LEGISLATIVE COUNCIL

Thursday 17 November 1994

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

SODOMY

Petitions signed by 728 residents of South Australia praying that the Legislative Council will pass a law to make the commission of sodomy a criminal offence, to prevent this serious health hazard from being promoted in the media and educational institutions as a valid form of sexual intercourse, were presented by the Hons. Bernice Pfitzner, G. Weatherill and J.C. Irwin.

Petitions received.

PAPER TABLED

The following paper was laid on the table:

By the Minister for Education and Children's Services (Hon. R.I. Lucas)—

State Supply Board—Report, 1993-94.

PUBLIC SECTOR WAGE OFFER

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to table a copy of the ministerial statement made by the Minister for Industrial Affairs in another place today on the subject of the public sector wage offer.

Leave granted.

INDONESIAN MINISTER

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to table a copy of the ministerial statement made by the Minister for Industry, Manufacturing, Small Business and Regional Development on the subject of the visit to South Australia of the Indonesian Minister of Public Works.

Leave granted.

RADIOACTIVE MATERIAL

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to table a copy of the ministerial statement made by the Premier in another place today on the subject of the transfer of low level radioactive waste to Woomera.

Leave granted.

TEACHER RECRUITMENT

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

Leave granted.

The Hon. R.I. LUCAS: Every year, as a result of industrial arrangements entered into by the previous Labor Government and the South Australian Institute of Teachers, the Department for Education and Children's Services has up to 250 surplus teachers in the metropolitan area because of guaranteed conditions for certain groups of teachers such as those entitled to a right of return to the city after four years' country service.

At the same time, the department has to appoint new teachers to teach in many country schools. The curriculum guarantee agreement entered into by the previous Government with the Institute of Teachers in 1989 has ensured that the Department for Education and Children's Services is constrained in its executive decision making and has resulted in substantial ongoing and unnecessary expense.

This agreement has meant that each year, even though we have a surplus of teachers, up to 250 new permanent teachers have been appointed to fill country positions. The annual cost of this institutionalised surplus of teachers is about $12 million, and $35 million was spent this year on targeted separation packages for surplus teachers.

The staffing practices that this Government has inherited meant that where a permanent teaching vacancy occurred in a country school, where members of the existing teacher work force did not choose to take up the position, new recruits were brought into the system. In turn, each of these 250 new recruits would be entitled to return to the metropolitan area after four years' service. Each year up to 250 teachers would return to the metropolitan area, and again the task of filling the positions left by them would be filled by up to 250 new recruits.

This process, designed by the former Government, created this institutionalised surplus. If the current Government does not act now, we will still have surplus teachers returning from country positions in the year 2000 and beyond. This Government is still faced with the problem of staffing country schools, but its new initiatives will break the cycle which has given us this surplus.

Next year the Government will appoint about 150 new teachers to fill vacancies which have occurred in schools, most of which are in the country. The Government will fill these positions through a mixture of permanent appointments and fixed term appointments for three years. Permanent appointments will be offered to new recruits, who will take up positions in very remote schools. Other permanent positions will be offered where there is a known lack of expertise in the system, for example, in the Languages Other Than English programs. Probably about 80 permanent appointments will be made under this process.

The Government is therefore making permanent appointments only in areas of greatest need. The remaining appointments will be for a fixed three year term. This new strategy will allow permanent vacancies, particularly those in regional areas, to be filled by teachers on fixed term appointments for three years. Outstanding, enthusiastic teachers appointed under this scheme will then be able to apply on merit for further appointments in the system, perhaps at the same school.

Another feature of the new scheme is that principals will play a key role in the appointment of a teacher to their school. This will allow a close match between the special and often unique needs of the country school and the talents of the individual teacher. Many of these new fixed term appointments will be ideal for enthusiastic teachers graduating from university and looking for their first job, or for the experienced contract teacher looking for stability of appointment.

The new scheme has many features which are attractive to parents, teachers and principals. Vacancies will be filled by teachers who want to be in the country; there will be a close match between a school's needs and the talents of the teacher; and the opportunity exists to keep the outstanding

teacher in the school for another term appointment, subject, of course, to a selection and merit process.

There will be no loss of quality in country schools through the Government's initiative. It must be remembered that a significant number of teachers who are appointed to country schools on a permanent basis are leaving the country school after four years, anyway, to return to the city. There are up to 4 000 applications each year from which to choose, and principals will ensure that they get the most dynamic and effective teachers to meet the needs of their communities.

It is important to note that the new changes will not affect the rights of permanent teachers currently in the system. The four year right of return conditions for country areas will continue for existing teachers and will still be available for remote and isolated teachers and for those who are subject specialists in areas of high demand. It is important to note that this change will not mean a further reduction in the total number of teachers, but simply means a change in the nature of the appointment of teachers. It will also mean that the total number of TSPs to be offered in the department will be increased due to these additional surplus teachers, the declining enrolment factor and the need to hire up to 150 new teachers. Whilst the budget cut remains at 420 teachers, the total number of TSPs for teachers will be somewhere between 650 and 690.

My statement this afternoon would not be complete without reference to the astonishing statements of the union leadership on this issue. The President of the Institute of Teachers, Ms Clare McCarty, claimed this morning that the Government was trying to staff schools with a casual work force. This claim is wrong because, as I have already said, the Government is appointing new teachers either as permanent appointments or for a fixed term of three years. Ms McCarty, in opposing teachers being appointed on a fixed term of three years, stated this morning on ABC radio that:

> Casual teachers certainly don't help students. They are a floating population, which means that it is very difficult for them to relate on a long-term basis to students when they are learning, and very difficult for them to be able to relate in the long term to parents.

On behalf of the Government—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS:—I reject absolutely the union's claim—

The Hon. L.H. Davis: On a clear day you cannot see forever.

The PRESIDENT: Order!

The Hon. R.I. LUCAS: On behalf of the Government I reject absolutely SAIT's claim that casual teachers certainly do not help students. I have already received a small number of complaints this morning from teachers about what they describe as a completely unwarranted attack by the Institute of Teachers on their professional ability. I share the view of these teachers—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS:—and want to place on record the Government's appreciation of the outstanding performances by many contract teachers and teachers appointed for fixed terms of up to three years.

QUESTION TIME

SCHOOL PROPERTIES

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 the sale of school properties.

Leave granted.

The Hon. CAROLYN PICKLES: In response to a question asked during the debate on the Appropriation Bill the Minister has advised that the education budget includes $18 million from the sale of surplus properties. The Minister listed nine properties, those expected to realise more than $100 000 and valued at a total of $9.5 million. That left $8.5 million worth of sales not identified. The Minister said that due to the complex and sensitive nature of the negotiations consultation process it was inappropriate to release details until the properties were formally declared surplus. This means that the budget requires the sale of schools not yet declared surplus, and one presumes they are not yet closed but are about to be. My questions to the Minister are:

1. Is the sensitive consultation process that precludes the Minister from listing those properties to be sold the same process that he has initiated with schools under review for closure?

2. How many schools must the Minister close this year to meet his sales budget of $18 million?

The Hon. R.I. LUCAS: The Government's commitment in relation to school closures has been stated on a number of occasions. Briefly, I will restate it for the Leader of the Opposition. It is simply that—

The Hon. Carolyn Pickles: Just answer my question.

The Hon. R.I. LUCAS: I will do that as well. It is simply that the Government's policy in relation to school closures is exactly the same policy as the Leader of the Opposition supported with the Labor Government in relation to school closures. We are continuing the same policy. On that basis, we have given a commitment that the ballpark number of closures over the four years of this Liberal Government's parliamentary term will be about 40. The numbers that have been factored into this budget and future budgets are consistent with that policy announcement. Nothing that comes from the 1994-95 budget will, in effect, change that policy position. There is no answer, as I have indicated before, as to hit lists of schools, because that is not the way we operate. We operate in a true consultative fashion in relation to school rationalisation and closure. We are interested in sitting down and talking with parents, teachers, principals and the community before we make the final decision.

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: I have never been coy about saying where the buck stops: the final decision rests with the Minister. Irrespective of what the particular recommendations might be from varying groups, in the end the Minister must accept responsibility for these very difficult decisions. I have explained the reasons for that before, and I do not intend to go over them again. The $18 million factored into the capital works budget this year pales into insignificance when compared with the last budget of the Labor Government. The last budget of the Labor Government factored in $32 million worth of land sales, school closures and facilities to pay for the capital works budget. If the Leader of the Opposition is—

The Hon. L.H. Davis interjecting:

The Hon. R.I. LUCAS: Exactly. If the Hon. Ms Pickles—

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: There is no secret about it. I am the one who gave you the information. It was in the Appropriation Bill debate. I have discussed it with the Institute of Teachers, with principals, with teachers and with parents. I wrote you a letter in response to your question in the Appropriation Bill debate saying, 'Here is the answer.' No-one is hiding anything. We are an open Government and we seek wherever possible to allow members to enter into these sorts of discussions. If you want to compare $18 million in this financial year, compare it with the $32 million of the Labor Government in the last financial year to balance the capital works budget.

I can make it no clearer than that. The total number we are talking about is 40 for the four years. The 1994-95 budget figure of $18 million does not affect that calculation, so there will not be a rush in the next six weeks to close down 10 or 20 schools without consultation or without notice. I have given my undertaking in relation to that. We will continue with our policy of discussion and consultation. I can add no more than that. There will be no wholesale closure of schools in the next four to six weeks which takes us out of this ballpark of 40 school closures over the four years, an undertaking which I have given on a number of occasions.

ROXBY DOWNS

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Minister representing the Minister for Housing, Urban Development and Local Government Relations a question about the availability of housing and housing land at Roxby Downs.

Leave granted.

The Hon. R.R. ROBERTS: I have been advised of, and I have observed first hand, the problem of the lack of housing land and the cost of housing available to residents at Roxby Downs. Not only is there a shortage of available housing but also the cost of private rentals is quite extreme, with the example of a two bedroom flat costing approximately $185 per week. I am also told that this has forced some 40 workers and in some cases their families to seek accommodation in Andamooka, despite the state of the road and the cost to commute between Andamooka and Roxby Downs. To exasperate home seekers even more, and despite the fact that there are hundreds of square kilometres of land around but outside the Roxby Downs designated boundaries, people can build only on limited sized blocks of less than a quarter of an acre in most instances, with block prices being in a range of $28 000 to $30 000, which is unusually high for a country area.

I understand that the situation may have arisen as a result of the original indenture agreement. However, many people would like to take up larger blocks but they cannot, even if they can afford to do so. I am also advised that the future of Roxby Downs is assured, given the recently announced expansion plans for the mine facility. In view of this, my questions to the Minister representing the Minister for Housing, Urban Development and Local Government Relations are: will the Minister investigate whether affordable land can be made available to current and future residents of Roxby Downs; and will the Minister investigate fully the option of providing limited affordable housing at Roxby Downs, not at the artificially high prices that are now being paid because of the housing shortage in Roxby Downs? If not, why not?

The Hon. DIANA LAIDLAW: More land will have to be made available to accommodate the expansion that Western Mining is considering undertaking at that site. As the Hon. Legh Davis has said, it is becoming a bigger and better mirage in the desert each year. I will refer the honourable member's questions in relation to affordable housing and access to the Minister and bring back a reply.

RADIOACTIVE MATERIAL

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister for Transport a question about the transport of radioactive waste referred to in a ministerial statement tabled today.

Leave granted.

The Hon. T.G. ROBERTS: The questions I will be asking come out of not what is in the ministerial statement but what is not in it. The introduction actually tries to collar the previous Government, the present Opposition, into a position where an agreement was given to the Commonwealth to transport low level radioactive waste to Woomera, but in actual fact, for those people who read the ministerial statement closely, they will see that discussions were commenced in 1986, and it is my information that there was never any finalisation of those discussions and no decisions were made.

The Hon. Diana Laidlaw: You got tossed out of government.

The Hon. T.G. ROBERTS: The interjector says that we were tossed out of government, and that is quite an accurate reflection of the result of the December election. It is logical to assume that those negotiations were never finalised and agreements were never reached, because I understand that the final negotiations took place in the life of the current Government with the Premier and probably the Minister for Mines. I am not quite sure who was involved in discussions, but I suspect that the final discussions took place under the current Government.

My questions to the Minister for Transport are as follows, and I have other questions of other Ministers that do not directly come under the portfolio of the Minister for Transport, and I ask her to pass them on to the relevant Minister:

1. What route are the trucks taking?

2. How many trucks will be used, and over what period of time will the transfer take place?

3. Will the convoy travel through declared nuclear free zones?

The questions that will probably have to go to other Ministers are:

1. What type of waste are we storing?

2. What compensation, if any, is being requested by the State Government?

The Hon. DIANA LAIDLAW: In phrasing his question, the honourable member did acknowledge the Premier's opening paragraph which reads:

> Members are aware that in 1986 the former South Australian Government began discussions with the Federal Government about a storage site for low level radioactive waste.

The matter that is being transferred remains low level radioactive waste. The statement from the Premier also

indicates that the South Australian Government has had no say in the Commonwealth Government's decision—

The Hon. Carolyn Pickles interjecting:

The Hon. DIANA LAIDLAW: No negotiation in terms of whether or not we had a say in the decision by the Commonwealth to transfer the material to Commonwealth-owned land in South Australia. That was a decision made by the Federal Government. The State Government was not involved in that decision. I understand that permits were to be issued, and that matter was to be the responsibility of the Minister for Health and possibly the Minister for Emergency Services. They were not to be issued by the Department of Transport, because we are not involved in that area. Further, I understand that the Minister for Emergency Services and the Police Commissioner are aware of the route that the—

The Hon. R.R. Roberts interjecting:

The Hon. DIANA LAIDLAW: No, it is not our responsibility. We have defined areas of responsibility. The State Department of Transport's responsibility for permits would be for A-doubles and B-doubles, not in terms of dangerous or radioactive waste. They are specifically defined responsibilities under other Acts. In terms of radioactive material, that is legislation that the Hon. Jennifer Cashmore introduced back in the 1979-82 Parliament, and that is committed to the Minister for Health. The Police Commissioner, as I indicated, also has been made aware of the route that the trucks will travel. I will refer the honourable member's other questions to the relevant Ministers and bring back a reply.

MENTAL HEALTH

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Health, a question about support for mental health patients and their families.

Leave granted.

The Hon. SANDRA KANCK: I would like to give some background about the difficulties surrounding the family of a mentally and intellectually disabled man. The man, who is almost 50 years old, came from a small farming community on the West Coast of South Australia. Due to the distance, lack of information and facilities, the man did not have appropriate health care as a boy and a young man. By the time he was 40 years old his condition, both mental and physical, had deteriorated to the extent that he could no longer live on the farm with his two brothers. He was subsequently admitted to Hillcrest Hospital where he was diagnosed as having schizophrenia.

