LEGISLATIVE COUNCIL

Tuesday 29 November 1994

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

ASSENT TO BILLS

Her Excellency the Governor, by message, intimated her assent to the following Bills:

Electrical Products (Administration) Amendment,

Financial Institutions Duty (Exempt Accounts) Amendment,

Pollution of Waters by Oil and Noxious Substances (Consistency with Commonwealth) Amendment,

Small Business Corporation of South Australia Act Repeal.

LAND AGENTS BILL, CONVEYANCERS BILL AND LAND VALUERS BILL

At 2.18 p.m. the following recommendations of the conference were reported to the Council:

CONVEYANCERS BILL

As to Amendment No. 1:

That the House of Assembly do not further insist on its amendment but make the following amendment in lieu thereof:

Clause 3, page 1, after line 20—Insert definition as follows:

'Court' means the Administrative and Disciplinary Division of the District Court of South Australia;

And that the Legislative Council agrees thereto.

As to Amendments Nos. 2 to 7:

That the Legislative Council do not further insist on its disagreement thereto.

As to Amendment No. 8:

That the House of Assembly do not further insist on its amendment.

As to Amendments Nos. 9 to 14:

That the Legislative Council do not further insist on its disagreement thereto.

As to Amendment No. 15:

That the House of Assembly do not further insist on its amendment.

As to Amendments Nos. 16 to 19:

That the Legislative Council do not further insist on its disagreement thereto.

And that the House of Assembly makes the following consequential amendments to the Bill—

1. New clause, page 20, after line 13—Insert new clause as follows:

Participation of assessors in disciplinary proceedings

47A. In any proceedings under this Part, the Court will, if the judicial officer who is to preside at the proceedings so determines, sit with assessors selected in accordance with schedule 1.

2. Clause 51, page 22, after line 27—Insert subclause as follows:

(2a) The Commissioner may not delegate any of the following for the purposes of the agreement:

(a) functions or powers under Part 2;

(b) the approval of classes of accounts at banks, building societies or credit unions under Division 2 of Part 4;

(c) the appointment, reappointment or termination of appointment of a person to administer a conveyancer's trust account or of a temporary manager under Division 2 of Part 4;

(d) functions or powers under Division 3 of Part 4;

(e) power to request the Commissioner of Police to investigate and report on matters under Part 6;

(f) power to commence a prosecution for an offence against this Act.

3. New schedule, after page 25—Insert—

SCHEDULE 1

Appointment and Selection of Assessors for Court

(1) The Minister must establish a panel of persons who may sit as assessors consisting of persons representative of conveyancers.

(2) The Minister must establish a panel of persons who may sit as assessors consisting of persons representative of members of the public who deal with conveyancers.

(3) A member of a panel is to be appointed by the Minister for a term of office not exceeding three years and on conditions determined by the Minister and specified in the instrument of appointment.

(4) A member of a panel is, on the expiration of a term of office, eligible for reappointment.

(5) Subject to subclause (6), if assessors are to sit with the Court in proceedings under Part 5, the judicial officer who is to preside at the proceedings on the complaint must select one member from each of the panels to sit with the Court in the proceedings.

(6) A member of a panel who has a personal or a direct or indirect pecuniary interest in a matter before the Court is disqualified from participating in the hearing of the matter.

(7) If an assessor dies or is for any reason unable to continue with any proceedings, the Court constituted of the judicial officer who is presiding at the proceedings and the other assessor may, if the judicial officer so determines, continue and complete the proceedings.

And that the Legislative Council agrees thereto.

LAND AGENTS BILL

As to Amendment No. 1:

That the House of Assembly do not further insist on its amendment.

As to Amendment No. 2:

That the House of Assembly do not further insist on its amendment but makes the following amendment in lieu thereof:

Clause 3, page 1, after line 21—Insert definition as follows:

'Court' means the Administrative and Disciplinary Division of the District Court of South Australia;

And that the Legislative Council agrees thereto.

As to Amendments Nos 3 to 10:

That the Legislative Council do not further insist on its disagreement thereto.

As to Amendment No. 11:

That the House of Assembly do not further insist on its amendment but makes the following amendment in lieu thereof:

New clause, page 6, after line 22—Insert new clause as follows:

Entitlement to be sales representative

12A. (1) A person must not employ another person as a sales representative unless that other person—

(a) —

(i) holds the qualifications required by regulation; or

(ii) is registered as an agent under this Act or has been registered as a sales representative or manager, or licensed as an agent, under the repealed Land Agents, Brokers and Valuers Act 1973; and

(b) has not been convicted of an offence of dishonesty; and

(c) is not suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth.

