis of the facts before them. They cannot abdicate their responsibility by saying that it is too hard or that it will cause social upheaval, or whatever. Judges must decide individual cases, and they will decide cases unless legislators take the initiative and lay down appropriate principles in advance.

So, I do support the second reading of this Bill. Indeed, I support its substance. I do not regard it as a radical measure. It is largely a codification of existing principles derived either from our existing statutes or from common law principles which would be applied in any case.

I do not propose to address all the provisions of the Bill, but I will confine myself to commenting on a number of its aspects. Clause 6 contains the marginal note 'Anticipatory grant or refusal of consent to medical treatment'. This clause replaced an earlier clause with the marginal note 'Legal competence to consent to medical treatment', and that clause, to which the Hon. Anne Levy has referred, provided that a person over 16 years of age may consent to medical treatment as validly and effectively as an adult. In my view, the previous clause that I have just read is essential. The present Consent to Medical and Dental Procedure Act 1985 does allow a person between the ages of 16 and 18 to refuse or consent to medical treatment as if that person were of full age. That Act came into force in 1987 and, as the Hon. Anne Levy mentioned in her speech, the situation prior to that time allowed for a person of the age of 16 years to give consent to medical treatment.

If the Bill as drafted proceeds without a provision which gives to a person over the age of 16 the right to consent to medical treatment, it would be in my view a serious deficiency. Moreover, it would be ineffective because of the common law principles which already apply and already allow a child of any age to consent to medical treatment of various kinds in various circumstances, depending upon the type of treatment. This is an issue to which I will return later.

I agree with the current clause 6, which deals with anticipatory grant or refusal of consent to medical treatment—or medical directions, I suppose one could call it. I have no quarrel with the requirement that a person be over the age of 18 years to give such a direction. That is the wish of the majority. There is obviously a difference in principle between a decision made by a child about immediate medical treatment in respect of which persons of the age of 16 and under ought, in most cases, have the right to make, on the one hand, and on the other, a direction about treatment in futurity. In my view, a decision of the latter kind, namely, a medical direction as to what is to happen in the future, should only be made by a person who is legally adult. So, just as a person under the age of 18 presently cannot give a power of attorney, or make a will which is effective, nor should they be entitled to give directions as to medical treatment. I think it is largely hypothetical whether that case would arise in any event.

Clause 7 of the Bill deals with the medical powers of attorney and the appointment of an agent to consent to medical treatment. I support this measure strongly. It is a vast improvement upon the notice provisions contained in the old Natural Death Act which it is proposed to repeal. I agree with the limitations contained in this section, namely, that the person granting the power and the person appointed as agent must be adults. I agree with the restriction that the person appointed should not be involved in the medical care or treatment of the patient.

Subclause (5), which deals with the appointment of successive agents, only one of whom can act at any one time, is, it seems to me, a practical and sensible measure. Obviously, from what the Hon. Angus Redford said a few minutes ago, there is room for arguing that the power might be exercised jointly, but obviously, if it can only be exercised singly and successively as provided for in the present section, one avoids the possibility of dispute, which would be highly undesirable in this field.

Clause 7(6)(a), which authorises the agent to make decisions about the medical treatment of the person who granted the power if that person is incapable of making decisions on his or her own behalf, does contain, it seems to me, the seeds of some possible difficulty.

I do not wish to overstate the difficulties here: it is very easy to overstate the difficulties, to start at shadows, and fear that there will be disastrous consequences from measures such as this. But the words 'if the person is incapable of making decisions on his or her behalf' will always give rise to difficulties of interpretation. Who is to decide whether the person is capable or incapable of making decisions on his or her behalf? I simply raise that as an issue: it may be one that is insoluble.

I note in subclauses (8) and (9) of clause 7 that the draftsman has fallen into legalese where he refers to the grantor of the medical power of attorney. It is easy enough for lawyers to understand without second thought what a grantor and grantee are but in my view it is better to use uniform nomenclature throughout, and elsewhere the draftsman has used the simple term 'the person who granted the power'; or, if one wishes to use shorthand, 'the patient' might be appropriate. Just on the subject of legalese, I see that the draftsman defined the term 'parent' as including a person *in loco parentis*. I doubt that these days it is necessary to descend into Latin.

The Hon. Diana Laidlaw: What does it mean?

The Hon. R.D. LAWSON: What it means is standing in the stead of a parent, but it is not actually a legal term of necessarily precise definition and, in my view, it is inappropriate to have Latin terms in definitions in modern legislation. Let us keep our legislation in English.

Clause 9 empowers the Guardianship Board to review a decision of the medical agent. No appeal lies from a decision of the Guardianship Board under this clause. If there is to be a right of appeal, a matter that I am inclined to support, I query the appropriateness of the Guardianship Board. Without intending any disrespect for the Guardianship Board, I believe that applications for review of medical agents' decisions should be made to a judge of the Supreme Court in chambers. These applications, at least in the first instance, are likely to give rise to difficult questions of law that ought to be resolved by those who are most capable of providing an authoritative ruling on the principle.

Judges are quite used to acting at short notice on matters such as the custody of infants and *habeas corpus* applica-

tions. I have attended the homes of judges at all hours of the day and night to obtain urgent orders. So, if that had been an objection to having a judge hear a matter of this kind, it cannot be based on convenience. Alternatively, if it is the view of the Parliament that the Guardianship Board is the appropriate forum, I would propose moving amendments to secure, first, a power to state a case on a question of law to the Supreme Court, so that the court could give directions to the Guardianship Board on issues of law; and also to confer a right of appeal to the Supreme Court, a right which perhaps might be militated by the necessity to obtain leave to appeal. But the English experience has shown that the intervention of the courts can be speedy and useful in resolving these matters in a principled way that can be followed afterwards by later tribunals.

The Hon. Carolyn Pickles interjecting:

The Hon. R.D. LAWSON: It is surprising. The English cases are reported and ordinarily come on for hearing on the same day by judges in chambers all over the country. The Court of Appeal sits on the following day, applications are made by telephone, and—

The Hon. Carolyn Pickles: This is in England?

The Hon. R.D. LAWSON: In England.

The Hon. K.T. Griffin interjecting:

The Hon. R.D. LAWSON: Certainly; so it is possible. The Guardianship Board is a tribunal that operates by and large behind closed doors. The Supreme Court is a tribunal that operates by and large in the open, and the reasons for judgment are always stated in public and are published. Another significant omission in clause 9 is that the right of appeal is conferred upon practically everybody except the patient himself or herself. Obviously, in most cases the patient will be unconscious or otherwise unable to make an application, but there may be cases, especially where patients are alleged to be insane or deranged, where the patient might wish to exercise a right of appeal. In principle it seems to me to be wrong to deny the very person who is most affected by the decision a right of appeal.