Later, the diagnosis was changed to a so-called 'dual' diagnosis which means he was suffering both psychological problems and intellectual disability and which has led to the passing of the buck for his responsibility in the mental health area. After a few weeks at Hillcrest he was transferred to a rest home where he had his meals prepared for him and attended day-care programs three days a week. The other four days of the week he spent at the rest home and, as the home was locked, he could not leave the premises, even for walks. Thus, he soon became very bored and depressed and began sleeping during the days when he stayed at the home.

Subsequently, his behaviour deteriorated. He was taking money and clothes (and wearing them) from other residents and pinching cigarettes, even breaking a glass window to get to the cigarettes as they were locked away. A caring niece, who is a nurse and who has spent much time and energy to ensure that her uncle is properly cared for, decided that her uncle would be happier and thus better behaved in a place where he could at least go for walks. Another problem was that the rest home had many serious managerial problems that she has since reported to the appropriate authorities.

The man was moved into his new residence, this time a hostel, and lived happily there for 12 months. He continued to have day-care programs three days a week. Although the hostel was more professionally run and a much nicer place, his behaviour once again became a problem. The niece was told that her uncle could no longer stay there. An IDSC official suggested that he be transferred to a hostel at Victor Harbor, Whyalla or Port Lincoln. However, the niece did not believe that this would be acceptable because there would be no family support at those places nor any emergency support as was available at Glenside or Hillcrest.

In frustration, the man's niece decided that her uncle could live with her and her family as they had a self-contained room at the back of the house. As a nurse and a mother she was prepared to take on the work of daily baths, providing meals and other general caring duties but, after only one week, the man's behavioural problems re-emerged. On his seventh night with his niece he decided he did not want to sleep in his own room and made up all sorts of child-like excuses. The niece, who did not want to set a precedent, did not allow him to sleep on the couch and told him to go back to his room.

At this he started screaming in a loud voice at the back door in the middle of the night, which would not have been greatly appreciated by neighbours. She let him inside again. The niece tried to reason with her uncle about his bad behaviour and warned him that if he did not behave he could not stay with her. Meanwhile, the niece's husband decided that he and their young son must sleep somewhere else that night so they went to a friend's place. As the niece had already lost sleep the night before, due to her uncle's bad behaviour, she decided that she could not cope any more. She rang for an ambulance to take him to Glenside Hospital but was told that in order to do this he had to be assessed as a detained patient.

She rang the doctor. A locum came but, as her uncle was not assessed as being a danger to himself or others, he was not assessed as being detainable. So, in total despair, the niece put him in a taxi and sent him to Glenside. She then telephoned to tell the hospital he was on his way, and he was finally admitted into Glenside as a 'homeless person'. I have been informed that this story is not unusual and that, because funding is so tight, IDSC workers are only prepared to take on patients in crisis situations. It is not uncommon that the only way IDSC will provide any support is when a parent drops off their child, an elderly parent or relatives because they can no longer cope. My questions to the Minister are:

1. Is the Minister aware that due to IDSC's lack of funding it is providing assistance only to families who can no longer cope?

2. Who is responsible for those patients with dual diagnosis when neither the IDSC nor the South Australian mental health services want to fund the care of such patients?

3. If Strathmont continues to reduce its services what facilities will be made available to those intellectually retarded people, such as this man, who cannot live independently.

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

AFFIRMATIVE ACTION

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister for the Status of Women a question on affirmative action.

Leave granted.

The Hon. ANNE LEVY: In March I asked the Minister whether the current Government was continuing the policy of the previous Government, whereby, through State Supply, the Government had stated that it would not purchase any goods or services from companies which were named in the Federal Parliament as having not complied with the Federal affirmative action legislation. As I am sure members know, about six or eight firms each year are named in the Federal Parliament as not complying with affirmative action legislation.

The previous Government had indicated that it would not purchase goods or services from any firms so named until they were removed from the list provided by the Commonwealth Government. A couple of months later the Minister indicated to me that the matter had not yet been considered by Cabinet, but she would see that it did so. Yesterday we had tabled in this Chamber a ministerial statement made by the Deputy Premier and Treasurer in another place regarding supply management in Government in which he stated that the policy decisions and strategies adopted by Government purchasing managers can influence the achievement of broader policy discretions in the areas of industry development, environmental management and social justice objectives.

He then proceeded to detail the new procedures which will be adopted by State Supply—or what is left of it—but made no further comment on either environmental management or social justice objectives. But, obviously, before this change of policy regarding supply management was adopted Cabinet would have considered State Supply matters. My questions are as follows:

1. Was the question of the social justice objective of ensuring compliance with the Federal affirmative action legislation considered by Cabinet when it was considering this new policy on supply?

2. Has the State Government adopted the policy of the previous Government that it will not purchase goods or services from firms which do not comply with the Federal affirmative action legislation?

3. If the Government has decided to follow this policy, will it make an announcement about it?

4. If it has decided not to follow this policy, how can the Minister justify this, given the emphasis which the Government purports to give to equality for women?

5. If the Government has still not made up its mind on this matter, will the Minister see that it does so soon?

The Hon. DIANA LAIDLAW: I will seek a full copy of the policy for the honourable member, and some of the other questions I will have to refer to the relevant Minister.

Members interjecting:

The PRESIDENT: Order!

RATE REMISSIONS

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services, representing the Treasurer, a question about rate remissions.

Leave granted.

The Hon. CAROLINE SCHAEFER: It has been brought to my notice that some people who have taken either voluntarily separation packages or targeted separation packages may be double dipping into Government funds. The City of Port Augusta received from the Department for Family and Community Services $22 231 for rate remissions for the financial year 1993-94. Of this sum $10 770 was paid to 68 property owners who were known by local residents to have received separation packages. It is well recognised that not all packages were for large sums and, after payment of mortgages, etc., many people may not be in comfortable circumstances and may indeed need rate remission. However, some packages were for large sums, and it is certainly considered within Port Augusta that some packages have been disposed into large assets so that access can now be gained to Government assistance. It would seem unlikely that this practice is isolated to Port Augusta. Can the Minister inquire as to how widespread this practice is and, if there is indeed rorting of the system, whether there is some way that this loophole can be closed so that Department for Family and Community Services' money can be channelled to those in real need?

The Hon. DIANA LAIDLAW: I will refer the honourable member's question to the Minister and bring back a reply.

SEXIST LANGUAGE

The Hon. M.S. FELEPPA: I seek leave to make an explanation before asking you, Mr President, a question about the use of the word 'Chairman'.

Leave granted.

The Hon. M.S. FELEPPA: On 11 November the matter of the form of addressing a female member of a committee occupying the Chair was raised in the Federal Parliament. In the past there has been some use of the word 'Chair' or 'Chairperson' in an attempt to render the language gender neutral, and generally those words seem to be acceptable. However, the word 'Chairman' continues to be used in many situations, and it does rankle a bit when the Chairman is in fact a woman. Indeed, as a backbencher in the past, Mr President, you will recall that confusion often occurred in this Chamber when the Hon. Ms Levy was in the Chair and members, including you, Mr President, mistakenly referred to the 'Chair' as the 'Chairman'. Understandably, the deliberate or inadvertent use of the word 'Chairman' does annoy the presiding member if she is a woman. By way of observation, I note that when a female member acts as the Presiding Officer, there seems to be a more ready recognition of that situation and that, therefore, members usually refer to the Acting Presiding Officer as 'Ms', or 'Madam President'.

However, 'Chairperson' is somewhat clumsy, and the word 'Chair' is clipped and wrongly descriptive. However, the description of 'language terrorist' by the Federal Opposition's John Howard last week seems to indicate how out of touch some traditional politicians are with the views of most modern Australians. Regardless of Mr Howard's views there appears to be an acceptance of gender neutral language in this type of situation in the wide community, and it may be time that this Parliament decided upon a gender neutral term to replace what seems to be an annoying and a seemingly discriminatory use of the word 'Chairman'.

Members interjecting:

The PRESIDENT: Order!

The Hon. M.S. FELEPPA: If you don't understand my English, I cannot help you, because I have given my reasons.

Members interjecting:

The PRESIDENT: Order! I cannot hear the question.

The Hon. M.S. FELEPPA: Therefore, Mr President, will you investigate the possibility of adopting a gender neutral term? What action will you undertake in order to remedy what in this day and age is a rather patronising reference to women members?

The PRESIDENT: The honourable member's question is a fair and reasonable one, and I hope that my answer, too, will be a fair and reasonable one. I believe that the term to describe the person in the Chair or the President is a rather personal matter. If that person wishes to be called 'Madam Chair', 'Chairperson', 'Mr Chair' or 'Ms Chair', I am not worried about that. It is a personal matter and the member involved could let that be known. If that is the case, it should be honoured by the Chamber.

As to the words used by Mr John Howard, I have not read or seen his comments, but that does not apply here. I believe it is up to the individual as to how they wish to be addressed.

The Hon. R.I. Lucas: What would you like us to call you?

The PRESIDENT: Anything, but not late for lunch!

PORNOGRAPHY

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services, representing the Attorney-General, a question about pornography and journalists' responsibility.

Leave granted.

The Hon. BERNICE PFITZNER: A Mr Creeper has drawn my attention to the magazine *World*, which is classified 'Unrestricted' by the Commonwealth Censor. Section 13(1) of the Classification of Publications Act 1974 provides:

> (1) Where the board decides that a publication—
> (a) describes, depicts, expresses or otherwise deals with prescribed matters in a manner that is likely to cause offence to reasonable adult persons; or
> (b) is unsuitable for perusal or viewing by minors—

that is, those people under the age of 18—

> the board shall. . . classify the publication—
> . . .
> (1) . . . category 1 restricted. . .
> (2) . . . category 2 restricted. . .

I have here a *World* magazine, and surely we must agree that it would fall within the ambit of 'prescribed matters', which is defined as follows:

> . . . matters of sex including demeaning images; or
> (b) violence or cruelty;

The magazine cover states:

> They are the curse of mankind: 500 000 virgins, thanks for nothing!

The magazine has pictures depicting explicit images—

The Hon. Anne Levy: They're not gender neutral in that case.

The Hon. BERNICE PFITZNER: Obviously not. Further, the magazine includes pictures of cruelty showing an exsanguination of a camel. Headed 'Time to drain the camel', the report states that that country's ambassador said:

> They were merely emptying it of blood so that they could fill it with water. How else do you think camels survive for so long on their desert treks?

A photograph shows a camel in agony. The second part of the problem is that Mr Creeper is depicted in this magazine against his instructions. On 3 July the *Sunday Mail* reported an incident where a car drove into Mr Creeper's lounge room, and it is entitled 'Bible reader's lucky escape in freak crash'. Part of that article states:

> A retired pensioner, 68, was lucky to escape with his life when an out of control car smashed into the lounge room of his home. On any other day retired Christies Beach pensioner, Arthur Creeper, 68, would have been sitting in his favourite chair in the exact position where the vehicle smashed through the room. Amazingly, and for reasons not even he can explain, Mr Creeper yesterday chose to sit at the kitchen table to have his coffee and to read the Bible. The decision almost certainly saved his life.

The same incident is reported in the *World* magazine and the article is entitled, 'The book of renovations'. It states in part:

> A timely squiz at the Good Book spared the arse of an Adelaide pensioner. On July 3 Mr Creeper completely let loose—shunning the cherished chair and savouring his coffee and Bible at the kitchen table instead. Moments later, at approximately 6.40 a.m., an out of control automobile careered into the house, crashing through the lounge room wall. The brick veneer and windows were completely flattened as if by God's own dick. God also directed the driver of the car to fuck off the scene.

Excuse me, Mr President, but I am just reading from the magazine. Mr Creeper and his family have suffered immense stress as a result of this article and his association with such a magazine. My questions to the Minister are:

1. Does our Classification of Publications Board look into publications once the Commonwealth has made a determination?
2. If the board does not, why not?
3. If the board does, why has this publication not been classified restricted?
4. What recourse has Mr Creeper, who was misled by the title of the *World* magazine, leading him to speak to the journalist, to castigate the particular journalist who wrote the *World* magazine article, keeping in mind that Mr Creeper is a pensioner and unable to afford large sums of money?

The Hon. R.I. LUCAS: I am not familiar with the particular document to which the honourable member refers but, if the honourable member is prepared to provide me with a copy of the document and the questions, I would be very happy to consider the matter and refer it to the Attorney-General, who I am sure will consider it expeditiously and bring back a reply.

RADIOACTIVE MATERIAL

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister representing the Minister for Health a question about transfer of radioactive waste to Woomera.

Leave granted.

The Hon. M.J. ELLIOTT: The Premier's statement today was one which he said that all South Australians are entitled to be informed about, although I am told that what really happened was that someone in South Australia was tipped off to what was happening, rang the Premier's office this morning and was very abusive. In other words, the cat was already out of the bag. I understand that the Premier is saying that the site at Woomera—

The Hon. Anne Levy interjecting:

The PRESIDENT: Order!

The Hon. M.J. ELLIOTT: The cat has probably been put down by now.

Members interjecting:

The PRESIDENT: Order!

The Hon. M.J. ELLIOTT: The Premier's statement refers to a temporary storage site at Woomera. I am not aware of any indication being given of how long 'temporary' is. There has been no indication as to what the long-term future of this is going to be and why a temporary storage site in Woomera is preferable to a temporary storage site in Sydney, particularly as the Premier also said that this material is supposed to be remarkably safe. If the Premier is saying that it is remarkably safe the question arises in some people's mind: why is it not remarkably safe in Sydney? If some of my questions also relate to the Premier, I would ask that they be referred onto him as well. My questions are:

1. When was the Minister for Health first aware of this particular shipment?

2. Did the Minister have prior knowledge of the shipment and, if he did, why were South Australians not told earlier than today about the movement of the trucks?

3. I understand from the Premier's statement this afternoon that perhaps something like 5 per cent of it was over the prescribed level, and therefore needed some sort of permit, I presume from the Minister for Health. If that was the case, did the Minister provide such a consent and, if so, when?

4. If the material is considered safe, why is it being relocated?

5. How long is that temporary storage going to continue?

6. If there are long-term plans, what are they and why were they not implemented immediately rather than using this so-called temporary storage?

The Hon. DIANA LAIDLAW: We have to get this whole issue into perspective; the material being carried is much less radioactive than the yellowcake which is routinely and safely transported from Olympic Dam on South Australian roads. I have indicated that the Commonwealth made the decision that this material would be transported.

The Hon. M.J. Elliott interjecting:

The Hon. DIANA LAIDLAW: We can protest as much as we like on some of these things, but it is going from Commonwealth property to Commonwealth property, and, as I understand, it would have been our preference—

Members interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW:—that it be stored at Lucas Heights in New South Wales, but when the Commonwealth makes decisions about what it wants to do on Commonwealth land, members of this Chamber and I are pretty irrelevant to the decision making process. We have known that is the case, whether it relates to poker machines, what is done about the airport, and so on. What the Commonwealth does on its land is an issue that has been a matter of contention to States for years and it will continue to be so.