Penalty: Division 5 fine.

(2) A person must not—

(a) be or remain in the service of a person as a sales representative; or

(b) hold himself or herself out as a sales representative; or

(c) act as a sales representative,

unless he or she—

(d) —

(i) holds the qualifications required by regulation; or

(ii) is registered as an agent under this Act or has been registered as a sales representative or manager, or licensed as an agent, under the repealed Land Agents, Brokers and Valuers Act 1973; and

(e) has not been convicted of an offence of dishonesty; and

(f) is not suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth.

Penalty: Division 7 fine.

And that the Legislative Council agrees thereto.

As to Amendments Nos. 12 to 14:

That the Legislative Council do not further insist on its disagreement thereto.

As to Amendments Nos. 15 and 16:

That the House of Assembly do not further insist on its amendments.

As to Amendments Nos. 17 and 18:

That the Legislative Council do not further insist on its disagreement thereto.

As to Amendment No. 19:

That the House of Assembly do not further insist on its amendment but makes the following amendment in lieu thereof:

Clause 44, page 19, lines 11 to 14—Leave out the definition of 'sales representative' and insert:

'sales representative' includes a former sales representative;

And that the Legislative Council agrees thereto.

As to Amendment No. 20:

That the House of Assembly do not further insist on its amendment but makes the following amendment in lieu thereof:

Clause 45, page 20, lines 1 to 9—Leave out subclause (2) and insert—

(2) There is proper cause for disciplinary action against a sales representative if the sales representative has acted unlawfully, improperly, negligently or unfairly in the course of acting as a sales representative.

And that the Legislative Council agrees thereto.

As to Amendments Nos. 21 to 26:

That the Legislative Council do not further insist on its disagreement thereto.

As to Amendment No. 27:

That the House of Assembly do not further insist on its amendment.

As to Amendment No. 28:

That the Legislative Council do not further insist on its disagreement thereto.

As to Amendment No. 29:

That the House of Assembly do not further insist on its amendment.

As to Amendments Nos. 30 to 35:

That the Legislative Council do not further insist on its disagreement thereto.

As to Amendment No. 36:

That the House of Assembly do not further insist on its amendment.

As to Amendment No. 37:

That the Legislative Council do not further insist on its disagreement thereto.

As to Amendment No. 38:

That the House of Assembly do not further insist on its amendment.

As to Amendment No. 39:

That the Legislative Council do not further insist on its disagreement thereto.

And that the House of Assembly makes the following consequential amendments to the Bill—

1. Long title, page 1, line 7—After 'Act 1973;' insert 'to amend the District Court Act 1991;'.

2. New clause, page 20, after line 28—Insert new clause as follows:

Participation of assessors in disciplinary proceedings

47A. In any proceedings under this Part, the Court will, if the judicial officer who is to preside at the proceedings so determines, sit with assessors selected in accordance with schedule 1.

3. Clause 51, page 23, after line 27—Insert subclause as follows:

(2a) The Commissioner may not delegate any of the following for the purposes of the agreement:

(a) functions or powers under Part 2;

(b) the approval of classes of accounts at banks, building societies or credit unions under Division 2 of Part 3;

(c) the appointment, reappointment or termination of appointment of a person to administer an agent's trust account or of a temporary manager under Division 2 of Part 3;

(d) functions or powers under Division 3 of Part 3;

(e) power to request the Commissioner of Police to investigate and report on matters under Part 5;

(f) power to commence a prosecution for an offence against this Act.

4. New schedule, after page 27—Insert new schedule as follows:

SCHEDULE 1

Appointment and Selection of Assessors for Court

(1) The Minister must establish a panel of persons who may sit as assessors consisting of persons representative of agents.

(2) The Minister must establish a panel of persons who may sit as assessors consisting of persons representative of members of the public who deal with agents.

(3) A member of a panel is to be appointed by the Minister for a term of office not exceeding three years and on conditions determined by the Minister and specified in the instrument of appointment.

(4) A member of a panel is, on the expiration of a term of office, eligible for reappointment.

(5) Subject to subclause (6), if assessors are to sit with the Court in proceedings under Part 4, the judicial officer who is to preside at the proceedings on the complaint must select one member from each of the panels to sit with the Court in the proceedings.