Alternatively, a right of appeal could be vested in the public advocate, a statutory officer appointed under the Guardianship and Administration Act. The general functions of the public advocate are set out in section 21 of that Act and they include the performance of such functions as are assigned to the Public Advocate under another Act. It seems to me to be possible and relatively easy to include in this measure a right of appeal to the public advocate to act in the interests of the patient. That is invariably done in England, where counsel and solicitors are appointed to represent the patient.

I support the provisions relating to the medical treatment of children and emergency medical treatment. Earlier when I was dealing with the serious omission of a provision similar to clause 6 of the original Bill I mentioned that it is probably ineffective for this Parliament to seek to deny to persons of the age of 16 or under the capacity to consent to medical treatment. In 1985 the House of Lords decided, in a case called *Gillick*, that a child does have the capacity to consent to medical treatment in circumstances where the child is capable of understanding the nature, consequences and risks of the treatment. That case arose when the Department of Health issued a circular to the effect that a National Health doctor consulted at a family planning clinic by a girl under 16 would not be acting unlawfully if he prescribed contraceptives, so long as he was acting in good faith to protect her, as the circular somewhat coyly said, from the harmful effects of sexual intercourse.

The circular further stated that, although a doctor should proceed on the assumption that advice on contraception should not be given to a girl under 16 without parental consent, the doctor should try to persuade the girl to involve her parents in the decision. However, in exceptional cases, the doctor could prescribe contraceptives without consulting the child's parents or obtaining their consent if in his clinical judgment it was desirable to prescribe them. The plaintiff in this case (Mrs Gillick) had five daughters under the age of 16 and she sought an assurance from her local health authority that her daughters would not be given advice on contraception without her knowledge while they were under the age of 16. The authority refused to give that assurance, and she sued. One of the essential issues in the case was the proposition that the circular issued by the National Health Service was unlawful, because it amounted to advice to doctors to commit the offence of causing or encouraging unlawful sexual intercourse with a girl under the age of 16, that being the age of consent under English law.

In the Court of Appeal, Mrs Gillick was given the declaration she sought on the ground that a child under 16 years could not validly consent to contraceptive treatment. However, the House of Lords overturned that decision. In the House of Lords the majority held that a child became increasingly independent as it grew older and that parental authority dwindled correspondingly. The House of Lords held that the law did not recognise any rule of absolute parental authority until a fixed age. That was the fact, notwithstanding that since the Family Law Reform Act of 1969 in England, the consent of a minor who had obtained 16 years to any medical, mental or dental treatment was deemed as effective as if the child were of full age.

This case illustrates quite different approaches by the various judges to the question of parental rights. It will be obvious from my brief recital of the facts that Mrs Gillick was a strong advocate of parents' rights. The judge in the first instance held that a parent's interest in his or her child did not amount to a right but was more accurately described as a responsibility and a duty. Accordingly, that judge held that the giving of advice on contraception to a girl under 16 years without her parents' consent was not unlawful interference in the parents' rights.

The dichotomy between rights on the one hand and responsibilities and duties on the other was not directly resolved in the House of Lords, but most of their Lordships continued to speak of parental rights, but adopted the approach of Lord Denning. In an earlier case, although the legal right of a parent to the custody of a child ends when the child obtains 18 years, as Lord Denning stated:

> Even up to then it is a dwindling right which the courts will hesitate to enforce against the wishes of a child the older he is. It starts with the right of control and ends with little more than advice.

So, control in the early stages and advice just before the age of majority. The House of Lords, interestingly, quoted a number of cases dealing with kidnapping (mainly early cases) where the question was:

> How old must a child be before it can effectively consent to go with someone else? When does taking a child or young adult amount to kidnapping?

There have been a lot of cases concerning elopements and the like over the years. It is unnecessary, for the purposes of this debate, to examine in any detail the historical source of parental rights, nor is it necessary to resolve this issue

ultimately of whether a parent has rights or whether it is merely duties and responsibilities. I agree with the proposal in clause 14 of the Bill, which will codify the obligation of a medical practitioner to explain to his or her patient the nature, consequences, risks and so on of medical treatment. This clause is no more than a restatement of the common law position.

The Hon. Carolyn Pickles: If only they would do it.

The Hon. R.D. LAWSON: Yes; well, the common law position owes a lot in this State to the present Chief Justice King in a case in which I was involved which has now been embraced by the High Court as correctly stating the appropriate rule. In that case a medical practitioner had performed a tubal ligation on a patient and that procedure did not have its intended effect. The point of principle in the case was the appropriate standard to be adopted in relation to advising about the risk that the tubal ligation would have its intended effect. Traditionally the courts have said that a medical practitioner could not be guilty of negligence if he or she adopted the current standards of practice used by competent practitioners in the field. Thus, the courts had left to the medical profession the determination of appropriate standards.

In this case the practitioner said that she had given the patient the standard warning given by obstetricians performing this procedure regarding the possibility of the failure of the procedure. However, the Chief Justice held that matters such as this are not the sole province of the medical profession. He said that in matters of clinical judgment, such as what drug regime to prescribe, what treatment to undertake or what incision to make, obviously the views of the medical profession would invariably be paramount. But in matters such as consent, advice or warnings about the possible consequences and risks of a procedure the law itself could impose a higher duty and the community, through the courts, could insist upon a higher standard than that which the medical profession chose to adopt. That is the principle that is now embodied in clause 14, and it is a principle which I applaud and endorse.

Clause 16—'The care of the dying'—is a provision about which there has been considerable debate. It is clearly not a euthanasia measure. It is a statement of the common law principles, as I see them applying in this State at the moment on the assumption that the Australian courts would adopt the approach adopted in England. The leading case is *Airedale National Health System Trust v. Bland*, which was heard in the House of Lords in 1993. This is an extremely interesting and sad case in many ways, but the judgments, which run to many pages, contain the best analysis, it seems to me, of the problems which we now face. It is probably worth outlining the facts of the case.