As I say, whether we wanted this material to come here or not, the Federal Government has made the decision and, having made that decision, we must get it into perspective that this is much less radioactive—

The Hon. Carolyn Pickles interjecting:

The Hon. DIANA LAIDLAW: What a mess we have on the other side of this Chamber. Some members are worried about material being carried from New South Wales which is much less radioactive than the yellowcake that comes from Roxby Downs, and other members argue that the blocks of land in Roxby Downs are far too small and that they want them bigger and better, and they want more of them.

The Hon. ANNE LEVY: I rise on a point of order. The Minister is debating the matter, contrary to Standing Orders, and is not replying to the question.

The PRESIDENT: There is no point of order.

The Hon. DIANA LAIDLAW: I was replying to an interjection, which I acknowledge I need not have done.

Members interjecting:

The Hon. DIANA LAIDLAW: The Leader of the Opposition was out of order; that is correct. However, true to her left wing leanings in the Labor Party, she clearly does not like this material coming from New South Wales. Yet, on the same day, two questions earlier, the Deputy Leader of the Opposition is wanting us to expand at Roxby Downs by getting bigger blocks of land and more of them, and more people. There seems to be some confusion about this matter by members opposite.

Members interjecting:

The Hon. DIANA LAIDLAW: It is more than a split; I think it is an ideological crisis. I will refer that question to my colleague in another place and bring back a reply.

The Hon. M.J. ELLIOTT: As a supplementary question, did the Government formally protest in any way in relation to this material being shifted to South Australia?

The Hon. DIANA LAIDLAW: I understand that discussions were conducted between the Department of Premier and Cabinet, the South Australian Health Commission, the South Australian Police and the Department of Environment and Natural Resources in relation to the transport plan. I will get more detailed information to respond to the honourable member's specific questions.

CLEARWAYS

The Hon. J.C. IRWIN: I seek leave to make a brief explanation before asking the Minister for Transport, and it may involve other Ministers, a question about clearways.

Leave granted.

The Hon. J.C. IRWIN: I understand that the police are still demanding payments for expiation notices issued in respect of clearway penalties prior to the proclamation of the new clearway regulations on 15 September 1994. I will read from a letter to Mr Howie, as follows:

> I am writing to you in reference to our telephone conversation on Monday 31 October. I have attached a copy of my expiation notice and a map of where I was parked when I received the fine. I spoke to the sergeant in charge of infringement notices today and he advised me that they would not be withdrawing any of the notices, and that your case was won on a technicality relating to your case only.

The words 'on a technicality relating to your case only' are nonsense, as a judgment in favour of Mr Gordon Howie was made on 27 September declaring that the 'old' clearway regulations were out of order.

I understand that the infringement notice section was not notified of the Full Court judgment declaring clearway regulations 'out of order' for 15 days after that judgment. The Government pre-empted the judgment by declaring new clearway regulations a few days prior to 27 September. I understand also that the police found out only on Monday 14 November that they had been prosecuting for clearway offences under a regulation which had not existed since 1962—19 years. My questions to the Minister are:

1. Is it the intention to declare all expiation notices issued regarding clearways prior to 15 September 1994 null and void?

2. Is it reasonable that any fines outstanding prior to 10 September 1994 should not be collected?

3. Will the Minister consider speaking to her colleague the Minister for Housing, Urban Development and Local Government Relations to seek the setting up of a top level task force to review all matters in relation to the management of traffic lights, signs, road markings and parking? The task force, if set up, should advise on how best to administer and who should administer traffic and parking controls in this State.

The Hon. DIANA LAIDLAW: As my department did not issue the expiation notices, it is not for me to declare whether they are null and void. I was pleased to receive some forewarning about this question, because I have been able to ask the Minister for Emergency Services what the plan is in respect of the policing of these notices and whether the police will proceed with them. According to the office of the Minister for Emergency Services, this matter must be referred to the Attorney-General's office. With the Attorney-General being absent today, I was not able to receive the reply that I would have wished for the honourable member. Therefore, I will have a reply for the next day of sitting.

In view of the time, I will not go back over the matter. The Department of Transport was alerted that the courts were likely to rule in favour of Mr Howie and against the Government in terms of clearways. Therefore, we immediately brought in new regulations pre-empting that decision which would have overturned so many of what we thought were the laws of the land. We are now bringing in more detailed regulations that will satisfy the Act. They will be introduced on a progressive basis.

I believe that the honourable member's suggestion of top level discussions has a lot of merit. There is a massive amount of confusion between the police and councils in relation to the Road Traffic Act and the regulations made under it. That confusion has been around for some years. Mr Howie has been diligent in highlighting that confusion and many inadequacies in the policing of our laws. I think it is about time that all these parties came together to address the concerns that he and others have raised in relation to this matter. There must also be changes to the Road Traffic Act to tidy up many of the provisions, and that is also being addressed. I will shortly bring back a more considered reply for the honourable member.

ROXBY DOWNS TO ANDAMOOKA ROAD

In reply to **Hon. R.R. ROBERTS** (15 November).

The Hon. DIANA LAIDLAW: Funding for the sealing of the Roxby Downs to Andamooka Road was announced by the Government as part of its budget initiatives.

So far nine kilometres of the road have been sealed starting at Roxby Downs. Another 10 kilometres will be completed during this financial year. Another 10 kilometres will be sealed early in the 1995-96 financial year.

This will leave three kilometres of road through the town of Andamooka to be sealed. It is anticipated that there will be some delay in completing this section until the residents of Andamooka can agree on whether they in fact want the road to be sealed. There is also concern about the route as the present alignment of the road passes through a creek bed which is subject to periodic flooding.

APEC AGREEMENT

The Hon. T. CROTHERS: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services, representing the Premier, a question about the commitment of our national Government and 17 other member nations late the other day to the APEC agreement and in addition matters relating to the recently debated GATT accord.

Leave granted.

The Hon. T. CROTHERS: Late the other day the Prime Minister, Paul Keating, along with the leaders of 17 other nations, signed an agreement which, if implemented, will give Australia and the other signatories access to each other's markets free from the restrictions of import tariffs and quotas. The initiative for this event came from the former Prime Minister, Bob Hawke, and it has been taken to a successful conclusion by the present Prime Minister.

Commentators such as the Federal Minister, Bob McMullan, and other non-political independent commentators believe that of the 18 signatories to the document Australia will by far have the easiest road to travel in respect to its already considerable lifting of import tariffs and levies. They also state that the agreement will have an enormous beneficial impact on Australia's economy relative to job creation and the people on the land who have had a gigantic struggle on their hands in selling their products and finding new markets for them, mainly as a consequence of their former market, Great Britain, joining the European Economic Community. Most commentators on these matters believe that says much for the resilience and creativity of our farmers and other people involved in the food processing industry throughout Australia. Indeed, it is recognised that the creative diversity of the people on the land in turning to new crops produced in volume, such as rice, cotton, sorghum and canola, augur well for the continued success of our primary producers in their contribution to the nation's future welfare. In addition to the foregoing, it is said that Australia has already made considerable inroads into the import markets of the APEC nations, particularly in the export area of value added and technically advanced manufactured products.

Experts also tell us that the recently concluded global agreement on the General Agreement on Tariffs and Trade (GATT) will, if ratified by all signatories, have a very beneficial impact on Australia's economic future. Indeed, the signing of the APEC agreement will hasten the day when members of the EEC will have to open their markets for global free and fair trade—free, that is, from the impost of tariff barriers and import restrictions. Indeed, the Prime Minister has gone on record as saying that yesterday was the most important day in the history of our nation since 1 January 1901. Given all of the foregoing, I wish to direct the following questions to the Premier:

1. Will his Government ensure that a course is continued to be embarked upon so as to ensure that South Australian businesses will maximise the advantages provided to them by the GATT and APEC protocols?

2. Will the Premier say how much he believes that South Australian business will be advantaged by both GATT and APEC?

3. Does he believe that the Federal Government deserves nothing but credit for the able manner in which Hawke and Keating have handled Australians' interests in respect of our future trading position?

4. If the Premier's answer to question 3 is in the affirmative, as a matter for the public record, will he accept the opportunity now extended to him to do so?

5. If his answer to question 4 is 'No', is he prepared to put his reasons also on the public record and, if not, why not?

The Hon. R.I. LUCAS: As always I thank the Hon. Mr Crothers for his questions, and I will be pleased to refer them to the Premier and bring back a reply. The only comment I would make is that the photographs this week and the television footage of the 18 leaders and in particular the Prime Minister Mr Keating in a silk batik shirt certainly made for interesting viewing, together with—

Members interjecting:

The Hon. R.I. LUCAS: I do not think I saw any of it, but there might have been. It made for interesting viewing, but of course the important issues that were concluded as part of those discussions will have significant ramifications for the Australian economy, albeit that we are talking about an extended period of time; I think we are talking about the year 2020 or 2030. The Hon. Mr Crothers may well still be alive by that time, but I wonder sometimes whether I will still be around. Whilst we are talking about the long term, significant arrangements have been entered into by the leaders of the 18 countries for that time and, while they will have effects for Australia as a whole, clearly it means that they will have effects for the South Australian economy and industry. I will be happy to bring back a response to the honourable member's questions from the Premier.

ESTIMATES COMMITTEES REPLIES

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister for Transport a question about answers to questions.

Leave granted.

The Hon. ANNE LEVY: As I am sure all members know, any questions which remain unanswered from the Estimates Committee debates have to be answered within a maximum of 10 days from the Estimates Committee hearing. During the Appropriation Bill debate in this House I asked a number of questions of the Minister in her capacity as Minister for the Arts and Minister for the Status of Women. I indicated that I certainly did not want to hold up the Committee stage by insisting on getting answers then, but I did presume that answers would be supplied within the time that applies for unanswered questions in the Estimates Committees of the House of Assembly. It is now a considerably longer period of time since I spoke in the Appropriation Bill debate, and as yet I have received no answers at all to any of the questions I asked in that debate. When can I expect to get answers to the questions raised in the Appropriation Bill debate?

The Hon. DIANA LAIDLAW: I received those answers last night or the night before. They are being retyped in a form suitable for insertion in *Hansard*. The honourable member can have them next week. There is nothing slack—

The Hon. Anne Levy: It is more than 10 days.

The Hon. DIANA LAIDLAW: I have had to deal with a few other issues as well. I have been more than diligent in returning the answers to the questions that have been asked of me in this place within the same week, so the statement that the honourable member made that I or my department have been slack in this regard is unjustified. The replies are there and the honourable member will have them next week.

GAMBLING

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

That the Social Development Committee be required to inquire into and report on:

1. The extent of gambling addiction that exists in South Australia and the social and economic consequences of that level of addiction;
2. The social, economic and other effects of the introduction of gaming machines into South Australia; and
3. Any other related matters.

(Continued from 15 November. Page 765.)

The Hon. SANDRA KANCK: As a member of the Social Development Committee I rise to support this motion. The Social Development Committee is obviously the most appropriate place to deal with a matter such as this. I grew up in Broken Hill. At the time I was growing up the age of majority was 21 years of age and it was not possible to enter a licensed club until I was 21. The poker machines—the so-called one-armed bandits that many Adelaide people have spent weekends up in Broken Hill playing—were something that interested me because of the experiences I had heard of regarding other people and poker machines. First, I was appalled by what I saw—that people stood by these machines hour after hour, pulling this lever at the side. I tried it once and thought it was probably one of the most boring things I had ever done. Even at this day when I have wandered over to the Casino to see what is happening I find it amazing that these people can actually be entertained by such a machine.

When I was 16 or 17 I became a Lifeline counsellor in Broken Hill, along with my parents, and I remember my mother coming home one night and telling me of a particular case she had dealt with that Friday morning where the accountant of a local business firm had come in. Earlier in the morning he had been into one of the clubs and he had put the whole payroll of the employees—and my recollection is that there were 18 of them—through the poker machines in one club and had lost it all, in two hours. He had come in to Lifeline to find out what support they could possibly give him. Obviously, in the circumstances there was little that could be done. Apparently he was having his own financial trouble. He put the first lot in and thought, 'Oh well, that pay packet didn't get me anywhere,' and he put the next one in. He kept on putting them in in the hope that eventually he would strike is lucky, but unfortunately he did not.

I want to quote from sections from a best selling fiction book that came onto the market about 18 months ago, called *Miss Smilla's Feeling for Snow* by the Danish author Peter Høeg. I do not know whether he is talking about a real place; he refers to the Casino Øresund in Denmark, which he says is their twelfth casino. He is talking about what is happening in that casino:

> Occasionally, a figure tears himself away from the table and disappears past us. Several with bowed heads, others with shining eyes, but most of them neutral, preoccupied. Several say hello to Lander; no one notices me. 'They don't see me,' I say. He squeezes my arm. 'You have been to school honey, you remember what men look like inside. Heart, brain liver, kidneys, stomach, testicles. When they come in here, a change takes place. The moment you buy your chips a little animal takes up residence inside you, a little parasite. Finally there's nothing left but the attempt to remember what cards

have been dealt, the attempt to feel where the ball will fall, the probability of certain card combinations, and the memory of how much you have lost.'

We look at the faces around the table he has led me to. They're like empty shells. At that moment, it is practically impossible to imagine that they have any life outside of this room. Maybe they don't. 'That parasite, it's the gambling bug, darling, one of the most voracious creatures in the world. And I know what I'm talking about. I've lost everything several times over.

He goes on to say:

'That bug comes in various sizes, sweetheart. For some it's a canary. For me it's a corn-fed duck. For that guy over there, it's an ostrich. . . ' He's been speaking in a low whisper and he doesn't point, but I know he's talking about the man sitting to one side of us. . . an ostrich that has eaten him up from the inside and now takes up more room than he does. He comes here every night until he's lost everything. Then he works for six months. Then he comes back and loses it all.

Then there is a reference to the Thai bordello madam:

. . . who dropped 500 000 kroner three times last week. She comes here every night. Every time she sees me, she begs me to have the place closed down. As long as it exists, she won't have any peace. She *has* to come here. Before us there were illegal joints, of course. But that wasn't the same thing. It was mostly poker, which is slower and requires some knowledge of odds. Legalisation has changed that. It's like an infectious disease that was once under control but has now been let loose. Here comes a young man who has built up a painting company. He never gambled until someone brought him in here. Now he's losing everything.

I am sure that they are probably dramatic sorts of examples and I recognise it is a fictional illustration, but to me it does give some indication of what is involved in gambling. I think the decisions that were made first to allow a casino in South Australia and, secondly, in more recent times, to allow the introduction of poker machines are decisions that were made basically on economic grounds with no consideration of the social downside. I think it is very timely, with the introduction of poker machines, that this matter be investigated. I support the motion.