(6) A member of a panel who has a personal or a direct or indirect pecuniary interest in a matter before the Court is disqualified from participating in the hearing of the matter.

(7) If an assessor dies or is for any reason unable to continue with any proceedings, the Court constituted of the judicial officer who is presiding at the proceedings and the other assessor may, if the judicial officer so determines, continue and complete the proceedings.

5. New schedule, after page 29—Insert new schedule as follows:

SCHEDULE 3

Amendment of District Court Act 1991

(1) The District Court Act 1991 is amended—

(a) by striking out subsection (2) of section 3;

(b) by striking out paragraph (d) of section 7 and substituting the following paragraph:

(d) the Administrative and Disciplinary Division.;

(c) by striking out subsection (3) of section 8 and substituting the following subsection:

(3) The Court, in its Administrative and Disciplinary Division, has the jurisdiction conferred by statute.;

(d) by striking out from section 20(3) and (4) 'Administrative Appeals Division' wherever occurring and substituting, in each case, 'Administrative and Disciplinary Division';

(e) by striking out from section 43(3) 'Administrative Appeals Division' and substituting 'Administrative and Disciplinary Division';

(f) by striking out from section 52 'Administrative Appeals Division' and substituting 'Administrative and Disciplinary Division';

(g) by inserting after the present contents of section 52, as amended by this clause (now to be designated as subsection (1)) the following subsection:

(2) The Court, in its Administrative and Disciplinary Division, is bound by the rules of evidence in—

(a) disciplinary proceedings; and

(b) proceedings related to contempt.

(2) A reference in any Act or instrument to the Administrative Appeals Court or to the Administrative Appeals

Division of the District Court, is so far as the context permits, to be taken to be a reference to the Administrative and Disciplinary Division of the District Court.

And that the Legislative Council agrees thereto.

LAND VALUERS BILL

As to Amendment No. 1:

That the House of Assembly do not further insist on its amendment but makes the following amendment in lieu thereof:

Clause 3, page 1, after line 15—Insert definition as follows:

'Court' means the Administrative and Disciplinary Division of the District Court of South Australia;.

And that the Legislative Council agrees thereto.

As to Amendments Nos. 2 to 7:

That the Legislative Council do not further insist on its disagreement thereto.

As to Amendment No. 8:

That the House of Assembly do not further insist on its amendment.

As to Amendments Nos. 9 to 11:

That the Legislative Council do not further insist on its disagreement thereto.

And that the House of Assembly makes the following consequential amendments to the Bill—

1. New clause, page 3, after line 13—Insert new clause as follows:

Participation of assessors in disciplinary proceedings

9A. In any proceedings under this Act, the Court will, if the judicial officer who is to preside at the proceedings so determines, sit with assessors selected in accordance with schedule 1.

2. Clause 16, page 5, after line 19—Insert subclause as follows:

(2a) The Commissioner may not delegate for the purposes of the agreement—

(a) power to request the Commissioner of Police to investigate and report on matters under this Act;

(b) power to commence a prosecution for an offence against this Act.

3. New schedule, after page 7—Insert:

SCHEDULE 1

Appointment and Selection of Assessors for Court

(1) The Minister must establish a panel of persons who may sit as assessors consisting of persons representative of land valuers.

(2) The Minister must establish a panel of persons who may sit as assessors consisting of persons representative of members of the public who deal with land valuers.

(3) A member of a panel is to be appointed by the Minister for a term of office not exceeding three years and on conditions determined by the Minister and specified in the instrument of appointment.

(4) A member of a panel is, on the expiration of a term of office, eligible for reappointment.

(5) Subject to subclause (6), if assessors are to sit with the Court in proceedings under this Act, the judicial officer who is to preside at the proceedings on the complaint must select one member from each of the panels to sit with the Court in the proceedings.

(6) A member of a panel who has a personal or a direct or indirect pecuniary interest in a matter before the Court is disqualified from participating in the hearing of the matter.

(7) If an assessor dies or is for any reason unable to continue with any proceedings, the Court constituted of the judicial officer who is presiding at the proceedings and the other assessor may, if the judicial officer so determines, continue and complete the proceedings.

And that the Legislative Council agrees thereto.

CORRECTIONAL SERVICES (PRIVATE MANAGEMENT AGREEMENTS) AMENDMENT BILL

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

That the sitting of Council be not suspended during the continuation of the conference on the Bill.