Anthony Bland, at the age of 17½, attended the Hillsborough soccer ground as a supporter of the Liverpool Football Club—that was on 15 April 1989—at which there was a crush in which many people were killed and he was severely injured. His lungs were crushed, the supply of oxygen to his brain was interrupted, and as a result he suffered catastrophic and irreversible damage to the higher centres of his brain. The condition from which he suffered, and continued to suffer, was known as persistent vegetative state (PVS). Sir Thomas Bingham, in his judgment, said:

> Its distinguishing characteristics are that the brain stem remains alive and functioning while the cortex of the brain loses its function and activity. Thus the PVS patient continues to breathe unaided and his digestion continues to function. But, although his eyes are open, he cannot see. He cannot hear. Although capable of reflex movement, particularly in response to painful stimuli, the patient is incapable of voluntary movement and can feel no pain. He cannot taste or smell. He cannot speak or communicate in any way. He has no cognitive function and can thus feel no emotion, whether pleasure or distress. The absence of cerebral function is not a matter of surmise: it can be scientifically demonstrated. The space which the brain should occupy is full of watery fluid.

Sir Thomas Bingham, the Master of the Rolls, said this of him:

> Mr Bland lies in bed in the Airedale General Hospital, his eyes open, his mind vacant, his limbs crooked and taut. He cannot swallow, and so cannot be spoon-fed without a high risk that food will be inhaled into the lung. He is fed by means of a tube, threaded through the nose and down to the stomach, through which liquefied fuel is mechanically pumped. His bowels are evacuated by enema. His bladder is drained by catheter. He has been subject to repeated bouts of infection affecting his urinary tract and chest, which have been treated with antibiotics. Drugs have also been administered.

But there is no prospect of recovery. At no time before his admission to hospital, and before this disaster, had he given any indication of his wishes should he find himself in such a condition. That is not a topic that one would expect most adolescents to address. However, after careful thought, his family agreed that the feeding tube should be removed: they felt that that was what he would have wanted.

Members should bear in mind that it was 1989 when he suffered his injuries. By 1992, his condition was static. The doctors and the trust decided to apply to the court for a declaration that they might lawfully discontinue all life-sustaining treatment. The Master of the Rolls addressed the matter as follows:

> The present appeal raises moral, legal and ethical questions of a profound and fundamental nature, questions literally of life and death. The case has naturally provoked much public discussion and great anxiety. Strong and sincerely held opinions have been expressed both in favour of the decision under appeal and against it.

An earlier judge had made the decision that it would be permissible for the trust to discontinue life support systems. The Master continues:

> The issues are such as inevitably to provoke divisions of opinion. But they are fairly and squarely before the court, which has had the benefit of eloquent and erudite argument. It cannot shirk its duty to decide. It is, however, important to be clear from the outset what this case is, and is not, about. It is not about euthanasia, if by that is meant the taking of positive action to cause death. It is not about putting down the old and infirm, the mentally defective or the physically imperfect. It has nothing to do with eugenic practices associated with fascist Germany. The issue is whether artificial feeding and antibiotic drugs may lawfully be withheld from an insensate patient with no hope of recovery when it is known that if that is done the patient will shortly thereafter die.

There are certain important principles relevant to the issue which both parties accept. These are the common law principles: these are not principles derived from any legislation in England. This is the common law which, as it seems to me, would apply here:

1. A profound respect for the sanctity of human life is embedded in our law and our moral philosophy, as it is in most civilised societies in the East and the West;

2. It is a civil wrong, and may be a crime, to impose medical treatment on a conscious adult of sound mind without his or her consent;

3. A medical practitioner must comply with clear instructions given by an adult of sound mind as to the treatment to be given or not given in certain circumstances, whether those instructions are rational or irrational. That is the principle of self-determination. This principle applies

even if, by the time the specified circumstances obtain, the patient is unconscious or no longer of sound mind.

4. Where an adult patient is mentally incapable of giving his consent, no-one (including the court) can give consent on his behalf. Treatment in such a case may lawfully be provided by a doctor where the treatment is in the best interests of the patient.

5. Where the patient is a child and a ward of court, the court itself will decide (paying appropriate regard to professional medical opinion) whether medical treatment is in the best interests of the patient.

In the result, the Master of the Rolls, the judge who heard the matter at first instance, and all of the other judges who heard the case reached the conclusion that it was permissible at law for life support to be discontinued. The best statement, as it seems to me, of the principle is that from a New Zealand judge, Mr Justice Thomas, in a case decided in 1993, *The Auckland Area Health Board v A-G*. Mr Justice Thomas put the matter as follows:

> Medical science and technology has advanced for a fundamental purpose; the purpose of benefiting the life and health of those who turn to medicine to be healed. It surely was never intended that it be used to prolong biological life in patients bereft of the prospect of returning to an even limited exercise of human life. Nothing in the inherent purpose of these scientific advances can require doctors to treat the dying as if they were curable. Natural death has not lost its meaning or its significance. It may be deferred, but it need not be postponed indefinitely. Nor, surely, was modern medical science ever developed to be used inhumanely. To do so is not consistent with its fundamental purpose. Take the case of a man riddled with cancer, in constant agony, and facing imminent death. Is he to be placed upon a respirator? On the contrary, it has been generally accepted that doctors may seek to alleviate a patient's terminal pain and suffering even though the treatment may at the same time possibly accelerate the patient's death. As I perceive it, what is involved is not just medical treatment, but medical treatment in accordance with the doctor's best judgment as to what is in the best interests of his or her patient. They remain responsible for the kind and extent of the treatment administered and, ultimately, for its duration. In exercising their best judgment in this regard it is crucial for the patient and in the overall interests of society that they should not be inhibited by considerations pertinent to their own self-interest in avoiding criminal sanctions.

The principles reflected in that case, it seems to me, are embodied in general terms in clause 16 of this Bill; I support them, and I support the clause. I do not propose to delay the Chamber unduly on a recitation of cases, but it seems to me that I should mention a couple because they highlight the type of factual situations that arise. I cite the English case of *Re W*, decided in 1992. All the cases I refer to are English cases. The facts of that case were that a girl of the age of 16 was suffering from anorexia nervosa, so severely that she was admitted to a specialist unit run by a consultant psychiatrist. Her condition deteriorated and she was moved to a hospital specialising in the treatment of eating disorders.

She wanted to stay where she was and refused to move to the hospital. The local authority applied to the court for a direction that it be at liberty to place her in the hospital for treatment, and that she be given medical treatment without her consent, if necessary. The judge held that although she had a sufficient understanding to make an informed decision, he had an inherent jurisdiction to make the order sought, and he authorised the removal of the girl and her treatment in the specialist hospital. She appealed against that decision. By way of aside, whilst the case was under appeal her condition deteriorated to such an extent that her life was in immediate danger. The hearing was expedited and an order was made that permitted her to be removed to hospital for immediate treatment.