The Hon. R.I. LUCAS: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

The Hon. M.J. ELLIOTT: I rise to support the motion. My recollection is that there was a select committee at one stage theoretically set up to look at these same issues. At the time that was done, it certainly seemed to me that we were placing the cart and the horse in the wrong juxtaposition, for sure. We had opened up a new and significant gambling opportunity with poker machines and, having done it, we set up a committee to see what was going to happen. I guess it is useful that some monitoring will occur, but it is a very great pity that there was not an inquiry into the impact of gambling in South Australia as it then stood before we introduced the major new form that we have. I must say that I have taken the opportunity over the past couple of weeks to look at some of these new gambling opportunities. I have had a look at the Casino only three days ago. The number of poker machines there is just unbelievable. I was stunned at the number. The vast majority of the people I saw there, and this was on a Monday morning, I would judge to be pensioners. They were certainly there out of choice—

The Hon. R.I. Lucas: Having fun, were they?

The Hon. M.J. ELLIOTT: I have never actually seen a person sitting at one of those machines with a smile on their face, or for that matter around the blackjack tables.

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: I can assure you there were a couple of hundred people when I was there, and not one of them was doing any form of jig. It is worth looking at the faces of the people who are leaving the Casino, and the vast majority of those who are leaving, generally speaking, have had a disappointing day. Obviously they have enough good days among them that they are encouraged to go back. The Casino itself has gone through a remarkable expansion in the gaming machines and certainly hotels have done the same. There is no doubt that they are being used and being used significantly. There is no doubt that there will be many people being hurt as a consequence of that. I must say, having spoken to many people who do not really care about gaming machines in themselves one way or another, the usual reaction is, 'I do not know why we bothered to do it. It really has not done anything positive for the State.' The money they spend there is not being spent somewhere else. The gain for the owner of the hotels and clubs is the loss for the shop, the restaurant or wherever they were going to spend their money instead. It was probably the most mindless thing that this Parliament has ever done, to have fallen for the yarn that it will create new jobs.

The Hon. R.I. Lucas: That is reflecting on other members.

The Hon. M.J. ELLIOTT: Yes, accurately.

The Hon. R.I. Lucas: That cannot be done, under Standing Orders.

The Hon. M.J. ELLIOTT: An accurate reflection is okay.

The Hon. R.I. LUCAS: On a point of order, Mr President, I ask you to rule on the Standing Orders. Is a member allowed to reflect on a decision that a majority of the members in this Chamber have taken, in describing it as the most mindless decision ever taken?

The PRESIDENT: I think the member was actually referring to something that he himself was involved in and therefore I believe that he is in fact reflecting on himself, or he is a part of it, so I do not rule that there is a point of order.

The Hon. M.J. ELLIOTT: I was certainly reflecting on a decision that the Parliament made as a whole. We do make many decisions and it is fair to say that at different times there are members who disagree with some of the decisions and they do see those decisions as being wrong. I always made it quite plain that I thought that was wrong and I think it was one of our worst ones. I thought 'mindless' was a reasonable description of the decision. I have no doubt from what I have seen that in fact the decision we made back then has done further harm to a large number of families. I thought that the morality of the decision was questionable, but at least there will be an inquiry which will set about measuring the impact of not just that decision but other decisions that the Parliament has made in the past. I repeat the observation that I have made, that the role of the State in my view is not to ban gambling as such but it certainly is to control gambling.

It is perhaps to cater for demand but not to encourage demand, and I draw those very clear distinctions. Gambling has become a very easy way for the State to make money. I have no doubt that at least some members who supported the increase in gambling realised that, by getting money out of people in that way, they would have to put in less. That was not the view of all members but I have no doubt that it was the view of some. It is a great pity if that sort of attitude was taken.

The time will come—although I am not sure how much longer it will take; perhaps as a result of this sort of inquiry

the process will be accelerated—when we will take a few steps back and not ban gambling but at least think very carefully about the extent to which it is encouraged. If this inquiry in any way contributes to that outcome then I would be thankful and pleased to support the motion.

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I thank members for their contributions to the debate. A wide variety of views have been expressed. As I have indicated on a number of previous occasions, I can well remember the debate we had in South Australia in relation to the Casino, when a number of members of Parliament with similar views to those of the Hon. Mr Elliott and a number of community groups led the charge against the establishment of the Casino in South Australia. In essence they claimed it would be the beginning of the end of the world as we knew it; that the sky would fall in; that we would have people tramping their way to the Casino losing buckets of money; and that families by the thousands would be distressed and distraught as a result of the introduction of the Casino.

A number of people supported the Casino at that time and stood up against that view expressed by members such as the Hon. Mr Elliott and others, and took the view that this State and this Parliament should not stand in the way of options such as the Casino, which provides an opportunity to those people who want to gamble. It is also a tremendous tourism benefit to South Australia. It has been a part of the ongoing tourism scenery, I suppose, in South Australia and Adelaide over the past 10 or 15 years—however long we have had the Casino.

I have always urged caution in relation to automatically heeding the views that some people express in relation to the next opportunity for gambling in South Australia that it will be the end of the world as we know it today and that these are the sorts of dire consequences that will occur automatically. If we had, as I said, listened to those views we would never have had a Casino in South Australia. I suspect that before it we would never have had the introduction of the TAB in South Australia, and I suspect that before it we would never have allowed bookmakers to operate legally on a variety of events in this State. One has to be cautious.

I know that in my contribution to the most recent debate on the poker machines I looked at much of the evidence submitted by a number of groups as to the extent of the addiction problem that exists within the community. I certainly argued that, in my judgment, some people would get themselves into trouble with the Casino, and that latterly some people will get themselves into trouble with gaming machines. Whilst that is not 100 per cent the case, by and large I believe that there is a group in the community who, irrespective of what form of gambling is available, will more than likely get themselves into trouble. Those people who will, by and large but not absolutely, find themselves in trouble with the video gaming machines may well be the people at the moment who are betting too much at the TAB, on the SP, or down at the Casino, or on the scratchie tickets.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Elliott has a view, and I understand his view. I acknowledge that some people may be different. In my judgment, I do not accept the view put by some that we will have thousands of new people, as a result of gaming machines, becoming addicted to gaming machines, as if the creation of gaming machines is the catalyst that sends them from being average citizens headlong down a path of destruction to becoming gambling addicts. I believe that a good percentage of those people who might find themselves in trouble with video gaming machines are likely to be experiencing problems already with the myriad gambling options that exist in the community. I acknowledge that some might be new, but my view, based on the research that I have done, is that a large number are likely to be those who are already predisposed to gambling problems.

I am at the other end of the spectrum to the Hon. Mr Elliott on many things, and certainly on this issue. I must admit that I cannot recall the Hon. Mr Elliott supporting any gambling measure in the Parliament in his time. I go back over his seven or eight years in Parliament, and I cannot honestly recall a single occasion when he supported an extension of a gambling option in South Australia. I might be wrong on a small issue somewhere, but certainly I cannot recall that.

Whereas, as I said, I am at the other end of the continuum. I have very catholic tastes in relation to gambling issues and have on virtually all occasions supported extensions of gambling options for the reasons I have given briefly today and more extensively on past occasions. As with every other gambling issue, that is one of the joys of being in this Chamber: we have people at one end of the continuum such as the Hon. Mr Elliott, others who oppose all extensions, others such as I who support virtually all of them, and a vast group of members in the Parliament in the middle who have differing views on different occasions.

In the end, with gambling issues, it depends on one or two votes here or there as to whether something is or is not approved. As I said on a previous occasion, because gambling is a social conscience issue we never know what will happen with the final numbers. The most recent example of that was the scratch tickets debate, whether the age of majority should be 16, 18 or whether indeed there should be no restriction, and the range of penalties.

Given that background whence I come, I am happy to look at the gambling issue or have a committee look at it, because when members sit down and look at the research they will find that the sky does not necessarily fall in whenever you have a Casino or extend another form of gambling.

If particular issues need to be addressed then this Government has announced a range of initiatives and has provided a maximum of $1.5 million to groups and others who work with those people who are unfortunately addicted to gambling—whether it be in relation to video gaming machines, the Casino, TABs, or bookmakers does not really matter. Hopefully, the committee will look at those issues to see the sorts of programs that do work, because everyone has an idea as to how someone can be weaned off a particular gambling addiction. The committee could investigate which programs should continue to be funded but also to provide base line information as to the extent of what would be known as a true gambling addiction problem within the South Australian community.

At least a base line would be established, and in three or five years' time when other members of Parliament—probably not the Hon. Mr Elliott and probably not even I—get to debate some further extension of gambling hopefully there will be some base line information so that they can say, 'Well, we do not have to make up figures on this issue and speculate that it will be the beginning of the end of the world as we know it today. Here are the base line figures. We will be able to monitor the changes that may occur in those figures

with the further introduction of any other extended form of gambling.'

With that, I welcome all members' support for this motion. I look forward to the work of the Social Development Committee, which, I hope, will occur in an ongoing fashion. I presume they have the capacity to every now and then keep their own weather eye on this particular situation, not just report on it once and then forget about it. Certainly, my view is that it will be a very worthwhile task for the committee that it not only report on it but that it also set for itself some particular program for ongoing monitoring in the long term of the issue of gambling and gambling addiction in South Australia.

Motion carried.

NATIVE TITLE (SOUTH AUSTRALIA) BILL

Adjourned debate on second reading.

(Continued from 2 November. Page 731.)

The Hon. J.C. IRWIN: I support the Bill. In the last session three Bills relating to native title were introduced to enable comments on the State's response in the main areas affected by the Mabo decision and the Commonwealth's own legislation known as the Native Title Act 1993. The three Bills that were introduced last session were the Mining (Native Title) Amendment Bill, the Land Acquisition (Native Title) Amendment Bill and the Environment, Resources and Development (Native Title) Amendment Bill, all of which have been amended and, together with this Bill, the Native Title (South Australia) Bill, form the current package of native title legislation now before the Parliament.

My understanding is that the general second reading contributions to the Native Title Bill will, in fact, cover cognately the other three Bills. The Statutes Amendment Bill amending various other pieces of legislation affected by native title is currently in preparation and will, I understand, be brought before Parliament as soon as possible. As stated when the package of legislation was first introduced, the South Australian Government believed that the Native Title Act was, in many ways, a less than optimal resolution of the issues raised by the High Court in its decision in Mabo.

The Government is actively engaged in seeking improvements to the legislation and in seeking the overturning of parts of the legislation where it believes that the Commonwealth has invalidly encroached upon matters within the responsibility of the States.

However, to ensure that dealings in land in this State may proceed with as much certainty as possible, the State must legislate to take account of the Commonwealth Act as it now stands. Honourable members should be under no illusion that this package of four Bills, which are a flow-on from the Commonwealth Native Title Act, which itself is a flow-on from the now notorious High Court decision on Mabo, is a simple measure which with the land acquisition fund will address the so-called Aboriginal problem in this country. Nor should honourable members be under any illusion that the Native Title Act is not part of an extensive Commonwealth Government agenda to change the face of Australia forever.

The native title legislation of the Commonwealth is linked to the way that the High Court is interpreting its role; to the republican debate; and to a massive change for the Commonwealth Constitution under the guise of the 100 years review of the present Australian Commonwealth Constitution, culminating in the year 2000 Sydney Olympics. These are all being used as a guise for the need to change our Constitution. It is also linked to immigration, designed to change the culture from European to you name it, so that it would be easier to change the head of State and the Constitution; to revising the old centralist arguments roundly defeated in the 1890s and then to the use of United Nations conventions.

They are some of the points that I believe are linked and I will be trying in this rather extensive address to this Bill to put those together. There have been a number of occasions in recent years when I have spoken about the Mabo decision and other matters affecting Australia's future. To my thinking, they are so important that I will put some old and new aspects together for members' consideration.

Recent years have seen some extraordinary rewriting of history by the High Court in the name of interventionalism, a disregard for the legal system carefully built up by its predecessors and for the established rights of the Australian community.

When commenting recently on the territorial seas' case, which was in the 1970s, where the court held by a majority that the colonies before Federation had had no proprietary rights in the territorial waters which washed their shores, nor in the land below those waters, the Hon. Peter Connolly QC said:

> This High Court decision is really breathtaking in its arrogance, but even worse it would appear it shows no understanding at all of reality.

I turn to Mabo to ask the question what was wrong with that decision. The Hon. Peter Connolly Q.C. also said:

> The first answer is that it was sheer invention or, if you prefer a politer word, sheer legislation.

As Dr Colin Howard has observed, the philosophy of the common law is, above all, evolutionary and not revolutionary. Mabo is above all revolutionary and not evolutionary. Peter Connolly's thesis (and he regrets having to put it so bluntly) is:

> That this is a naked assumption of a power of a body which is quite unfitted to make the political and social decisions which are involved.

When the High Court was considering Mabo No. 1 there was placed quite properly before it evidence to the facts concerning the Meriam people and the Murray Islanders. No evidence whatsoever was placed before the court concerning mainland Australia, and there was no evidence whatsoever as to Australian Aboriginal culture and ways. With no mainland issues, with no evidence as to the mainland and no parties with any mainland issue, not even from the Commonwealth Government, the High Court proceeded to destroy what Judges Deane and Gaudron described as:

> The basis of the real property law of this country for more than 155 years [administered as it is by each State].

In their judgments on Mabo, Deane and Gaudron JJ state:

> The conflagration of oppression and conflict was over the nineteenth century to spread across the continent to dispossess, degrade and devastate the Aboriginal people and leave a national legacy of unutterable shame.

The judgment continues:

> The acts and events by which the dispossession of the Aboriginal people of most of their traditional land was carried out into practical effect constitute the darkest aspect of the history of this nation. The nation as a whole must remain diminished unless and until there is an acknowledgment of and retreat from those past injustices.

From a paper prepared by Professor Geoffrey Partington I can say something (as I have before) about the contribution made

to the evidence that was not placed officially before the court by one Dr Henry Reynolds, whose wife is the ALP Left senator, Margaret Reynolds. He made this contribution to the High Court of Australia's conscious rejection of Australia's history. He states:

> On what grounds did Their Honours reject the Australian past as unutterably shameful? Judges Gaudron and Deane said they had been 'assisted not only by the material placed before us by the parties but by the researches of the many scholars who have written in the areas into which this judgment has necessarily ventured. We acknowledge our indebtedness to their writings and the fact that our own research has been largely directed to sources which they had already identified.'

I underline that this evidence was sourced by the judges but was not given to the court formally. It continues:

> Who were the scholars? Very few historians are mentioned in Their Honours' footnotes, but we find there that they read the *Historical Records of Australia*, which was not interpretive, one book each by Ernest Scott and Sir Kenneth Roberts-Wray, who give no support to their position, an article by R.S. King, and Henry Reynolds' 1987 *The Law of the Land*.

There can be no doubt that Their Honours were influenced particularly strongly by Reynolds. Indeed, several important passages of their judgment are virtual paraphrases of Reynolds. Justices Dawson and Toohey also cite Reynolds' *The Law of the Land* on pastoral leases in Queensland. Gordon Briscoe, research scholar of Aboriginal decent, critical of Mabo, claims:

> The weakness of the Mabo decision lies in the way that one historical idea raised by one historian, Henry Reynolds, and one ethnographic document made up the sole proof relied on by the court.