Motion carried.

QUESTIONS ON NOTICE

The PRESIDENT: I direct that the written answers to the following questions, as detailed in the schedule that I now table, be distributed and printed in *Hansard:* Nos 32, 35 and 46.

STA HOUSE

32. **The Hon. BARBARA WIESE:**

1. Will the Minister provide details of the work involved in a $3.3 million re-fit of STA House provided for in this year's State budget?

2. What transport priorities were foregone to accommodate this work?

3. Has the cost of this work been taken into account in the Minister's transport reform savings claims?

The Hon. DIANA LAIDLAW:

1. The large majority of the funds are required to provide a fit-out and minor building upgrading work in STA House which will provide new accommodation for the Department of Housing and Urban Development (DHUD). DHUD will relocate from current accommodation in the leased building at 55 Grenfell Street which is not a Government owned premise.

(a) This move will consolidate DHUD's city accommodation to STA House and the Riverside Building. DHUD will occupy levels 1 to 6, that is, half the total number of levels. This proposal was approved in principle by the former Labor Government Cabinet on 30 August 1993.

(b) The remaining funds are required to consolidate TransAdelaide to levels 7 to 9 and to refit levels 10 to 12 for the Passenger Transport Board (PTB) and the Office of the Minister for Transport. The consolidation of TransAdelaide is partly due to downsizing of the head office administration and the relocation of staff from the 6th floor as a result of the DHUD lease.

The DHUD, PTB and Office of the Minister for Transport tenancies and subsequent refits are commercial decisions in terms of having STA House fully occupied and financially viable.

2. During budget discussions with Treasury, TransAdelaide's capital budget was reduced from around $66 million to $63 million. This was as a result of the normal negotiation process with Treasury and was not specifically due to the $3.3 million refit of STA House. This reduced capital budget will not affect transport initiatives relating to services.

3. As the savings referred to relate to initiatives to reduce operational expenditure, this capital work will not affect the savings target.

METROPOLITAN TAXICAB BOARD

35. **The Hon. BARBARA WIESE:**

1. What new arrangements were implemented following completion of the review of the Taxi Industry Research and Development Fund?

2. What projects were approved and funded from the fund in 1993-94?

3. What is the current status of the fund?

The Hon. DIANA LAIDLAW:

1. A report and recommendations were submitted by the former Metropolitan Taxi Cab Board in July 1994 resulting in new guidelines for the use of the fund. The Passenger Transport Board has formed a sub-committee to evaluate applications and monitor the guidelines.

The present guidelines are as follows:

- A yearly budget for use of the fund should be proposed, which should be consistent with the fund's overall annual budget allowing for accumulation of a significant proportion of the fund as reserves.
- As a matter of general principle, proposals should not be exclusive as to the beneficiaries of the project, unless it is a demonstration-type project, the benefits of which will be widespread in the longer term.
- The proposals should be legal, that is, comply with Trade Practices Act, Fair Trading Act, and Codes of Practice.
- Proposals (apart from those relating to data collection) should be designed in such a way as to be self-sufficient if they are to be ongoing.

· Fund expenditure should be predominantly of a capital nature, not used to meet recurrent expenses to prop up projects that will not become self supporting in the long run.
· Where proposals contain third party contractors, those contracts involving funds of more than $10 000 should be openly tendered. For proposals costing less than $10 000 at least three quotes should be obtained.
· Preference should be given to sponsors of projects who are prepared to meet one-third of the project cost, or as determined by the Passenger Transport Board.

2. (a) Promotion of the Taxi Industry ($150 000)
(b) Reimbursement to University of SA for one years salary and associated costs with the employment of Dr Ian Radbone with the Transport Policy Unit ($61 000)
(c) Drink, Drive Advertising Campaign ($9 970)
(d) Independent Evaluation of Taxi-Cab Age Limit ($17 500)
(e) Survey of Hills Area ($7 400)
(f) Drink Don't Drive Campaign over Easter period ($9 643.25)
(g) Stage 1, Implementation of Code of Practice (SATA) ($8 000)
(h) Evaluation of the promotion of Taxi Industry ($2 800)
(i) SATA Administration Grant, second half 1993-94 ($17 900)

3. Balance of the fund as at 19 October 1994—$4 691 676.46.

Applications have been received and are currently being assessed for my approval.