Then the court considered the matter of principle and it held that the court had an unlimited inherent jurisdiction over minors which could, in the child's own best interest, objectively considered, override the wishes of a child who had sufficient intelligence and understanding to make an informed decision. The court would only exercise that power if to refuse medical treatment would in all probability lead to the death of the child or severe permanent injury. But before exercising that jurisdiction the court should approach the decision with a strong predilection to give effect to the child's wishes. Ultimately the appeal was dismissed because the court held that on the facts, and having regard to the deterioration in the patient's condition, the appeal ought to be dismissed.

Another case, *Re T*, decided in 1992, raised an issue to which the Hon. Angus Redford referred. This was the case where a young woman made the decision to refuse a blood transfusion, but she made it in circumstances where there was a fair inference, in fact a finding, that she had come under the influence of her mother, who was a Jehovah's Witness. She would decide one thing and then be visited by her mother, and her mother who had a fervent objection to blood transfusion would convince her that she ought to refuse. She in fact signed a form which stated that she would refuse a blood transfusion.

Once again, her condition deteriorated. She was transferred to an intensive care unit where, given a free hand, the consultant anaesthetist would have unhesitatingly administered a blood transfusion, but he felt inhibited from doing so in the light of her stated desire not to have a blood transfusion. The young woman's father and her boyfriend applied to the court for an order that it would not be unlawful for the hospital to give a blood transfusion, notwithstanding the absence of her consent, because it appeared manifestly in her best interests that that treatment be administered. Her condition deteriorated and the doctors, in fact, administered a blood transfusion. The court held that the doctors had been justified in disregarding her instructions and in administering a blood transfusion to her as a matter of necessity, since the evidence showed that she had not been fit to make a genuine decision because of her medical condition which had vitiated her decision.

Lest it be thought that I am in favour of the unbridled power of medical men to make decisions for their patients, I should mention lastly the case of *Re C*, a case decided in England in 1993. This involved a patient who was diagnosed as a chronic paranoid schizophrenic. He was actually in prison at the time of that diagnosis. He was found to be suffering from an ulcerated foot which became gangrenous, and the surgeon advised the treatment of amputation of the leg below the knee, failing which the chance of survival was small. But the patient refused to consent to the amputation. He did agree to conservative treatment, and his condition improved. He sought from the hospital an undertaking that it would not amputate his leg in any circumstances in the future, and the hospital refused to give that undertaking. So he made an application to the court for an injunction to prevent the amputation of his leg without his written consent. The court granted him that injunction. The court applied principles which reinforced the patient's right of self-determination. The mere fact that he was suffering from chronic paranoid schizophrenia did not mean that he was not

entitled, at a lucid time, to refuse to consent to medical treatment.

I support the measure, in particular clause 16. The saving provision, clause 17, is one about which I do not have strong feelings. However, the difficulty about a provision of this kind, which says that this Act does not authorise the administration of medical treatment for the purpose of causing the death of the person to whom the treatment is administered, is that its very existence gives rise to arguments. The argument is that, were it not for a provision of this kind, this Act would not have authorised; in other words, the section serves the purpose of changing the law. As I understand it, it was the intention of the movers of the amendment which brought in this provision that it would simply have a declaratory effect. Upon balance, I am inclined to think that it merely does have a declaratory effect.

Perhaps I should put the argument a little better: for example, in relation to clause 17(2), the Act does not authorise a person to assist the suicide of another. The argument would be that, were it not for that declaration, it might be suggested that the Act did authorise the assistance of the suicide of another. Clearly, on no reading of the Act does it have that effect. One would have to query the necessity for a provision of that kind. However, this Act is not merely a tool of lawyers: it is intended to be a piece of legislation that presumably will be in the drawers of medical registrars and the directors of hospitals. It should serve not only the legal purpose of declaring the law but also the educative purpose of clarifying the position. Accordingly, I support the second reading of the Bill.

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

SOUTHERN STATE SUPERANNUATION BILL

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

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

That this Bill be now read a second time.

In view of the hour, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

This Bill seeks to establish a new contributory superannuation scheme for government employees.

The scheme will have a cost to the Government based on the level of employer support required under the Commonwealth's Superannuation Guarantee (Administration) Act 1992. This means the employer cost of the scheme as at 1 July 1995 will be 6 per cent of members' salaries, and will rise to 9 per cent of members' salaries as the Superannuation Guarantee Charge rises in steps to 9 per cent of salaries on 1 July 2002. This scheme has a cost parameter in line with that recommended by the Audit Commission.

The scheme is to commence on 1 July 1995. It will be the contributory scheme available for public servants, health sector employees, teachers and police officers who are not already members of an employer supported contributory scheme. An existing member of the main State schemes which are closed to new entrants will however, have a right to move over to this new scheme.

In order to establish this scheme, the Government also accepted an Audit Commission recommendation and closed the existing main State lump sum scheme and the police lump sum scheme. Another Bill which is being introduced by the Government, seeks to confirm the closure of those other schemes on the basis that the Government is now moving to establish a new scheme for government employees.

The proposed scheme is an accumulation style of scheme and will provide retirement benefits on a par with those provided for employees in the private sector. By contributing 6 per cent of salary to this scheme, an employee can expect to receive a benefit on retirement after 35 years membership, of at least 7 times final salary. In general to be a member of the scheme employees must contribute at a chosen full percentage point of salary between 1 per cent and 10 per cent. Obviously the more an employee contributes the greater will be the end benefit. The level of employer support is not dependent however on the level of employee contribution. Membership of the scheme will be compulsory for police officers who will be required to contribute at least 5 per cent of salary. The Police Association support the concept of the scheme being compulsory for future police officers.

The scheme will also be available for casual employees. Casual employees were not eligible to join the main State lump sum scheme which has recently been closed.

A basic level of death and invalidity insurance is provided in the proposed scheme with an option for employees to purchase higher levels of insurance. Essentially members of the scheme will be able to buy up to 7 times salary cover for death and invalidity. The insurance is planned to be provided from within the scheme itself in order to obtain the most attractive rates. This means that an employee will be able to buy $55 000 death and invalidity cover for around 75 cents per week. This makes the scheme quite attractive for employees.

In recognition of the special nature of police work a minimum level of benefit is to be payable under the scheme in those unfortunate situations where an officer dies or becomes an invalid as a result of an incident in the course of duty.

In line with another recommendation of the Audit Commission the Government intends to fully fund for the employer liability as the liability accrues. The Bill contains specific requirements for the employer contributions being paid in satisfaction of the Superannuation Guarantee requirements, to be paid into an established employer fund.