On the opposite side of the argument, Mr Noel Pearson of the Hope Valley Aboriginal Community, holds that it was Reynolds who demonstrated:

> That native title was recognised by the Imperial Governments in the nineteenth century and respect for this title was supposed to govern colonial 'settlement' in Australia.

Reynolds shows how the colonists contrived to deny these rights. In the Law Book Company's 1993 *Essays on the Mabo Decision*, all of which were written in support of Mabo or demanding its further extension, several contributors acknowledge Reynolds' contribution to the struggle. Susan Burton Phillips attributed to Reynolds historic material reflecting the concerns of Australian colonial administrators that access to and use of land be retained for the indigenous inhabitants.

Noni Sharp referred readers to Reynolds for the meaning of *terra nullius*. Michael Mansell referred to Reynolds as a noted commentator who favours a separate Aboriginal republic in Australia, which Reynolds may not in fact support. Garth Nettheim drew attention to Reynolds' definition of a distinctive and unenviable contribution of Australian jurisprudence to the history of relations between Europeans and the indigenous people of the non-European world, which is denied in the right, even the fact of possession. Eddie Mabo himself was once Reynolds' research assistant at James Cook University. He and his colleague, Noel Loos:

> . . . had the unpleasant task of explaining to him (Mabo) the doctrine of *terra nullius*. It was a shocking revelation and one that hardened his determination to fight for justice.

Reynolds added:

> The ingredients of the Mabo case came together at a lands rights conference at the University of Townsville where he (Mabo) and several of his associates met some of the leading lights, lawyers and academics.

One must agree with Reynolds' own contention:

> There can be little doubt that the History Department of James Cook University played a major role in the fundamental reinterpretation of Australia's past which found expression in the Mabo decision.

As with many discoveries, there is some dispute about influence and precedence. Mr Greg McIntyre, a Perth barrister who was solicitor in the Milirrpum and Mabo cases claimed:

> The Mabo case was conceived as a test case arising from a meeting of Barbara Hocking, a Melbourne barrister, Eddie Mabo, Father Dave Passi, Flo Kennedy of Thursday Island, Noni Sharp of La Trobe University and the writer on a conference on race relations and land rights at James Cook University in 1991.

Despite his omission of Reynolds' name, Mr McIntyre acknowledges the importance of the role played by James Cook University in the origins of Mabo. I now refer to Mr S.E.K. Hume QC, who said when commenting on the Mabo No. 2 decision:

> Courts get their facts from two main sources. The first is the evidence of one kind or another actually put before the court and the other is via the doctrine of judicial notice. In my view the statements of Dean and Gaudron JJ fail utterly to meet the requirements for being established by judicial notice. Both are highly controversial and much controverted. They are the very kind of findings which cannot be made on the basis of judicial notice. When they function as judges and deliver findings of fact in the High Court, they operate under the constraints of legal doctrine. I cannot avoid the view that they have made the findings which have no basis of evidence properly before them.

This Mabo decision is a far cry from one of our greatest jurists, Sir Owen Dixon, who advised at his swearing in as Chief Justice:

> There is no other safeguard to judicial decisions in great conflicts than a strict and complete legalism.

We cannot today disregard what Australia's leading legal minds are saying, some of whom I have quoted and will quote. The High Court of Australia within the Constitution is pivotal for our future. As Lord Reid, one of the most respected English judges this century, said:

> We cannot say that the law until yesterday was one thing, from tomorrow it will be something different. That would indeed be legislating.

I want to draw out the points made by Mr Hume and other important points made by other eminent legal commentators. I seek to do this because, even though I am a legal layman, I am persuaded by their arguments that our legal system at the very top end stands at a cross-roads following a number of High Court decisions, culminating in the Mabo No. 2 decision on which the Bills before us are based.

Again, I base my comments on a paper Mr Hume gave in July this year entitled 'Hit and Myth in the Law Courts'. Mr Hume outlines the appointments and credentials and composition of the High Court from its inception to about the mid-1980s. He refers to the diverse background experience of the judges. It includes members of the bar who had parliamentary careers, who had not had parliamentary careers, judges promoted from other States, other courts and one who was a Commonwealth Crown Solicitor.

In the 36 years since the appointment of Sir Victor Windeyer in 1958—I have already spoken in this place of Sir Victor who, as a soldier and a judge, had always been a hero of mine, having commanded a South Australian company during the Second World War and frequently marched here on Anzac Day—five judges have been promoted from the State court, three from the Commonwealth Government's Federal Court, Sir Harry Gibbs was promoted from the

Federal Court of Bankruptcy, and three State Solicitors-General and one Commonwealth Attorney-General, known to members as the former Federal Government member of his time, Justice Murphy, were appointed.

Of the two Chief Justices appointed since Barwick, both were promoted from within the Federal Court. The result is that the present High Court consists entirely of the promoted judges or promoted Solicitors-General. The change from the pre-Barwick era no doubt has several causes. Whatever the causes, Mr Hume's judgment is 'that the pattern seems well established and likely to persist'. What he observes is undeniable and now there is the silent emergence at this level of a career judiciary where promotion is an accepted norm. Several things follow, one being that it is entirely unsatisfactory that to a significant extent the High Court will be composed of judges whose performance in the Federal Court has commended itself to the Government.

It is unsatisfactory that a court should be staffed to any extent at all by judges who wish they were not there and who are there only because they see service on the Federal Court as opening their best chance of being part of another court and who may slowly realise that they are not going to get that far. It is doubly unsatisfactory when the Government, which makes the decision whether to put the judge on to the High Court, is one of the litigating parties in a high proportion of the cases coming before the Federal Court. Mr Hume's paper goes on to comment on an oration delivered by the present Chief Justice of the High Court, Sir Anthony Mason, in November 1993. I quote that paper because Mr Hume has the legal standing to put the case succinctly. Headed 'Fairy Tales in the Creation of Law', the final matter at page 22 of the Chief Justice's paper is more important. He states:

> The incidental creation of law is implicit in the role of the judge and that criticism of the court for undertaking a legislative role seems to imply that the court exceeds its role if it makes law.

He says:

> Only a person entirely ignorant of the history of the common law could make such a suggestion.

At page 22 the Chief Justice says:

> It is scarcely to be credited that anyone with any understanding of the judicial process now believes the fairy tale that judges 'discover' the law and then declare it, without actually making it, as though the judges resembled the Delphic oracle in revealing the intentions of the pagan gods.

Needless to say, the passage got a good press, as Chief Justices are apt to do when they refer to fairy tales and the oracle of Delphi. Fairy tales were in vogue again at page 8 of an address to the Sydney Institute in March 1994, which stated:

> What I have just said may not be welcome news to those who believe that the courts do no more than apply precedents and look up dictionaries to ascertain what the words used in a statute mean. No doubt to those who believe in fairy tales that is a comforting belief. But it is a belief that is contradicted by the long history of the common law.

The Chief Justice has more than once made plain his great respect for Sir Owen Dixon, and again Sir Owen Dixon never, to Mr Hume's knowledge, said anything at all resembling the views expressed in those two passages. Who then had said anything like them? There Mr Hume finds himself bewildered for he knows of no-one who denies, and I know of no-one who has within the past 100 years denied, that in some sense judges, especially appellate judges, do make law. Certain things of course need to be added and they are:

1. Judges make law in a very special way, under special conditions and within special parameters.

2. Telling a judge that what he says will be the law is no help to a judge who is trying to formulate what he is going to say.

3. The doctrine of the law is that the correctness or otherwise of what the judge says can be judged against the principles of legal reasoning. There is no exemption for the judge's own contribution. He may be able to point to it as his or her personal contribution. It will be right if, but only if, it is perceived as consistent with legal principle.

None of this is new. Almost 40 years ago Sir Owen Dixon received the Henry E. Howland Memorial Prize from Yale University. He was asked to honour the occasion by the delivery of a paper. The result was a paper entitled, 'Concerning Judicial Method' in which Dixon spelt out his views on certain matters which are very relevant today. Members will find it reprinted in *Jesting Pilate* (Law Book Company, 1965). It was Lord Wilberforce who said:

> There is no such thing as substandard Dixon, but from time to time there is Dixon at his superb best.

This paper at Yale is Dixon at his superb best. It is not always easy, for thought packs upon thought. Every word has been chosen carefully and needs to be read carefully. I will quote several passages for they set out better and more authoritatively than I could ever hope to do the principles which underlie the concerns which people feel in relation to the present High Court.

It is of course true that the law is not lying there waiting to be discovered, but it is not true that judges can say whatever they like. Dixon speaks first of the doctrine that it is meaningful to say that what the court says, whatever its source, may be right or wrong. Dixon said:

> Such courts (courts of ultimate resort) do in fact proceed upon the assumption that the law provides a body of doctrine which governs the decision of a given case. It is taken for granted that the decision of the court will be 'correct' or 'incorrect', 'right' or 'wrong' as it conforms with ascertained legal principles and applies them according to a standard of reasoning which is not personal to the judges themselves. It is a tacit assumption, but it is basal. The court would feel that the function it performed had lost its meaning and its purpose if there were no external standard of legal correctness.

That assumption underlies the whole process of argument conducted before the court by highly paid persons believed to be able to argue, to persuade and convince. Dixon goes on:

> The argument is dialectical and the judges engage in the discussion. At every point in an argument the existence is assumed of a body of ascertained principles or doctrine which both counsel and judges know or ought to know, and there is a constant appeal to this body of knowledge. In the course of an argument there is usually a resort to case law for one purpose or another.
>
> It may be for an illustration. It may be because there is a decided case to which the court will ascribe an imperative authority. But for the most part it is for the purpose of persuasion; persuasion as to the true principle or doctrine or the true application of principle or doctrine to the whole or part of the legal complex which is under discussion.

When the court decides, no doubt what it has decided is, while it stands, the law. Yet lawyers will still stand aside and wonder whether it is good or bad law. Academics and practitioners will write articles praising or criticising decisions as being consistent or inconsistent with principles. *Mandamus* will still not lie to the logical facility. Whether the law as declared is good or bad law is a decision which will ultimately be made not by the deciding judge, but by posterity. Dixon was equally aware of the contribution of the

judge, and of the proper limits of that contribution. He makes an interesting remark on it in a letter he wrote to his judicial friend, the great Felix Frankfurter, of the Supreme Court of the United States. Dixon was well aware of the judicial making of law and he says to Frankfurter:

> Denning has been in India to the meeting of the International Commission of Jurists. He is reported to have gone very far in his statement of the judicial function in making law. His statements are reported as if he treated it as an arbitrary act, which I find it hard to believe. On the whole controversy, which in England now seems to centre around him, I have felt that it is unwise for a judge to speak publicly. He ought to appear to believe that he has some external guidance, even if in his ignorance he regards it as untrue. In the Darwinian process of adaptation to environment such a bird as the honey-sucker ought not consciously to enlarge his bill by stretching it, even if reaching for the honey causes him to do so. In any case law-making ought not to be regarded as honey.

In his Yale paper, Dixon had given a more closely reasoned statement of his views. He said:

> No doubt courts are much more conscious than of old of the formative process in which their judgments may contribute. They have listened, perhaps with profit, to the teachings concerning the social ends to which legal development is or ought to be directed. But in our Australian High Court we have had as yet no deliberate innovators bent on express change of acknowledged doctrine. It is one thing for a court to seek to extend the application of accepted principles to new cases or to reason from the more fundamental of settled legal principles to new conclusions, or to decide that a category is not closed against unforeseen instances which in reason might be subsumed thereunder. It is an entirely different thing for a judge who is discontented with the result held to flow from long accepted legal principles deliberately to abandon the principle in the name of justice or of social necessity or of social convenience. The former accords with the technique of the common law and amounts to no more than an enlightened application of modes of reasoning traditionally respected in the courts. It is a process by the repeated use of which the law is developed, is adapted to new conditions and is improved in content. The latter means an abrupt and almost arbitrary change. The objection is that in truth the judge wrests the law to his authority. No doubt he supposes that it is to do a great right. And he may not acknowledge that for the purpose he must do more than a little wrong. Indeed there is a fundamental contradiction when such a course is taken. The purpose of the court which does it is to establish as law a better rule or doctrine. For this the court looks to the binding effect of its decision as precedents. Treating itself as possessed of a paramount authority over the law in virtue of the doctrine of judicial precedent, it sets at nought every relevant judicial precedent of the past. It is for this reason that it has been said that the conscious judicial innovator is bound under the doctrine of precedents by no authority except the error he committed yesterday.

There it is, enunciated once and for all. I ask honourable members to read those quotes from Owen Dixon. They are nearly 40 years before Mabo was decided. It is the basis for the wide criticism of the decision in Mabo and the making of the decision in that case. There is all the difference in the world between the judge who is bound to take a step to decide the case and the judge who wishes to take a step because he or she thinks it is a step that ought to be taken. If ever there was a situation which cried out for caution, for care, and for proceeding with deliberation step by step, it was the situation one part of which was brought to the court in Mabo. Instead, the whole thing was decided ahead of the necessity of the case in a manner that people can be forgiven for seeing as abrupt and almost arbitrary.

Again, I highlight the demise of the Privy Council. As Justice Gaudron said before she was elevated to the High Court when welcoming the demise of appeals to the Privy Council, 'It committed the future course of Australian justice to the Australian courts. The Australian legal system is realised.' The Australian legal system in Hawke and Whitlam terms is certainly realised as we sit here in 1994, where the only appeal process from High Court decisions open to Australians is to the same High Court on which Justice Gaudron and others now sit. That is a great example of an appeal from Caesar to Caesar. The High Court has some distinction in terms of a whole judicial process because it is the final court in this process.

Appeals to the Privy Council were abolished by the Hawke Government in 1986. Previously Whitlam had said:

> The High Court of Australia must be the final court of appeal for Australians in all matters. It is entirely anomalous and archaic for Australian citizens to litigate their differences in another country before judges appointed by the Government of that other country.

Not only does the High Court decide on matters relating to Government legislation based on the now about 2 000 United Nations treaties signed so far, but the Keating Government, and the Hawke Government before that and, I emphasise, signed by the Executive Government, not by the Parliament—and certainly do not bring the States into it—has moved to increase the pressure for Australians to litigate their differences before foreigners. In 1991 the Australian Government agreed that individual Australians could take their complaints to the United Nations Human Rights Committee. In 1993, just before the election, the Commonwealth Government recognised that individual Australians could take complaints to the Committee on Racial Discrimination and the Committee Against Torture.

The Hon. T.G. Roberts: That is an entirely different jurisdiction.

The Hon. J.C. IRWIN: Of course it is, but we are told by your legal and political colleagues in the Commonwealth that you want the legal system to be within Australia. You have done away with the appeal mechanism to the Privy Council and you can appeal only to the High Court itself. If you do not like the opinion given by the High Court, there is no further appeal mechanism. Yet we are signing treaties and giving other rights which allow Australian citizens to take their cases to the Committee on Racial Discrimination and the Committee Against Torture which are located in other countries. It is nonsense to say that we do not want people in other countries to make rules for Australia, because that is exactly what they are doing.