WOMEN'S ADVISORY COUNCIL

46. **The Hon. ANNE LEVY:**

1. Who are the members of each of the four subcommittees established by the Women's Advisory Council, one each for the areas of—
(a) women and the economy;
(b) women and violence;
(c) women in the regions;
(d) women and representation?

2. How often has each subcommittee met, and how often do they propose to meet during the next 12 months?

3. Is each subcommittee planning to prepare a report, and when is each report expected to be finalised?

4. Will these reports be released publicly, and if not, why not?

The Hon. DIANA LAIDLAW:

1. The Women's Advisory Council has established three subcommittees to focus on specific priority areas over the initial six months of its operation. The committees cover women and representation, violence against women and women in rural and regional areas issues. A separate subcommittee on women and the economy has not been established at this stage. However, each of the subcommittees will consider any potential economic impact in their area of interest. The membership of the subcommittees is:

Women and Representation Subcommittee
Julie Mills (Convenor), Janet Maughan, Marjorie Schulz, Julie Meeking, Natalie Ward and Karobi Mukherjee.
Violence Against Women Subcommittee
Helen Storer (Convenor), Janet Maughan, Ele Wilde, Vicki Hiscock and Marilyn Rolls.
Rural Issues Subcommittee
Di Davidson (Convenor), Janis Koolmatrie, Geraldine Boylan and Wendy Botting.

2. The subcommittees meet at least once between the monthly meetings of the Women's Advisory Council. The Rural Issues Subcommittee holds its discussions by telephone.

3. Each subcommittee will prepare a report for consideration by the Women's Advisory Council. The Council then formulates its report to me on each area. It is anticipated that the reports will be completed progressively over the next six months.

4. I anticipate that the reports will be available publicly.

PAPERS TABLED

The following papers were laid on the table:

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

Friendly Societies Act 1919—General Laws.
Gaming Machines Act 1992—Report by the Liquor Licensing Commissioner, 1993-94.
Regulation under the following Act—
Police Superannuation Act 1990—Pensions and Lump Sums.

By the Attorney-General (Hon. K. T. Griffin)—

Reports, 1993-94—
Construction Industry Long Service Leave Board.
Legal Practitioners Complaints Committee.
Legal Practitioners Disciplinary Tribunal.
South Australian Meat Corporation.
South Australian Office of Financial Supervision.
South Australian Timber Corporation.
Summary Offences Act 1953—
Dangerous Area Declarations, 1-7-94 to 30-9-94.
Road Block Establishment Authorisations, 1-7-94 to 30-9-94.

By the Minister for Consumer Affairs (Hon. K. T. Griffin)—

Commissioner for Consumer Affairs—Report, 1993-94.

By the Minister for Transport (Hon. Diana Laidlaw)—

Reports, 1993-94—
Chiropractors Board of South Australia.
South Australian Psychological Board.
Response to Report of the Public Works Committee inquiring into the development of new regional health facilities in Mount Gambier.
Regulations under the following Act—
Harbors and Navigation Act 1993—
Position-indicating Radio Beacon.
Restricted Areas—Glenelg.
Corporation By-laws—
Mitcham—No. 2—Council Land.
Munno Para—
No. 1—Repeal of By-laws.
No. 2—Permits and Penalties.
No. 3—Ice Cream and Produce Vehicles.
No. 4—Removal of Garbage at Public Places.
No. 5—Bees.
No. 6—Management of Parks, Parklands, Recreation Reserves and Other Public Places.
No. 7—Keeping of Dogs.
No. 8—Flammable Undergrowth.
No. 9—Animals.
Payneham—No. 1—Moveable Signs on Streets and Roads.
District Council By-Laws—
Port Broughton—
No. 1—Permits and Penalties.
No. 2—Council Land.
No. 3—Moveable Signs.
No. 4—Fire Prevention.
No. 5—Animals and Birds.
No. 6—Bees.
Stirling—No. 1—Permits and Penalties.

By the Minister for the Arts (Hon. Diana Laidlaw)—

South Australian Country Arts Trust—Report, 1993-94.

CAMQUEST-NONG FENG PEONY COMPANY JOINT VENTURE

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a copy of a ministerial statement made by the Minister for Primary Industries in another place with regard to a joint venture between Camquest and the Nong Feng Peony Company.

Leave granted.