Members' contributions will be invested with the South Australian Superannuation Fund Investment Trust and the Bill provides that members will be guaranteed a rate of return of 4 per cent above inflation. This aspect of the scheme's design provides another attraction to employees considering joining.

As an interim measure, employees who wish to join a contributory scheme before the new scheme commences on 1 July 1995, will be able to join the closed lump sum schemes as though the schemes had not been closed. On 1 July 1995, these employees will be transferred to the new scheme being established under this Bill. These interim arrangements are being dealt with under another Bill being introduced as part of the package of revised superannuation arrangements.

Explanation of Clauses

The provisions of the Bill are as follows:

PART 1

PRELIMINARY

Clause 1: Short title

Clause 1 is formal.

Clause 2: Commencement

Clause 2 provides for the commencement of the Act on 1 July 1995.

Clause 3: Interpretation

Clause 3 provides for the interpretation of terms used in the Bill. The definition of "charge percentage" allows employers to provide salary packages which include an additional superannuation payment on behalf of an employee. The term "retrenchment" is defined as termination of employment by the employer for any reason that cannot be attributed to the employee. Subclause (3) provides that the employer will be taken to have terminated the employment of an employee whose limited term of employment expires and who is not re-employed in his or her former position or is not offered some other position carrying a salary of at least 80 per cent of the employee's previous salary. Subclause (5) provides for the circumstances in which the employment of a casual employee will be taken to have terminated.

PART 2

ADMINISTRATION

DIVISION 1—THE FUND

Clause 4: The Fund

Clause 5: Investment of the Fund

Clause 6: Accounts and audit

These clauses make provision for the Southern State Superannuation Fund. This Fund is similar to the South Australian Superannuation Fund continued in existence by Part 2 Division 3 of the *Superannuation Act 1988*.

DIVISION 2—MEMBER'S ACCOUNTS

Clause 7: Member's accounts

This clause provides for member's accounts. Contributions made by members will be credited to these accounts.

Clause 8: Other accounts to be kept by Board

Clause 8 provides for other accounts to be kept by the Board and for the auditing of accounts kept by the Board.

DIVISION 3—THE SOUTHERN STATE SUPERANNUATION (EMPLOYER CONTRIBUTIONS) FUND

Clause 9: The Southern State Superannuation (Employers) Fund

Clause 10: Accounts and audit

Clause 11: Determination of rate of return

Clauses 9, 10 and 11 provide for a new fund to be called the Southern State Superannuation (Employer Contributions) Fund. The scheme is to be fully funded. Contributions will have to be made by employers within seven days of the payment of salary to a member (see clause 26). The amount of each contribution will be the charge percentage of the salary paid and will be paid into the fund established by clause 9.

DIVISION 4—PAYMENT OF BENEFITS

Clause 12: Payment of benefits

Clause 12 provides for the payment of benefits. Benefits are paid from the Consolidated Account which will be reimbursed by charging the Southern State Superannuation Fund with the employee component of benefits (subclause (2)) and the Southern State Superannuation (Employers) Fund with the employer components of the benefits (subclause (3)).

DIVISION 5—REPORTS

Clause 13: Reports

Clause 13 provides for reports to be made to the Minister by the Board and the Trust. The Minister must have copies of the report laid before both Houses of Parliament.

PART 3

MEMBERSHIP AND CONTRIBUTIONS

DIVISION 1—MEMBERSHIP OF THE SCHEME

Clause 14: Interpretation

Clause 15: Election by new employees

Clause 16: Election by member of the Benefit Scheme

Clause 17: Election by contributor to the State Scheme

Clauses 14, 15, 16 and 17 enable certain persons to make an election to become a member of the Southern State Superannuation Scheme. An application to the Board is not appropriate as the persons in these categories are to have a right to be a member of the scheme. However, if a member wishes to receive supplementary future service benefits he or she will have to apply to the Board which may refuse the application or grant conditional acceptance based on the applicant's state of health or lifestyle.

Clause 18: Commencement of membership

Clause 18 provides for the time at which membership of the scheme commences. Where an employee is joining the Southern State Superannuation Scheme from another scheme it is important that these clauses provide for an exact meshing so that the employee is not credited under both schemes for the same period or does not miss out on any employer contribution during any period.

Clause 19: Members of the police force

Clause 19 provides that all members of the police force will be members of the scheme established by the Bill unless they are members of the Police Superannuation Scheme.

Clause 20: Elections

Clause 20 makes general provisions in relation to elections.

Clause 21: Duration of membership

Clause 21 provides for the duration of membership of the scheme.

DIVISION 2—SUPPLEMENTARY FUTURE SERVICE BENEFIT MEMBERS

Clause 22: Acceptance as a supplementary future service benefit member

Clause 22 enables members to apply to the Board for acceptance as a supplementary future service benefit member. A future service benefit is provided under clauses 34 (invalidity) and 35 (death) and is an insurance against monetary loss due to loss of future earnings on invalidity or death. A basic future service benefit is provided to all members and is paid for by a reduction in the annual employer contributions—see clause 28 (N is the relevant factor in the formula in that clause). This will be supplemented in the case of members who are accepted as supplementary future service benefit members. The value of N will be increased in accordance with the regulations and the annual employer component will consequently be less for those members. Their future service benefit will be increased however by the factor A (see clauses 34 and 35) also to be fixed by regulations.

Clause 23: Variation of benefits

This clause provides for variation of a supplementary future service benefit.

Clause 24: Election to terminate status as a supplementary future service benefit member

Clause 24 enables a member to terminate his or her status as a supplementary future service benefit member.

DIVISION 3—CONTRIBUTIONS BY MEMBERS

Clause 25: Contributions

Clause 25 provides for contributions to be made by members of the scheme.

DIVISION 4—EMPLOYER CONTRIBUTIONS

Clause 26: Employer contributions

Clause 26 provides for contributions to be made by employers.

PART 4

THE EMPLOYER COMPONENT OF BENEFITS

Clause 27: Employer contribution accounts

Clause 27 provides for the employer component of benefits to be credited to accounts maintained by the Board in the names of all members.

Clause 28: Annual employer contribution

Clause 28 sets out a formula for determining the employer component of benefits under the Bill.

Clause 29: Administration charge

Clause 29 provides for an administration charge which is to be deducted from the employer component of benefits.

PART 5

SUPERANNUATION BENEFITS

Clause 30: Interpretation

Clause 30 defines "the employee component" and "the employer component" of benefits for the purposes of Part 5 of the Bill. There is a guaranteed minimum for each component.

Clause 31: Retirement

Clause 31 provides a benefit on retirement.