The Hon. T.G. Roberts: One sets international standards and the other sets national standards.

The Hon. J.C. IRWIN: Mr Keating keeps reminding us that we must have our own sovereignty, but at the same time he is throwing it away all around the world. No doubt in time this man of straw will be blown away. Again, I emphasise, as a person with no legal experience whatsoever but as a mere onlooker in this great debate, the people of Australia are being manipulated. If anyone wants to see the real picture, we have to put a great number of these things together. At some length and leaning heavily, as I do, on others by quoting them, I have attempted to put the puzzle together, and will go on doing that, so that people will be able to see the picture.

The Mabo decision and what is flowing from it, including the Bills before us now, may be claimed by some as a victory. I acknowledge that a number of people have claimed it as a victory, but, because the victory is not based on a solid, legal and logical foundation, in my opinion it will simply crumble. The Australian people in general and the Aboriginal people in particular will be worse, not better, for the Mabo decision. Proper enduring decisions are based on the rock, not on the shifting sands that I have tried to lay out.

As part of the puzzle that I seek to put together there are a number of other factors. For instance, the Commonwealth

Attorney-General, Mr Lavarch, in 1993, although I acknowledge that he has since withdrawn somewhat, said:

> . . . to broaden the pool from which judges were appointed to include groups—

he is talking about the High Court—

> in addition to senior barristers. We have good judges drawn from the ranks of barristers, but that is not to say that there are not some excellent solicitors, academics and Government solicitors.

He clearly said that the courts, including the High Court, ought to be representative of groups. I have asked before, 'What groups?', and I still wonder what groups. The senior Law Officer for the Government is the Federal Attorney-General and he is thinking about making the High Court representative of groups, not on their legal expertise but basically on whether they are from one group or another. Thankfully, our own Chief Justice King had something to say about this only last week which disagreed with Mr Lavarch's statement. I understand that it was directed not at Mr Lavarch, and I did not get the quote to bring here today, but at our own State court system.

Then we had the Hon. Robert Tickner's actions over the Hindmarsh Island bridge. The furore caused by the decision of the Federal Minister for Aboriginal Affairs, Robert Tickner, to ban the building of a bridge from Goolwa to Hindmarsh Island may be the precedent for many dubious decisions in future. Again, I have not had time to chase this up, but one has only to read the paper today or remember the news from yesterday about the developer, Mr Williams, in Queensland who has been stopped from carrying out a development which was legal yesterday or the day before and which now has a world heritage listing on it which makes it illegal to do some quite substantial development in Queensland.

The Hon. Sandra Kanck: There have been protests about it for 12 months.

The Hon. J.C. IRWIN: I do not know how far he got with his development, but the decision to put a listing on it came only in the past couple of days.

The Hon. Sandra Kanck: He should not have been surprised by it.

The Hon. J.C. IRWIN: I am simply saying that it is another example of the Commonwealth Government trampling over some of the States. I come back now to the Hindmarsh Island bridge. Obviously the decision was made without a genuine attempt to examine the claims of the female members of the Ngarrindjeri group as to its validity. It is a great pity that the submissions made by the late Professor T.G.H. Strehlow were not given more consideration by the Law Reform Commission when it was examining these matters in the 1970s, as he showed, through his intimate knowledge of Aboriginal law, that much, if not all, tribal law was lost because those in whose hands it was held refused to pass it on to younger members of the tribal groupings.

I think that is very important. There were fears that it was based on the fact that they had no confidence that the tribal law would remain secret to those whose responsibility it was to administer it. In a paper on Professor Strehlow and Aboriginal Customary Law delivered at the opening of the Strehlow foundation in Adelaide on 3 October 1978 in Adelaide the then Chairman of the Law Reform Commission the Hon. Justice Michael Kirby said:

> Strehlow asks, by inference, if not directly, can we seriously propose the retreat of the general Australian legal system to permit the enforcement of secret laws, the very revelation of which cannot be permitted? He also asks, in view of the decline of truly traditional society and the diminution of the ever scarce members to whom the law was passed orally from generation to generation, are there any true 'Ingkata' (ceremonial chiefs) left? If not, what is this law called 'tribal' or 'traditional', which it is suggested the Australian legal system should countenance and support? The plain, commonsense interpretation of Kirby's understanding of Strehlow's arguments have been completely overturned by the 'Mabo' decision of the High Court, with the resultant decision of the Minister which can and will have serious implications for development in this country. The Hindmarsh Island debacle will probably be just a foretaste of what we can expect in the future unless we heed the advice of Professor Strehlow written in his last paper before his death in 1978.

I will not go through all that quote, but it is worth contemplating. The Aboriginal cause is done no good when people are able to say that the women's issues which stopped the building of the Hindmarsh Island bridge are not able to be given any legal validity. This strengthens what I have recently said, namely, that the immediate battle might be won but any hopes of a lasting solution are dashed beyond hope. Another part of the jigsaw is the role being played for the Commonwealth Government by the Constitutional Centenary Foundation and its director, one Professor Cheryl Saunders, a familiar name, as she gave the famous advice to the Hon. Robert Tickner on Hindmarsh Island, and she is part of the network. I will not go into how this foundation and Professor Saunders are working to undermine the Commonwealth constitution, but I will quote one passage from Professor Saunders herself. In early July, the *Australian* newspaper reported an address by Professor Saunders to a 2020 Vision forum in this city. According to that report, she said that, as Australians move 'inexorably' to a republic:

> . . . the Senate's power to reject Supply should be abolished, and Parliament should elect a head of State.
>
> . . . all taxation [should] be imposed by the Federal Parliament, with proceeds allocated between levels of Government according to procedures set down in the Constitution.
>
> . . . while her proposals may cause [a] furore, they were 'evolutionary rather than revolutionary'. . .
>
> . . . an Australian head of State to have a largely formal ceremonial role.
>
> The status of indigenous people in Australia [should] be recognised, with a flexible framework providing for their self-government.

Professor Saunders' remarks as head of the Centenary Foundation are salutary reminders that she and others, including Nugget Coombs (who is one I can remember) embrace the agenda of a separate nation. Without casting around too much further, I can add the Aboriginal Land Fund and the Racial Vilification Laws to the pieces which make up the jigsaw that is changing the Australian way to a new way.

I now move to my concluding points, which relate to the fact that all applications with respect to native title must begin in the National Native Title Tribunal or an approved State equivalent. The remarks I make here are from a paper by Dr John Forbes, a barrister and reader in law at the University of Queensland. Let us start with the tribunal. The paper states:

> Title and compensation claims which are opposed and which are not compromised in the tribunal go to the Federal Court. The NNTT is an unusual tribunal in that it decides only one of several kinds of claims filed in it, namely, 'right to negotiate matters'—contested applications for approval of 'future acts'. Otherwise it is a complicated government bureau which processes unopposed applications and agreements, transfers others to the Federal Court, and serves the Minister as an occasional committee of inquiry. The composition of the National Native Title Tribunal is governed by section 110. The President is styled 'Justice'. Australian politicians have a deep and abiding belief that the citizenry will more readily defer to a tribunal or administrative inquiry headed by someone bearing that title. On several occasions in its short history the Federal Court has served to

confer it on persons who really exercise quasi-judicial or administrative (not to say political) functions. A view that this debases the currency has not prevailed. Non-presidential members of the tribunal will include 'assessors' (as described. . .), people with 'special knowledge in relation to Aboriginal. . . societies', and others chosen by the Federal executive.

The paper further states:

The first president of the NNTT lost no time in telling the courtiers of that body that the 'stated objective of [the NTA] is to provide for the recognition and protection of native title. . . [and] nobody should be a member of or on the staff of the tribunal who does not accept the legitimacy of that objective.'

At the commencement of the tribunal's first case the President proclaimed the tribunal's anxiety to 'mediate' and to sponsor settlements: '[Our] main function. . . is to provide a means by which you. . . may reach a fair and reasonable agreement.' Applicants were told, in terms reminiscent of early advertisements for the Family Law Act, that NNTT mediation is 'not a win-lose process'. Whether or not a claim could be established after a full hearing a compromise registered in the tribunal can 'provide. . . for a plan of management which would allow the Aboriginal involvement in the management of the [land] and guaranteed rights of use and development [by] Aboriginal communities.' 'One form of agreement might involve a concession of. . . native title with an agreement involving the Commonwealth, State or Territory Government, under which [the conceded title] is exchanged for other forms of statutory title or benefit.' But alas, if no agreement is reached the parties face 'a court case with no certainty about the outcome and all the costs and tensions that court cases generate.' (In reality costs are likely to trouble the claimants or sponsor corporations.) It seems reasonable to take these as broad, albeit delicate hints that titles or compensation may sometimes and perhaps often be secured by pressure rather than proof.

I turn to the role of the Federal Court. The paper states:

If a title or compensation matter is not settled, the tribunal must refer it to the Federal Court. In so far as one may speak of tradition in a court of limited jurisdiction (that is, piecemeal statutory jurisdiction) created less than 20 years ago, the set-up of the Federal Court for this purpose is most unusual. It is not required to observe the law of evidence. This is normal drill in a quasi-judicial tribunal but probably unprecedented in a court of law. In a formula which has become a mantra among promoters of new tribunals the court is told to adopt procedures which are 'fair, just, economical, informal and just'.

Further, the court is directed to 'take account of the cultural and customary concerns of Aboriginal peoples'. The intent and likely effects of this provision are by no means clear. Obviously the court would be bound to take account of these things in evidence, if evidence of them were placed before it in the normal manner. But if that is all that is meant, the provision is quite superfluous. But if in fairness to the draftsman one assumes that it is not superfluous, it appears that a special department of statutory 'judicial notice'—a broad area in which the court may give evidence to itself—has been created. Normally judicial notice and a judge's own investigations are a very limited source of legitimate evidence.

Are we to take it that this subsection of the NTA is a charter for the wide-ranging, extra-curial evidence gathering which occurred in Mabo itself and to which I have referred earlier. If so, and unless the rules of natural justice have been impliedly abrogated, it will be the duty of the court in every case, and before judgment, to tell all the parties about any 'cultural and customary concerns' which are not in evidence but which it proposes to take into account.

We have not yet reached the end of the list of special arrangements. The court is to be assessed by super witnesses and potential *de facto* adjudicator styled 'assessors' who, 'so far as is practicable. . . are to be selected from Aboriginal people or Torres Strait Islanders'. The court's infrastructure offers other congenial employment. The Registrar may engage consultants. The court may direct evidence to be taken before an assessor. In that event, there is no right to cross-examine. These provisions are seen as a considerable advantage for claimants and as a commensurate handicap for other parties:

[They give] rise to the suspicion that the system is being weighted against development interests and in favour of native title claimants; why should not [they] be subject to the same standards of proof. . . as are other Australians for similar claims?

In a formal sense, the standard of proof is the same, but it is not difficult to see what the author of the passage I have just quoted means. However, in the light of practical evidence, problems explained following these provisions may not make a great deal of difference in the end.

The Native Title Act apart, issues affecting State land would be within the jurisdiction of our most experienced courts, the Supreme Court of the States. Perhaps it is still possible for them to retain some jurisdiction in these cases which, after all, belong to one of the oldest areas of superior court jurisdiction, namely, real property law. The Supreme Courts are still properly described as our superior court of general jurisdiction. Their judicial histories cover not a mere 20 years but 100 to 150 years. The Supreme Courts are not confined to a piecemeal statutory charter and they handle State and Federal criminal matters in which the law of evidence is most exacting. Appointments to Supreme Courts are more visible to the legal profession and are not in the gift of just one central Government which may hold all the power of patronage for many years.

I turn now to the issues of native title cases. The Native Title Act does not dispense with problems arising from the very broad, not to say nebulous, Mabo criteria. It makes no attempt at codification. Whose title? First, the proper claimants must be identified. In Mabo the High Court wandered to and fro among a number of these: indigenous inhabitants, clan or group, people, community, family band or tribe, and several other expressions. The Act seeks to dispel this miasma by creating approved corporations to assist claimants and to hold property on their behalf. Power tends to be centripetal, and from time to time it may be doubted whether these title brokers are duly representative.

Groups in the Northern Territory have challenged the hegemony of the Central and Northern Land Councils, and in one instance the Federal Court had to order a council to assist a group of which the council did not approve. It is to be hoped that the distribution of benefits to all beneficiaries will be just and efficient, although recent history is not particularly encouraging.

There is a question whether emoluments ascribed by a labyrinth of representatives—corporations and subcorporations—will leave sufficient funds to those for whom the elaborate structure has been erected. If only an oligarchy prospers, the self-reliance to which we all look forward will once more be postponed. I indicate that I will be asking questions about the Native Title Act when we start the discussion. For instance, the interpretation of 'Aboriginal people' shows that it means people of the Aboriginal race of Australia. Quite frankly, I do not know what that means, and I do not know if any honourable colleague of mine, or anyone, knows what that means.

With respect to the customary connection, the next step is to establish a sufficient connection between the claimant and a specific tract of land. This is a question of presence amounting to occupancy from a time long prior to the point of inquiry. Plainly, these tests leave room for creative

jurisprudence, particularly when the rules of evidence and normal court procedures do not apply. It is no objection that native customs at the time of European settlement are incompletely known or imperfectly comprehended. Nor does it matter that the customs did not exist at the time of British settlement or even 100 years ago because they may continue to evolve up to the time of litigation.

It is enough that any changes do not diminish or extinguish the relationship between a particular tribe and particular land, and that the people remain as an identifiable community. According to Toohey J, this notion of continuity is sufficiently elastic to survive European influences such as the profound effects of Christianity, the use of schools and other modern facilities and (in the case of the Murray Islanders) a change from gardening, fishing and barter to a cash economy substantially dependent upon welfare payments and other Government assistance.

These are elusive targets for any opponent, and it appears that arguments based on uncertainty or discontinuity of alleged customs can expect a rough passage, not least in special tribunals. Even in the Murray Islands case, as Judges Deane and Gaudron conceded, the evidence exhibited areas of uncertainty and elements of speculation. There may be difficulties of proof of boundaries or of membership of the community, but those difficulties afford no reason for denying the existence of a proprietary community title. A court may have to act on evidence which lacks specificity. Mabo suggests that claimants' evidence will be treated gently.

Creativity in the Federal Court or the NNTT may be encouraged by some extra-judicial precepts of Chief Justice Mason. A remarkable sequel to Mabo was a sustained effort by the Chief Justice to defend that decision in particular and judicial legislation in general. What would the reaction have been if the dissenting judge, Dawson J, had traversed the country or the newspaper columns expounding his view of the proper limits of judicial power?

The Chief Justice defended the decision on two grounds: first, that judicial legislation is part and parcel of the common law. This truism was adorned with heavy patronage of anyone so ignorant and so addicted to fairy tales as to question it. However, the Chief Justice ignored the real issue, namely, the difference between incremental development over many years and a sudden, major *volte-face*—a difference of degree which is arguably a difference in kind. Sir Anthony's second plea is more intriguing, as follows:

> I think that in some circumstances Governments. . . prefer to leave the determination of controversial questions to the courts rather than [to] . . . the political process. Mabo is an interesting example.