WOMEN'S AND CHILDREN'S HOSPITAL

The Hon. DIANA LAIDLAW (Minister for Transport): I seek leave to table a copy of a ministerial statement made by the Minister for Health on proposed increases in charges at the Women's and Children's Hospital.

Leave granted.

QUESTION TIME

BASIC SKILLS TESTING

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 basic skills testing.

Leave granted.

The Hon. CAROLYN PICKLES: Parents have been receiving the results obtained by their children in basic skills tests which were trialled in 41 South Australian schools in August this year. The reports for level three include gradings for literacy and numeracy between bands one and four and explanatory sheets describing what students in each of the bands could generally do. Parents are invited to study the results and discuss them with the school principal.

While the explanatory sheet for numeracy is relatively easy to understand, the description of what students achieved in literacy is far more difficult to understand. In fact, it would present significant difficulties for many parents, particularly those who do not have English as their first language.

A constituent of mine has brought this in to me and has made a complaint himself. Although this person is particularly well educated, he also has some difficulty understanding what it is all about. For example, the parent of a child who obtained a band four mark is told that the student could generally 'select a verb in tense for a descriptive report (not a recount)' and 'recognise when to use the preposition "during" in a circumstance (adverbial phrase) showing time'.

If one accepts that these tests have any value, it is important that the parents of children who achieved band four are aware of the standard obtained by their children. However, it is more important that parents of children who did not achieve band four need to understand what their child could not do. My questions are:

1. Does the Minister himself understand this advice?

2. Is he concerned that many parents will almost certainly not understand this advice?

3. Will he ensure that parents from a non-English speaking background can understand the advice sent to them by their school?

4. Will the Minister take action to ensure that this information can be easily and clearly understood and does not act as a psychological barrier to parents contacting their child's teacher to discuss the child's progress?

The Hon. R.I. LUCAS: I thank the honourable member for her question. As she has indicated, the Government this year in August conduct a pilot program or trial of basic skills testing in 41 schools. The whole purpose for the child was to see how the tests could or could not be adapted to South Australian conditions and iron out any problems their might be in the implementation of tests. The Government made the decision—I think a sensible decision—that, rather than going into the tests without testing or piloting those programs in our schools, it was sensible to try them out, see whether there were any issues or concerns that needed to be resolved and then work with parents, teachers and principals to resolve any possible problems there might be. I am not in a position to make a judgment on the individual circumstances of the one constituent who has spoken to the honourable member—

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: I am not in a position to make a comment on the individual concerns of the one constituent who has spoken to the honourable member. A variety of views will be expressed about the importance or otherwise of basic skills testing. The Hon. Ms Pickles and her Party have steadfastly opposed any use of basic skills testing in South Australian schools for 20 years. As convener of the education backbench committee advising the former Minister, the Hon. Ms Pickles has been a prominent opponent of basic skills testing. Parents in South Australia do want to receive more information and have been strongly supportive of the introduction of testing to provide more information on literacy and numeracy performance of their children in South Australian schools. If there are some problems with the understanding of the explanation of the performance of students from some members of the community, some parents in particular, again that is the reason we have had the trials. If it is more than just an isolated example of a problem—

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: I know it has gone out, but if it is more than just an isolated problem, the Government is more than prepared to work with parents, principals and teachers to ensure that, when we do introduce the tests comprehensively next year, the information is made more accessible, readable or understandable for certain parents in the community who may have difficulty with the English language. If that is a problem (and I am certainly not acknowledging at this stage that it is), the Government in its assessment will be prepared, as always, to be reasonable in this issue and consult with parents, teachers, principals and anyone who has a viewpoint on the issue of basic skills testing and then make a decision, as someone has to make a decision. We will certainly consult and listen to any issues that might be of concern to some parents who may have a problem.

STATUTORY AUTHORITIES REVIEW COMMITTEE

The Hon. L.H. DAVIS: I move:

That the committee have leave to sit during the sittings of the Council today.

Motion carried.

GULF ST VINCENT FISHERY

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

Leave granted.

The Hon. R.R. ROBERTS: Members will be interested to note that the basis of my question is Gulf St Vincent prawn fishing. When I first raised this issue in this place early in the year, I made certain predictions as to what might be the outcome of the new Government's policies in respect of the Gulf St Vincent prawn fishery. It was pointed out to the Government by many people, including me, that that fishery was still in a fragile condition. Despite these comments and, as I understand it, questions by the Democrats and the fishing industry, in particular, we were at first cast aside as though we did not know what we were talking about and no further inquiries were deemed necessary.