Clause 32: Resignation

Clause 32 provides the resignation benefit. Subclause (7) allows a member who has preserved a benefit to change his or her mind (if the benefit has not been paid) and carry it over to another superannuation fund or scheme.

Clause 33: Retrenchment

Clause 33 provides a benefit on retrenchment. A member who is retrenched can choose to preserve the benefit or carry it over to another fund or scheme as though he or she had resigned.

Clause 34: Termination of employment on invalidity

Clause 34 provides for a benefit on invalidity. Subclause (6) provides for a minimum benefit in the case of members who are members of the police force. Subclause (8) provides that termination of employment in circumstances that would otherwise amount to retrenchment will be regarded as invalidity if the member was incapacitated for work when his or her employment was terminated and satisfies the Board that the incapacity is likely to be permanent.

Clause 35: Death of member

Clause 35 provides for benefits on the death of a member. As with invalidity members of the police force are guaranteed a minium benefit by subclause (7).

PART 6

MISCELLANEOUS

Clause 36: Employees to be informed of their rights to membership of the scheme

This clause requires the Board to ensure that persons who are entitled to elect to be members of the scheme are informed of their rights.

Clause 37: Employer benefits and contributions where member on leave without pay

Where a member is on leave without pay employer contributions will normally cease. If, however, the member has been seconded to employment outside the public sector it may be more convenient for all concerned if employer contributions continue to be credited on the member's behalf under the scheme. This would only occur of course if the second employer had agreed to reimburse the first employer. The clause operates through Ministerial direction and therefore its use in a particular case requires the agreement of the Minister.

Clause 38: Exclusion of benefits under awards, etc.

Clause 38 prevents the accrual of superannuation entitlements under awards and under this Bill. Similar provisions are included in the *Superannuation Act 1988* and the *Superannuation (Benefit Scheme) Act 1992*.

Clause 39: Police Occupational Superannuation Scheme

Clause 39 provides that a member of the scheme is not entitled to benefits under the Police Occupational Superannuation Scheme.

Clause 40: Review of the Board's decision
Clause 40 provides for the review of decisions of the Board by the Supreme Court or by the Board itself.

Clause 41: Power to obtain information
Clause 41 gives the Board power to obtain information from a member or an employing authority.

Clause 42: Delegation by Board
Clause 42 is a delegation provision.

Clause 43: Division of benefit where deceased member is survived by lawful and putative spouses
Clause 43 provides for division of benefits on the death of a member who is survived by a lawful spouse and a putative spouse.

Clause 44: Payment in case of death
Clause 44 provides for payment of benefits where the recipient has died.

Clause 45: Payments in foreign currency
Clause 45 provides for the payment of benefits in foreign currency in certain circumstances.

Clause 46: Rounding off of benefits
Clause 46 provides for the rounding off of benefits.

Clause 47: Liabilities may be set off against benefits
Clause 47 allows the setting off of a liability of a member under the Bill against a benefit payable to, on behalf of, or in respect of the member.

Clause 48: Resolution of doubts or difficulties
Clause 48 provides for the resolution of doubts or difficulties by the Board.

Clause 49: Regulations
Clause 49 provides a regulation making power.

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

FILM AND VIDEO CENTRE

Adjourned debate on motion of Hon. Anne Levy:

That this Council condemns the Minister for the Arts for closing the South Australian Film and Video Centre, contrary to informed recommendations, without prior consultation with the Film Corporation Board, Libraries Board, the centre itself or its customers, or anyone else, so destroying a most valuable South Australian cultural resource and causing disruption and difficulties for its hundreds of thousands of users.

(Continued from 3 August. Page 32.)

The Hon. DIANA LAIDLAW (Minister for the Arts): This motion seeks to condemn me as Minister for the Arts for closing the South Australian Film and Video Centre. It outlines a number of reasons for doing so. Not surprisingly, I will oppose the motion and I foreshadow an amendment, which I have circulated. I reject the accusations made against me: they have no foundation and I will outline the reasons why.

It is important to note the role of the South Australian Film Corporation as at 30 June 1994 and, in particular, the South Australian Film and Video Centre. The centre has been responsible for collecting and lending films and videos; publishing catalogues and information; providing exhibitions; distribution; and the promotion of films and videos. It has conducted education programs for teachers and students, and it has assisted the film community.

As the mover of the motion knows, the South Australian Film and Video Centre has operated in an uncertain and unsettled administrative framework for many years—almost from the day it opened. Since 1973 the South Australian Film and Video Centre and its parent body, the South Australian Film Corporation, have endured nine reviews of their operations, five of those reviews being conducted in the past five years of the Labor Government. This rush of reviews, coupled with cuts of $400 000 in funding since 1990, has had a most destabilising and debilitating effect on staff. This fact was reinforced to me by the past Director. It is hard to believe that any Government—in this instance the Bannon-Arnold Government—would have treated any other industry that is as important to our economy as the film industry in the same casual, uncaring fashion.

The last review of the South Australian Film Corporation initiated in June 1993 was accompanied by a review of the South Australian Film and Video Centre with its own terms of reference, as follows:

1. Identify the current programs of the centre and the benefits of their targeted sectors.
2. Identify what future opportunities exist for current and possible future programs.
3. Establish the cost effectiveness of those programs.
4. Investigate options for the future management of the programs.

I received a copy of the South Australian Film and Video Centre report in April. The report recognised that there were management deficiencies and that there was little or no accountability to the management or the board of the South Australian Film Corporation, notwithstanding the fact that the South Australian Film and Video Centre was a division of the South Australian Film Corporation. Nonetheless, this latest report essentially endorsed the *status quo*, although it suggested modifications to the management process.

After receiving the report and reading it, I requested the Department for the Arts and Cultural Development to comment on it, because I considered that it contained considerable gaps. The department confirmed that this was so. In particular, I considered that two terms of reference needed more exploration: first, the identification of future opportunities for current and possible future programs; and, secondly, the investigation of options for the future management of these programs. The department reported, and I endorsed, concern that the South Australian Film and Video Centre's costs were too high in relation to the services it was providing. I was concerned also that following an internal departmental review of the centre in 1989 so few changes had been made to its operations to develop a much greater focus for its work and much higher efficiency.

I had further concerns about the effectiveness of the distribution of the collection throughout the State, and I objected to the fact that the arts budget had been so heavily subsidising access by the Department for Education and Children's Services and TAFE to the collection. Essentially, the department, which had been one of the largest borrowers (although that had fallen in recent years), had access to that service at no cost. In fact, the delivery of videos to country areas alone cost the arts budget $15 000 in the last financial year.