Unfortunately, we are not told how the legislative judge decides that Government has 'left it' to him. But can the silent thought process be other than this: 'Parliament has not legislated. I think it should have. So I will.'?

What are the particular rights, if any? Assume that a claimant group, a tract of land and connecting customs have been ascertained with some degree of certainty. Now the nature and extent of the subject title have to be determined. There is not *a priori* answer; potentially every case is unique. I quote:

> The content of the traditional native title . . . must . . . be determined by reference to the pre-existing native law or custom . . . (It) will, of course, vary . . . It may be an entitlement . . . to a limited special use of land in a context where notions of property in land and distinctions between ownership, possession and use are all but unknown.

The rights may range downwards from something akin to freehold to occasional rights of passage. Will all parties have access to evidence? Will some parties be more equal than others? There will be no discussion here of technical rules of evidence. Learned papers have been written about their application to native title claims, but with due respect the relevance of these writings is not apparent. I seek leave to continue my remarks.

Leave granted; debate adjourned.

ELECTRICITY CORPORATIONS BILL

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

The Hon. DIANA LAIDLAW (Minister for Transport): I move:

That this Bill be now read a second time.

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

Leave granted.

The electricity supply industry is at the leading edge of public sector reform and facing significant challenges to become even more efficient and further lower the overall cost of electricity.

At the national level, the Council of Australian Governments is considering the Hilmer Report, and means to increase competition. A competitive national electricity trading market is scheduled to commence in 1995 to provide access to the electricity network, by licensed generators, distributors and wholesale consumers, and open choice and competition between these participants.

At the state level, in 1993-94, ETSA has had the best financial performance in its 48 year history with an operating surplus of $215.2 million. ETSA has supported the Government's highly successful initiatives of delivering a conducive business climate to South Australia and recent tariff reductions will return $37 million to the State's economy.

To look at the introduction of competition into the electricity industry in South Australia, the Government has put in place an inter-agency Electricity Sector Working Party to make recommendations on a number of matters relating to the structure and market form of the industry in South Australia, and how it should relate to a national market. A key part of the work is being undertaken by a consultancy consortium.

As foreshadowed in the Governor's speech to Parliament, we are introducing legislation that will give us the capacity to further improve ETSA's performance, as recommended by the Audit Commission's Report, and to meet possible requirements consequent on the finalisation of national competition policies and an electricity market.

This Bill establishes ETSA Corporation, which will be governed by a new board and led by a new chief executive officer with clear goals and direction for the Corporation's future. This newly constituted Corporation will operate on a sound commercial basis as a successful business enterprise. This will be achieved by maximising the value of the business for the people of South Australia, increasing its share in profitable markets, and building on success through innovative best practices, leadership and responsible management.

The national electricity market has the potential of bringing significant benefits to South Australian electricity consumers, through increased competition driving down costs and improving service. However, the current proposals of the National Grid Management Council (NGMC) have yet to fully accommodate South Australian concerns, particularly with respect to ensuring reliability of supply to electricity consumers.

When these issues are satisfactorily resolved and the national market becomes fully operational, it may be necessary to restructure ETSA Corporation to ensure competitive neutrality between generators, distributors, and wholesale consumers connected to the State and interstate grid network and to ensure that ETSA's corporate structure enables proper management focus for successful operation against other State and interstate competitors.

Hence, the Bill also provides for the possibility of disaggregation of ETSA Corporation into three corporations responsible for generation, transmission (and system control) and distribution. Queensland, NSW and Victoria have, or are in the process of,

similarly reforming their electricity supply industries in anticipation of the introduction of a national market.

The *Public Corporations Act 1993* will apply, and a charter and performance agreement will be determined for each corporation.

The Government has taken the opportunity provided by the enactment of this legislation to consolidate and modernise provisions (some of which date back to 1897) affecting the electricity supply industry and ETSA. This Bill repeals the *Electricity Trust of South Australia Act 1946* and eight other Acts and associated Regulations.

ETSA will have clear commercial objectives in an increasingly competitive environment and, hence, the regulatory roles of the electricity supply industry presently performed by ETSA will need to be transferred to Government. In fact, the *Electrical Products (Administration) Amendment Bill*, to transfer appliance energy labelling to the Minister, has already been introduced.

The Bill takes a further step in this process by separating out ETSA's regulatory functions in Schedule 4. These non-commercial provisions include—

(a) defining and administering technical standards relating to electricity generation, transmission, distribution and supply;

(b) special powers currently available to ETSA such as the power to compulsorily acquire land, excavate public places, enter land and premises, carry out vegetation clearance on public and private land and property which are powers not available to other suppliers; and

(c) the duty to supply electricity even when it is not reasonable or economic to do so.

The provisions of this schedule will expire on a day fixed by regulation, when they are to be incorporated in new legislation covering regulation of the electricity supply industry and operation of a trading market.

In summary, this Bill establishes ETSA Corporation and provides the legislative and structural framework for the future to enable South Australia's electricity supply industry to compete successfully in the national electricity market.

I commend this Bill to Honourable Members.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Object

The object of this proposed Act is to establish a corporation or corporations for the generation, transmission and distribution of electricity for the benefit of the people and economy of the State.

Clause 4: Interpretation

This clause contains definitions of words and phrases used in the proposed Act.

Clause 5: Interpretation—Electricity generation corporation and functions

For the purposes of this proposed Act, an electricity generation corporation has electricity generation functions which include—

- generating and supplying electricity;
- carrying out research and works (including exploration and mining) to develop, secure and utilise energy and fuels;
- trading in electricity and fuels.

Functions common to each of the three categories of electricity corporation are as follows:

- carrying out research and development related to the corporation's functions;
- providing consultancy and other services within areas of the corporation's expertise;
- commercial development and marketing of products, processes and intellectual property produced or created in the course of the corporation's operations;
- any other function conferred on the corporation by regulation or under any other Act.

Clause 6: Interpretation—Electricity transmission corporation and functions

For the purposes of this proposed Act, an electricity transmission corporation has electricity transmission and system control functions which include—

- transmitting electricity;
- coordinating operation of the generation, transmission and distribution facilities of the South Australian electricity supply system;
- controlling the security of the South Australian electricity supply system;
- operating and administering wholesale market trading arrangements for electricity; and
- trading in electricity.

Clause 7: Interpretation—Electricity distribution functions

For the purposes of this proposed Act, electricity distribution functions of a corporation include—

- distributing and supplying electricity;
- meeting obligations to ensure security of electricity supply to customers;
- generating electricity on a minor scale or local basis;
- trading in electricity and fuels;
- advising and assisting customers and potential customers of the corporation in energy conservation and in the efficient and effective use of energy.

PART 2

ETSA CORPORATION

DIVISION 1—ESTABLISHMENT OF ETSA CORPORATION

Clause 8: Establishment of ETSA Corporation

ETSA Corporation is established as a body corporate that has perpetual succession and a common seal, is capable of suing and being sued in its corporate name and with the functions and powers assigned or conferred by or under this proposed Act or any other Act.

(*NB:* Clause 3 of schedule 2 provides that *ETSA Corporation* is the same body corporate as the Electricity Trust of South Australia established under the repealed *Electricity Trust of South Australia Act 1946* 'the repealed Act'.)

Clause 9: Application of Public Corporations Act 1993

ETSA is a statutory corporation to which the provisions of the *Public Corporations Act 1993* apply.

Clause 10: Functions of ETSA

ETSA has—

- electricity distribution functions;
- subject to Part 3, electricity generation functions;
- subject to Part 4, electricity transmission and system control functions;

and may perform its functions within and outside the State.

Clause 11: Powers of ETSA

ETSA has all the powers of a natural person together with powers conferred on it under this proposed Act or any other Act and may exercise its powers within and outside the State.

Clause 12: ETSA to furnish Treasurer with certain information

ETSA must furnish the Treasurer with such information or records in the possession or control of ETSA as the Treasurer may require in such manner and form as the Treasurer may require.

Clause 13: Common seal and execution of documents

A document is duly executed by ETSA if the common seal of ETSA is affixed to the document in accordance with this proposed section or the document is signed on behalf of ETSA by a person(s) in accordance with an authority conferred under this proposed section.

DIVISION 2—BOARD

Clause 14: Establishment of board

A board of directors consisting of not less than five nor more than seven members appointed by the Governor is established as the governing body of ETSA. The board's membership must include persons who together have, in the Minister's opinion, the abilities and experience required for the effective performance of ETSA's functions and the proper discharge of its business and management obligations.

Clause 15: Conditions of membership

The Governor may remove a director from office (during the appointed term not exceeding 3 years) on the recommendation of the Minister (which may be on any ground that the Minister considers sufficient).

Clause 16: Vacancies or defects in appointment of directors

An act of the board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a director.

Clause 17: Remuneration

A director is entitled to be paid from the funds of ETSA such remuneration, allowances and expenses as may be determined by the Governor.

Clause 18: Board proceedings

Subject to the proposed Act, the board may determine its own procedures. The proposed section includes provision for a quorum of the board, the chairing of meetings of the board, voting at meetings and the minutes of proceedings to be kept by the board.

DIVISION 3—STAFF

Clause 19: Staff of ETSA

The chief executive officer will be appointed by the board with the approval of the Minister. ETSA may appoint such employees as it

thinks necessary or desirable on terms and conditions fixed by ETSA.

PART 3
ELECTRICITY GENERATION CORPORATION
DIVISION 1—ESTABLISHMENT OF CORPORATION

Clause 20: Establishment of corporation

An electricity generation corporation may be established by the Governor by regulation (which must name the corporation). ETSA ceases to have electricity generation functions on and from the date specified for that purpose in the regulations.

Clause 21 : Interpretation

In the remaining provisions of this proposed Part, a reference to the generation corporation is a reference to an electricity generation corporation established under this Part.

Clause 22: Corporate capacity

The generation corporation is established as a body corporate that has perpetual succession and a common seal, the capacity to sue and be sued in its corporate name and the functions and powers assigned or conferred on it by this proposed Act or another Act.

Clause 23: Application of Public Corporations Act 1993

The generation corporation is a statutory corporation to which the provisions of the *Public Corporations Act 1993* apply.

Clause 24: Functions may be performed within or outside State

The generation corporation may perform its functions within and outside the State.

Clause 25: Powers of corporation

Clause 26: Corporation to furnish Treasurer with certain information

Clause 27: Common seal and execution of documents

DIVISION 2—BOARD

Clause 28: Establishment of board

Clause 29: Conditions of membership

Clause 30: Vacancies or defects in appointment of directors

Clause 31: Remuneration

Clause 32: Board proceedings

DIVISION 3—STAFF

Clause 33: Staff of corporation

Clauses 25 to 33 have the same substantive effect in relation to the generation corporation as clauses 11 to 19 have in relation to ETSA.

PART 4
ELECTRICITY TRANSMISSION CORPORATION
DIVISION 1—ESTABLISHMENT OF CORPORATION

Clause 34: Establishment of corporation

An electricity transmission corporation may be established by the Governor by regulation (which must name the corporation). ETSA ceases to have electricity transmission and system control functions on and from the date specified for that purpose in the regulations.

Clause 35: Interpretation

In the remaining provisions of this proposed Part, a reference to the transmission corporation is a reference to an electricity transmission corporation established under this Part.

Clause 36: Corporate capacity

The transmission corporation is established as a body corporate that has perpetual succession and a common seal, the capacity to sue and be sued in its corporate name and the functions and powers assigned or conferred on it by this proposed Act or another Act.

Clause 37: Application of Public Corporations Act 1993

The transmission corporation is a statutory corporation to which the provisions of the *Public Corporations Act 1993* apply.

Clause 38: Functions may be performed within or outside State

The generation corporation may perform its functions within and outside the State.

Clause 39: Powers of corporation

Clause 40: Corporation to furnish Treasurer with certain information

Clause 41: Common seal and execution of documents

DIVISION 2—BOARD

Clause 42: Establishment of board

Clause 43: Conditions of membership

Clause 44: Vacancies or defects in appointment of directors

Clause 45: Remuneration

Clause 46: Board proceedings

DIVISION 3—STAFF

Clause 47: Staff of corporation

Clauses 39 to 47 have the same substantive effect in relation to the transmission corporation as clauses 11 to 19 have in relation to ETSA and clauses 25 to 33 in relation to the generation corporation.

PART 5
MISCELLANEOUS

Clause 48: Mining at Leigh Creek

A sale or lease of any seam of coal vested in the Crown at or near Leigh Creek or a contract for any such sale or lease or a right to mine any such seam of coal cannot be made or granted by or on behalf of the Crown except under an Act specifically authorising that sale, lease, contract or right. (This provision is substantially the same as section 43C of the repealed Act.)

Without limiting the generation corporation's powers, the corporation may—

- mine any seams of coal, vested in the Crown or the corporation, at or near Leigh Creek;
- mine any substance, vested in the Crown or the corporation, discovered in the course of operations for the mining of coal;
- treat, grade, or otherwise prepare for sale, and use, sell or otherwise dispose of any coal or other substance so mined.

Generation corporation is defined to mean ETSA and, if an electricity generation corporation is established under proposed Part 3, that corporation.

Clause 49: Regulations

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

SCHEDULE 1
Superannuation

This schedule is similar to Part IVB of the repealed Act with alterations consequential on the enactment of this proposed Act.

SCHEDULE 2
Repeal and Transitional Provisions

This schedule contains provisions of a transitional nature as well as repealing a number of Acts as a result of the enactment of this proposed Act.

SCHEDULE 3
Transfer of Assets, Liabilities and Staff between Electricity Corporations

This schedule provides for the transfer of assets, liabilities and staff between electricity corporations.

SCHEDULE 4
Temporary Non-commercial Provisions

This schedule contains provisions drawn in part from the repealed *Electricity Trust of South Australia Act*. The provisions deal with special powers, duties and offences that it is intended will, at an appropriate time, be relocated to another Act applying to electricity suppliers generally.

Clause 1: Interpretation

This clause contains definitions used in the schedule.

Clause 2: Standards relating to electricity generation, transmission, distribution and supply

This clause provides that the Minister may define and administer standards for the generation, transmission, distribution and supply of electricity.

Clause 3: Powers of ETSA with respect to land and transmission or distribution system

ETSA is specially empowered to acquire land in accordance with the *Land Acquisition Act 1969*.

ETSA may—

- lay or install any part of the transmission or distribution system over or under any public place;
- excavate a public place;
- lay, install, provide or set up on or against the exterior of a building or structure any cable, equipment or other necessary structure to secure to that or any other building or structure a proper supply of electricity and for measuring the extent of such supply.