However, after some time an independent report was commissioned by the Minister to be undertaken by Dr Gary

Morgan, a well-respected biologist. His report was tabled in this place and the Minister drew some confidence from some of his findings. In respect of his findings and the research that has been done in this fishery, in summary Dr Gary Morgan said:

> The work undertaken by SARDI scientists, and used as the basis for decisions related to the 1993-94 fishing season, has, in the opinion of the consultant, been competently performed and accurately and appropriately analysed.

The final paragraph of the report states:

> The relevance of the collected survey data in measuring important parameters of the fishery (particularly recruitment levels) must be questioned. It should be noted, however, that such relevance could only be assessed after a time series of survey data had been accumulated and thus the initial decision to undertake the surveys would seem, in retrospect, appropriate. However, an urgent assessment of the value of the surveys now needs to be undertaken.

Dr Morgan also went on to talk about the recruitment in that fishery, which is quite crucial. He also talked about the objectives of the management of the fishery, the management methodology and the buy-back debt. He felt that introducing the buy-back debt into fishing management was absolutely necessary so that a proper management regime could be put in place. He states:

> The solution to the most appropriate management in this case requires a bioeconomic analysis of the present fishery, using updated fixed and operational costs as well as information on total catch and fishing effort.

He says that this has not previously been done, although the original and subsequent reports by Copes, which initiated the buy-back, addressed much of the economic applications.

Having reviewed the whole fishery, he came up with four specific research recommendations. First, he suggested:

> An urgent requirement is the collation of all data relating to the fishery and a comprehensive assessment of the fishery utilising all available data. Such an assessment (which should involve a competent prawn population dynamics expert) should cover, at least, catch and effective fishing effort analysis, analysis of tagging data and size composition data for growth and perhaps mortality estimation, analysis of size composition data to determine past recruitment, biomass and spawning stock abundance, the relationship between spawning stock and recruitment and, most importantly, modelling of the fishery under various management scenarios.

He emphasised that until such analysis is completed it would seem premature to embark on further management oriented research.

Dr Morgan made three other less detailed recommendations, the second of which was a detailed evaluation of the usefulness of the survey data in measuring recruitment and spawning biomass in the fishery. He stated:

> In this evaluation, a consideration should be given to utilising commercial data for providing such information.

The third recommendation was as follows:

> An evaluation of alternative measures of recruitment. This is already being done by sampling postlarvae in the shallow nursery areas but the use of such data in providing a measure of recruitment to the fishery should be examined.
>
> Alternatives may include utilising the SARDI research vessel to sample juvenile shrimp after the migration from the nursery areas but prior to their entry to the fishery.

The fourth point he made was as follows:

> Since the financial aspects of the buy-back. . . cannot be separated from management of the prawn stocks, a bioeconomic analysis of the implications of this debt on sustainable levels of harvest in the prawn fishery should be undertaken. This can be done prior to the full biological assessment mentioned in item 1, although a detailed assessment. . . would be required. Such analysis should be focused both on the long-term effects of the debt in determining optimal harvesting strategies and on the effects to individual fishermen. It is recommended that such a study be undertaken prior to any decision on the way the buy-back debt is addressed.

However, since that time the Minister has set new fees for surcharges on the buy-back debt. Other issues recommended by Dr Gary Morgan (who was engaged by the Minister) are causing fishermen in that industry some concern. We have reached the season when prawn fisheries are opening, and the Spencer Gulf fisheries and the West Coast prawn fishery have been under way for some weeks. There has been no fishing in Gulf St Vincent, although fishermen are now expected, with the surcharge and licence fees, to find almost $1 000 a week to participate in the fishery.

I understand that in June there was a survey of the fishery after the fishing season, and one of my questions will relate to the survey information and whether a report was made. After our questioning on this matter in this place, it became the practice, before the Gulf St Vincent Prawn Management Committee was dissolved, that when a survey was undertaken a report would be provided. That has not happened. On behalf of fishermen and people interested in the Gulf St Vincent prawn fishery, my questions to the Minister are:

1. Was a report made on the state of the fishery after the June survey and, if not, why not? Is it intended that a November survey, which is the other important survey that takes place in respect of this fishery, be undertaken this year? If these surveys have been undertaken will a report be provided?