One must question whether the delivery of films by courier to the Education Department in country areas was the best use of the arts budget. I certainly did question it, but at that time I got no assistance from the Education Department on this matter. The response from the Education Department was no different from the response the former Government had received to similar pleas for assistance.

The South Australian Film and Video Centre has become a luxury Rolls Royce service. Therefore, I am not surprised by the mover's reference to claims by the National Film Board of Canada that the centre was a model that should be followed elsewhere in the world. The fact is that nowhere else in the world was there such a service as that offered by the South Australian Film and Video Centre, because no other country believed that the way in which we were operating that service was the best and most efficient use of funds and

provided the best distribution in terms of the cost of the service. So we had a Rolls Royce service, the only one of its kind in the world. That is not to suggest that nowhere else in the world were Governments funding film and video centres.

Basically, the South Australian Film and Video Centre was operating a service that the taxpayers could no longer afford in view of the financial mess that we had inherited from the ALP Government. A survey by the Australian film and video libraries in July 1993 revealed that the South Australian Film and Video Centre had the second highest staff level (17); the second lowest number of registered borrowers (at that time, 2 285); and the third largest collection—28 318 items comprising 20 781 in film format and 7 537 in video format. I should distinguish between film titles and film format, because there has been confusion on the benches opposite. I emphasise that there are 13 040 film titles, of which a number of prints have been made, leaving 20 781 in film format.

The survey to which I have referred also highlighted that the centre provided the third highest number of loans per annum—51 201. The Audit Commission recommended earlier this year that the South Australian Film and Video Centre collections be sold, but the Government was not willing to endorse that recommendation. We considered that there was a role for Government in the collection and/or the distribution of film and videos. We adopted a middle course between keeping the Rolls Royce service that we were funding beyond our means and selling the collections as the commission recommended.

By adopting the course outlined by me on 30 June we will be saving $400 000 this financial year on the centre's budget of $850 000 in 1993-94. However, there are more advantages than that cost saving one. The course that has been outlined promises to provide borrowers of videos with a much more accessible and cheaper service through the PLAIN Central Services and our 138-strong public library system in South Australia. It will be cheaper because borrowers will no longer pay membership fees. The course proposed also enables the Government to establish for the first time a South Australian collection of film and video. It was of surprise to me and others looking at what was going on at the centre that over the 21 years that it had been established no opportunity had been made to establish a South Australian collection of film and video.

Again, the course that I have outlined provides that the Government will have an opportunity to involve other agencies and institutions in sharing fully or wholly the responsibility for the film collection.

The Hon. T. Crothers: Will the Government make some provision for the preservation of the collection?

The Hon. DIANA LAIDLAW: I will get onto that. In addition, we will be providing an additional $20 000 this year to buy more videos. I indicate that commitment to building up the collection because it has been suggested by the closure of the centre that the Government has no interest in the collection of film or video, that we are scrapping the whole thing and that we could not care about distribution or about access. In fact, one of the motivations for doing this is to improve access, and we will be further investing in video with the addition of $20 000 this year, and, in times of cost cutting across Government, that should be acknowledged by members opposite.

In making this decision I took into account the following facts. First, videos comprise 33 per cent of the collection. There are more than 13 000 film titles but only 5 000 titles have been borrowed in the past 12 months. The video collection is the area that is most borrowed—33 per cent—and, while film comprises the bulk of the collection, it is borrowed least often and there has been declining usage over a number of years.

Borrowings from the community have increased in recent years, while borrowings through the education sector have dropped. The South Australian Film and Video Centre has virtually ceased purchasing the 16mm film titles: in part because of the higher cost of doing so; in part because of the falling demand; and in part because the equipment required to show 16mm film in schools is becoming obsolete and is being replaced progressively with new, easier to use video equipment.

I also took into account that public libraries themselves have been building up their own video collection with more and more enthusiasm in recent years, and there is certainly some duplication between those two collections. One has to question why we should have two collections of videos in this State for borrowing purposes, one through the public library system and one through the old South Australian Film and Video Centre.

In this debate it should be recognised that the transfer of the South Australian Film and Video Centre's video collection to the PLAIN Central Services is not a new or novel idea: it has been around for some years and it certainly has been advocated by the State Library in recent years. I know from minutes I have sighted from 1992, when the Hon. Ms Levy was Minister for the Arts, that negotiations had been conducted between the then CEO of the Department of Arts and Cultural Heritage, Ms Dunn, and the State Librarian. I acknowledge that there were some misgivings expressed at the time by the Libraries Board, in terms of the transfer of videos to the PLAIN Central Services, but all these misgivings were addressed by me before I announced on 30 June this year that the South Australian Film and Video Centre would close and that the video collection would be transferred to the PLAIN Central Services.

At this point I would like to thank the senior officers in the State Library, the PLAIN Central Services and the South Australian Film Corporation for their professionalism, cooperation, advice and assistance that the department and I have received in preparing for the transfer of the video collection both prior to and since 30 June. The video collection was transferred to PLAIN Central Services on the weekend of 30 and 31 July. So, there was an extraordinary amount of work done between the announcement I made on 30 June and the transfer of the video collection from Hendon to Hindmarsh on the weekend of 30 and 31 July. It was completed over that weekend, which is an extraordinary effort when you consider that 7 000 videos were involved.

All the bookings have been honoured since that time. There are always forward bookings for film and video, and all video bookings were honoured. So, there was no hiccup or disruption to the service at all in terms of the borrowings of the videos. The bookings have continued without interruption. On the Friday before the move bookings were being made. Bookings were made again, but on a different telephone number, the following Monday.

So, much of this was able to be achieved in such an expert, efficient manner because four experienced staff were transferred with relative ease from Hendon to Hindmarsh. I have visited the four staff concerned since they have, so-called, set up shop at the PLAIN Central Services and I am satisfied that they have settled well, that they are producing

an expert service and that the needs of borrowers whom they are serving are being well catered for. I do thank them for their professionalism and cooperation under the very difficult circumstances, which I acknowledge.

The visit that I made with the member for Peake, Heini Becker, confirmed that the decision made by the Government was the right one. It confirmed that the videos booked from schools will be available in a much more efficient way than in the past, or at least as easily as they were in the past. Schools will be able to use the NEXUS system that they use now for various dial-up access purposes, so they will be able to use NEXUS to get direct dial-up access to the PLAIN Central Services. Already 45 school community libraries have such access to PLAIN Central Services; now all schools will.