ETSA must, at least 7 days before exercising such a power in relation to a public place, give to the authority in which the control or management of the place is vested notice of its intention to exercise those powers and of the area to be affected. Such notice is not required in an emergency or in circumstances of imminent danger to life or property. ETSA must, as soon as practicable, make good any damage to a public place arising from the exercise of powers conferred by this proposed section.

Clause 4: Subsidies to other suppliers

The Minister may direct ETSA to provide a subsidy to another supplier of electricity in the State.

Clause 5: Duty to supply electricity

ETSA must ensure that the transmission or distribution system is constructed and maintained in accordance with accepted standards and practices by the electricity supply industry. ETSA must (as far as practicable) maintain the electricity supply through the transmis-

sion or distribution system. If it is reasonable and economic to do so, ETSA must, on the application of any person, provide a supply of electricity to any land or premises occupied by that person subject to payment of fees and charges and observance of the other conditions of supply from time to time fixed by ETSA.

ETSA may cut off the supply of electricity—

- to avert danger to any person or property;
- to prevent damage to any part of a generator or the transmission or distribution system through overloading or unstable or abnormal operation;
- to allow for the inspection, maintenance or repair of any part of the transmission or distribution system;
- on non-observance of the conditions of supply.

If ETSA proposes to cut off a supply of electricity in order to avert danger of a bush fire, ETSA should, if practicable, consult with the Country Fire Services Board before doing so.

Clause 6: Immunity from liability in consequence of cutting off or failure of electricity supply

ETSA incurs no civil liability in consequence of cutting off the supply of electricity to any region, area or premises under this proposed Act or the failure of an electricity supply.

Clause 7: Duties in relation to vegetation clearance

ETSA has a duty to take reasonable steps to keep vegetation of all kinds clear of public supply lines and to keep naturally occurring vegetation clear of private supply lines, in accordance with the principles of vegetation clearance. The occupier of private land has (subject to the principles of vegetation clearance) a duty to take reasonable steps to keep vegetation (other than naturally occurring vegetation) clear of any private supply line on the land in accordance with the principles of vegetation clearance.

Any costs incurred by ETSA in carrying out work on private land (other than work that ETSA is required to carry out under an imposed duty) may be recovered as a debt from the occupier of the land. This provision operates to the exclusion of common law duties, and other statutory duties, affecting the clearance of vegetation from public and private supply lines.

This provision is substantially the same as section 39 of the repealed Act.

Clause 8: Role of councils in relation to vegetation clearance

ETSA may make an arrangement with a council (within the meaning of the *Local Government Act 1934*) conferring on the council a specified role in relation to vegetation clearance. The arrangement may include a delegation by ETSA of a function or power and may require that ETSA be indemnified for any liability arising from an act or omission of the council under a delegation. A delegation by ETSA for the purposes of the arrangement may be subject to specified conditions that may be varied or revoked and does not prevent ETSA from acting in any matter.

Clause 9: Powers of entry, inspection, etc.

ETSA may appoint an employee or any other suitable person to be an authorised person.

An authorised person may, at any reasonable time—

- examine or test any part of the transmission or distribution system or an electrical installation;
- carry out any work necessary to obtain access to any part of the transmission or distribution system or an electrical installation;
- inspect or repair any part of the transmission or distribution system or an electrical installation;
- take any action that may be necessary to avert danger from a fault in the transmission or distribution system or from unstable or abnormal conditions affecting it;
- inspect public or private supply lines;
- carry out any vegetation clearance work in accordance with the proposed Act;
- enter land or premises for the purpose of exercising any power under this provision.

Except in an emergency or circumstances of imminent danger to life or property or for meter-reading purposes, an authorised person must give reasonable notice of an intention to enter residential premises or land to the occupier and, where vegetation clearance work is to be carried out on the land, must give at least 60 days written notice, specifying the nature of the work.

Except in certain circumstances, ETSA must, as soon as practicable, make good any damage to land or premises resulting from the exercise of a power under this provision.

A person who hinders or obstructs an authorised person in the exercise of any of these powers is guilty of an offence and liable to a division 6 fine ($4 000). An authorised person, or a person assisting an authorised person, who, in the course of exercising powers, addresses offensive language to another person or who, without lawful authority, hinders or obstructs or uses or threatens to use force in relation to another person is guilty of an offence and liable to a division 6 fine ($4 000).

Clause 10: Offences relating to transmission or distribution system, etc.

A person who, except as approved by the Minister—

- abstracts or diverts electricity from any part of the transmission or distribution system or interferes with a meter or other device for measuring the consumption of electricity supplied by ETSA; or
- charges another a premium for the cost of electricity supplied by ETSA and paid or payable by that person; or
- contributes electricity to any part of the transmission or distribution system; or
- damages or otherwise interferes with any part of the transmission or distribution system or any electrical installation or other property belonging to ETSA, or under its control; or
- erects a building or structure in proximity to a supply line that is part of the transmission or distribution system contrary to the regulations,

is guilty of an offence and liable to a division 5 fine ($8 000).

The Minister may, subject to the regulations, give an approval for the purposes of this provision that may be general or specific and will, insofar as the approval operates for the benefit of a particular person, be subject to such conditions as the Minister may fix from time to time by notice in writing to that person.

If ETSA suffers loss or damage as a result of an offence under this clause, ETSA may recover compensation for the loss or damage from a person guilty of the contravention on application to a court convicting the person of the offence or by action in a court of competent jurisdiction.

Clause 11: Payments by ETSA

ETSA must, on or before each payment day, out of its revenues pay to the Treasurer for the purposes of the Consolidated Account, an amount equal to five per cent of its revenues being revenues derived from the sale of electricity during the quarter last preceding the quarter within which the payment day occurs.

Clause 12: Regulations

The Governor may make regulations dealing with specified matters for the purposes of the schedule. Regulations dealing with the clearance of vegetation from public or private supply lines can only be made with the concurrence of the Minister for Environment and Natural Resources. The regulations—

- may be of general application or limited in application;
- provide that a matter or thing in respect of which regulations may be made is to be determined, regulated or prohibited according to the discretion of ETSA;
- may refer to or incorporate (wholly or partially and with or without modification) any standard or other document prepared or published by a body referred to in the regulation, as is in force from time to time or as in force at a particular time.

Clause 13: Expiry

The Governor may, by regulation, declare that this schedule, or specified provisions of this schedule, will expire on a day or days specified in the regulations.

The Hon. R.R. ROBERTS secured the adjournment of the debate.

CORRECTIONAL SERVICES (PRIVATE MANAGEMENT AGREEMENTS) AMENDMENT BILL

The House of Assembly intimated that it had disagreed to the Legislative Council's amendments.

Consideration in Committee.

The Hon. DIANA LAIDLAW: I move:

That the Council do not insist on its amendments.

Motion negatived.

NATIVE TITLE (SOUTH AUSTRALIA) BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 856.)

The Hon. J.C. IRWIN: The present question is not one of legal theory but of reliability and accessibility. Present indications are that, hopeless claims aside, it will be easy to mount a *prima facie* case of native title and very difficult to contest it because the vital witness will often be at the beck and call of the claimants or their sponsor corporations. Much of the evidence in these cases will come from members of the claimant group asserting what others have told them about the words or actions of ancestors more or less remote. In Northern Territory land rights cases this lay testimony is commonly called 'traditional evidence'.

Traditional witnesses will be supported by the expert evidence of anthropologists or other social scientists who will in turn depend, at least in part, upon what past or present members of the claimant group have told the witness or his professional colleagues. In short, lay evidence may be recycled into scientific packaging. Traditional evidence will often consist of hearsay upon hearsay and, apart from the difficulties of cross-examination which give birth to the hearsay rule, other parties may have to cope with recent invention of what purports to be ancient history. A former Supreme Court judge, with more trial experience than some members of the High Court, suggests that customs 'are likely to be recalled in a manner favourable to the claimant which is, after all, simply human nature'. A Government lawyer in Darwin who regularly deals with land claims says:

> Anthropologists and lawyers for claimants stay with the people concerned and work up their evidence with them the night before. There is an employee of one of the land councils who is notoriously unethical in preparing and presenting witnesses. Land councils treat old and unsophisticated people who are the nominal claimants as their personal property. Land councils have unlimited access to them, others have none.

Another lawyer with relevant experience, Graham Hiley QC, gives an interesting account of practice in Northern Territory cases. He describes an extraordinary process of group evidence which enables collaboration and concoction and which makes it difficult to identify precisely which person knows what and which knows nothing. Reading the transcript afterwards, one could assume that all the members of that group had that knowledge. Hiley adds that leading questions and paraphrasing of indistinct answers are common in the Territory tribunal.

When cross-examination is allowed in NTA cases it will be hard to test direct evidence, let alone hearsay, if a non-claimant party has little or no access to alternative versions. Evidence of the kind which Hiley describes is extremely difficult to cross-examine and to assess, even if it were correct to attempt such an exercise in the club atmosphere which special tribunals engender.

In dealing with assertions of native customs a standard technique of cross-examiners—reference to prior inconsistent statements—will rarely be available. Claimants' evidence may self-levitate by finding its way into assessors' reports. Very occasionally it is possible to make bricks without straw. A Sydney barrister with a Territory practice states:

> If you are lucky you can go to the history books and find out that people who are claiming a connection from time immemorial only go back to 1930.

The same barrister adds:

> It is not the same tradition when you question every one of the Aborigines. Quite often you find that there are huge discrepancies between what the claimant, or some of them, are now saying and what the anthropologist may have written in his report. They say our laws never change, but internally they are highly political and there are struggles for control of land all of the time.

However, the nearest approach to the primary fact in this type of litigation is what claimants say they have been told and believe about territories and connections. The first inquiry into the South Australian Hindmarsh bridge project was told nothing about certain spiritual beliefs, whilst the second inquiry a few months later heard a great deal about them. One wonders whether events of this kind will support revised native title applications under the NTA. Justice Moynihan was not, as he states:

> Impressed with the credibilities of Eddie Mabo who seemed quite capable of tailoring his story to whatever shape he perceived would advance his cause. A most careful peruser of the High Court judgment would not alert the readers to those comments by the only judge who saw or heard the witness.

I turn to expert evidence. Land rights and litigation has created a new and rapidly growing expert witness industry. Anthropologists, who once were rarely seen in the witness box, are as much in demand in these cases as neurologists and orthopaedic specialists are in personal inquiry litigation. But while most of the latter are independent practitioners, the experts used by the native title claimants are usually employees of the Land Council which sponsors the claim and have spent long periods in close association with the normal applicants on whose behalf they testify.

In other litigation this certainly would not enhance an expert's credit, but special tribunals develop cultures of their own. Judicial doubts about experts who thrive on forensic appearances and practise advocacy from the witness box are not so candidly expressed today, but ruminations of a distinguished English justice are still worth considering. He states:

> In matters of opinion I very much distrust expert evidence for several reasons. In the first place, although the person cannot be indicted for perjury because it is only evidence as to a matter of opinion...but that is not all expert evidence is evidence of a person who sometimes lived by testifying.

I turn to access expert evidence. The well established species of expert evidence are (in principle) available to all, have little ideological content and do not suffer the censorship which current patois calls 'political correctness'. Due to the delicacy of this subject published material is not in over supply, but with patience a surprising amount is to be found. Some of it is in a form which the law sees as particularly impressive—voluntary statements against interest.

Hiley Q.C. records his impression that an anthropologist witness who fails to support, let alone criticises a land rights claim risks the resentment of and the possible alienation from his peers. Elsewhere the same senior counsel observes the following:

> To the best of my recollection an expert anthropologist has never been called to give evidence in a land claim except on behalf of the claimants or by counsel assisting the Land Rights Commissioner. . . It seems that parties other than the claimants usually find some difficulty in retaining an anthropologist who has the appropriate experience. . . and who is willing and able to positively testify against the claim. . . During the Jawoyn claim, when counsel assisting did in fact seek to call an anthropologist who had some experience with the Jawoyn people the attempt to call him was met with repeated and strenuous objections. . . There has been an understandable reluctance by anthropologists to be seen to be advising parties other than Aborigines.

Hiley adds that access to primary materials (that is, what an anthropologist claims to have been told or shown by his clients) is difficult to obtain and in the Northern Territory cases at least is often strongly resisted. The National Native Title Tribunal may prohibit the disclosure of evidence, but presumably natural justice will require disclosure to all

parties of anything which is likely to influence its decision. The same point has already been made about judicial notice of cultural and customary concerns.

Another barrister with experience in the Northern Territory states:

> I was involved in an Aboriginal land claim and I rang round various universities to try and get an expert witness and no-one would be in it. They were worried about their promotion. A couple of them said that they would never ever get a permit to go on to any Aboriginal land again to do work, and they would be effectively blackballed in their profession. And that's a real problem that respondents face in these applications.

Further, a Government lawyer in Darwin adds:

> Land councils have a mortgage on anthropologists, particularly in the areas which they have selected for claims. The Government has never produced an anthropologist. They are terrified of bringing their career to an abrupt end.

If there are few very real contests, why have courts? One looks for evidence or argument to support these criticisms. The attitude seems to be that the position of Mr Peterson and the American Anthropological Association is so natural and proper that there is no court case to answer. The complete absence of self-consciousness may indicate that the present questions have not been raised in the sequential veil of land rights litigation and, if so, that is cause for concern.

I know this has been a very long and at times involved contribution to the cognate debate we are having on the four native title Bills before the House. It has been very important for me at least to bring together a number of threads which have been developed over recent years. The people of Australia and, indeed, South Australia should be warned about the collective directions of those threads. I am extremely uncomfortable about what has been brought to my attention by some very eminent people whom I have sought to quote in this debate.

Having said all that, I support the Bill before us and, in fact, the other three Bills that are to be debated later. I understand there is another one to come in at some later stage. We also have a High Court challenge by Western Australia particularly, and joined by South Australia and maybe Victoria, that is going through the High Court appeal process now. What will flow from the mess that has been created by the decision of the judges of the High Court in the Mabo decision from which all this has flowed will be anyone's guess. I understand there will not be any indication from the High Court about the appeals on its Mabo decision until April next year, so I assume that these Bills will already be through by then, but if there is any change because of the move made by Western Australia against the Mabo decision and parts of it, then something else might have to come into this House at a later time.

The Hon. CAROLYN PICKLES secured the adjournment of the debate.

STATUTES AMENDMENT (OIL REFINERIES) BILL

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

MOTOR VEHICLES (CONDITIONAL REGISTRATION) AMENDMENT BILL

Returned from the House of Assembly with an amendment.

CORRECTIONAL SERVICES (PRIVATE MANAGEMENT AGREEMENTS) AMENDMENT BILL

The House of Assembly requested a conference, at which it would be represented by five managers, on the Legislative Council's amendments to which it had disagreed.

The Legislative Council agreed to a conference to be held in the second floor committee room at 5.30 p.m. this day at which it would be represented by the Hons K.T. Griffin, J.C. Irwin, Sandra Kanck, T.G. Roberts and G. Weatherill.

ADJOURNMENT

At 5.31 p.m. the Council adjourned until Tuesday 22 November at 2.15 p.m.