They will also be able to telephone their public library if they wish and use that means to get videos. However, if they do wish to book through the public libraries system, they are guaranteed that the videos will not have to be delivered to and picked up from the public library but will be delivered to the schools. That was an important consideration in this transfer arrangement. The Department of Education and Children's Services has now indicated that it is prepared for school borrowers to use its courier service, both in the metropolitan area and in the country. That is a big breakthrough after many years of negotiation to get some assistance from the Education Department in this important area.

In the metropolitan area, the PLAIN system, with its existing contract with Australia Post courier services, can be used if the Education Department's courier system is too busy at the time. I should also advise that the loan period for videos will be one week, not two weeks as it is for books. It was a concern of a number of users of videos that they may not have such ready access to those videos if they were out for two weeks as is the case presently for books.

I acknowledge the fact that the future of the film collection is more difficult. It has always been treated separately as a matter of consideration by the Government because it is much more sensitive material to use. We have implemented an audit of film, and I indicated in mid-July that that would take a maximum of three months to finish. It will be finished before that time. We have learnt from this audit some very interesting things about the borrowing patterns. For instance, only 83 schools out of almost 800 schools in South Australia regularly borrow any film from the collection. We have also found that, of all the films in the collection, only about 200 titles are relevant to the school curriculum. We have found that the most popular film, the film in the highest demand in the education sector in South Australia, is '*Meetings, Bloody Meetings*'. One would have to question the relevance of that film to the curriculum. In fact, it is not relevant to the curriculum at all.

So, some very interesting matters have come to light with the audit that has been undertaken, matters certainly of interest to the Arts and Cultural Development Department but, I would say, equally to the Education Department. In future, the films with any connection to South Australia—and the auditors have determined that there are about 100 such films—will be located in the Mortlock Library. These films, in terms of definition of a connection to South Australia, will be those which were made here or which have South Australian actors, directors or producers.

Those South Australian films that are borrowed will not be put immediately onto the shelves in the Mortlock Library where they can be used only for reference purposes; they will be available for borrowing purposes. When that borrowing demand falls off they will be returned to the Mortlock Library for reference. I have received various representations from a number of organisations and institutions in this State exploring arrangements whereby they may be able to have custody of the film collection, both the films actively borrowed and those where there is no borrowing pattern at all. These expressions of interest are being assessed at the present time and a decision will be made in regard to the fate of the collections within six weeks. It is important that the decision be made within that six week period, because the education institutions (our schools, TAFE and the like) must be able to plan, as must our film societies.

I emphasise that it has always been my intention to keep as much as possible of the collection in South Australia. Only those films of archival low borrowing demand would be considered appropriate for transfer to the National Film and Sound Archive. I am keen to explore circumstances in which films subject to a high level of demand might be copied onto video for borrowing under the new system. This is being examined at present but, until the borrowing details can be determined from the database and the copyright ownership details investigated, the extent and cost of possible transfer of the film to video is unknown. We will know the facts shortly.

Briefly, I want to explain why I made the decision on 30 June to close the centre, prior to all these matters in relation to film, in particular, being resolved. I could have waited for all the details to be resolved before making such announcement: I acknowledge that. However, I wished to speak to the staff personally and decided that I should do so as a courtesy to them as soon as possible, so that they did not hear about the possible closure from any source but me. All members who have any interest in the arts would know that rumour is rife in the arts even at the best of times, and I would have to say that the closing of this centre could not be called the best of times, nor could the circumstances in which the centre had to be closed.

I visited the centre and spoke to the Director and staff on 30 June. I wanted to give them the benefit of the more generous provisions that applied to the targeted separation packages (TSPs) that would end in July 1994, to give them at least four weeks to take advantage of those more generous provisions if they wished to do so. As it happened most, but not all, did. As I explained, four of our experienced officers have now been transferred to PLAIN's central services. One other is continuing to work at the South Australian Film Corporation in meeting our commitments in terms of the borrowing of films. I must acknowledge that there have been some hiccups in the transfer of film and video and in the decision to close the centre. I acknowledge that a memo was issued in late July indicating that from 1 August no 16 millimetre films that had been booked for the rest of the year and beyond would be honoured.

As soon as I heard about that arrangement I called senior people together within the department, the Film Corporation, State Library and others, and indicated that I was not satisfied with that decision, and it was reversed. I should indicate that, contrary to press releases issued by the Hon. Chris Sumner, the shadow Minister for Education and Children's Services at the time, 700 schools were not inconvenienced for the few days that that initial direction went out before I reversed the decision. Between 1 August and the end of the year only 60 schools had booked films to the end of the calendar year. As I indicated earlier, all borrowings for video were always to be honoured; there was a hiccup in the borrowings for films;

all 60 schools which had registered that they wished to borrow a film will have those borrowings and bookings honoured. The last film booked was 12 December and is to be returned on 22 December. As for schools, there were 60 school bookings for 605 films; 19 tertiary institutions with 124 bookings; 23 others, including film societies, with bookings for 369 films. All are being honoured.

Finally, I would indicate that there are a number of advantages in the new system, particularly for video at this time; arrangements for film will be confirmed. One particular advantage that I would like to highlight is the very powerful and efficient database that PLAIN uses. Its searching capacity is much stronger than anything that has been at the South Australian Film and Video Centre in the past. It will ensure immediate and maximum access to a wide range of titles from the computer screen which have not been so readily available in the past through the written catalogue system that the South Australian Film and Video Centre has been using. Now, immediately a new video is available and catalogued, that advice will be known throughout the State through the Nexus Education System and through the PLAIN system. The general public now has 183 additional access points through the public library system for videos, whereas in the past there has been the centre at Hendon and a city desk at the State Library.

In speaking to this motion and in moving my amendment I suppose it is hardly surprising that when there is change in a system there will be some shock to the system and to borrowers. Certainly I have received a lot of correspondence on the matter and many protests. I will not be reinstating the old system, because I believe with confidence that the new arrangements will not only save taxpayers' money but also provide substantial benefits in terms of access to catalogues, money for new videos and a far superior distribution system in the general public interest. I move the following amendment to the motion:

Leave out all words after 'Council' and insert:

welcomes the initiatives taken by the Minister for the Arts in relation to the South Australian Film and Video Centre—

1. to provide borrowers of videos with a more accessible, cheaper service through the PLAIN Central Services based at Hindmarsh and 138 public libraries across the State;
2. to establish for the first time a South Australian collection of South Australian film and videos based at the Mortlock Library; and
3. to call for expressions of interest from South Australian agencies and institutions to house and distribute the film collection.

The Hon. SANDRA KANCK secured the adjournment of the debate.

ADJOURNMENT

At 6 p.m. the Council adjourned until Tuesday 6 September at 2.15 p.m.