2. What steps have been undertaken to implement Gary Morgan's recommendations? Will the Minister assure the Parliament that the recommendations will be complied with before fishing recommences in the Gulf St Vincent prawn fishery, especially those in respect of the management objectives and the research?

The Hon. K.T. GRIFFIN: I will refer those questions to my colleague, the Minister for Primary Industries, in another place and bring back a reply.

BASIC SKILLS TESTING

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 basic skills test report for parents.

Leave granted.

The Hon. CAROLYN PICKLES: Earlier in an answer to a question on the basic skills test report for parents, the Minister made an inference that the matter I read out was one matter that went to one individual child. I wish to dispel that assumption. For the benefit of the Minister, I seek leave to table the document which outlines aspects of literacy (what students in each of the bounds could generally do) and aspects of numeracy (what students in each of the bounds could generally do).

Leave granted.

The Hon. CAROLYN PICKLES: Is the Minister aware of the contents of this document? If not, why not? If so, does he consider that the document is difficult to understand?

The Hon. R.I. LUCAS: The Leader of the Opposition obviously has difficulty in understanding what was an explicit answer to her earlier question.

The Hon. Carolyn Pickles interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: On no occasion did I suggest that that material had been sent to only one parent or constituent. What I said was that, at this stage, there had been a complaint

from but one constituent to the Leader of the Opposition suggesting that he or she—and the Leader confirms that there has only been one, but she thinks there might be more and that might be the case—could not understand the material sent to them. The material has clearly been sent to all parents who were participating in the scheme. On no occasion did I say that it had been sent to only one parent. I invite the honourable member to go back to my answer to her first question which was precise and explicit in relation to her question. I indicated that the whole concept of basic skills testing has its strong supporters and some opponents.

The Hon. Carolyn Pickles interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: There will be some opponents who will use any reason to oppose the introduction of basic skills testing. There will also be some who genuinely might have some concerns about the accessibility or understandability of the information sent to them. The Government is being reasonable in relation to this. We have conducted a pilot and that is why we have conducted a pilot. We will take the information, and if there is more than one person or more than a small number of people who have concerns about being able to understand the information, then the Government will be prepared to listen and to try and ensure that, in the material we circulate next year, there is not a problem. I did not find that there was a problem, but I am not representative of all parents and I do not pretend to be. We will wait for the information. We will wait for the analysis and the report to be produced and then the Government will make a decision.

BUS DRIVERS

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Transport a question regarding licences for bus drivers.

Leave granted.

The Hon. SANDRA KANCK: I refer the Minister to private correspondence I have had with her about a bus driver who has not had his commercial bus licence renewed following a bypass operation. In May this year this man was diagnosed as having coronary artery disease and he underwent a bypass operation in June this year. Three months later the cardiologist assessed the bus driver as being fit to return to work. However, the Department of Transport's medical consultant has stated that he has to wait 12 months before he can receive his licence again. Furthermore, an official of the Department of Transport told the bus driver 'off the record' that he has lost his bus licence for life. On 9 September the cardiologist, who is a specialist in heart disease, disputed the department's assessment. He writes about the bus driver as follows:

> He has no ongoing cardiac problem now and would be fit to resume work as a bus driver.

The doctor further states that the bus driver has informed him that he has to wait 12 months before he can receive his licence again. To this the doctor responded as follows:

> I find this very strange and inappropriate, particularly as I have recently cleared a man to resume commercial flying three months after his bypass surgery.

In reply to my letter, the Minister for Transport supports her department's decision that the bus driver's licence be reviewed 12 months after his operation (in June of next year) and refers to the National Medical Guidelines (published by the Federal Office of Road Safety) which recommend that persons known to suffer from coronary heart disease should not drive a commercial vehicle for one year after surgery. The Minister states further:

> The likelihood of [the bus driver] being reissued a licence to operate passenger transport vehicles is minimal given the recommendations disclosed in the publication.

The Hon. M.J. Elliott: He could get a pilot's licence.

The Hon. SANDRA KANCK: Exactly; he could go out and get a pilot's licence, and a commercial one at that. The Minister also stated:

> Statistical evidence supports the view that people with coronary artery disease, including those who have had bypass surgery, have an increased risk of future episodes compared with those who do not have the disease.

This statement is not supported by the National Medical Guidelines, which state:

> There is a lack of conclusive statistical data about the importance of cardiovascular conditions as a causative factor in motor vehicle crashes. However, a medical practitioner can usually give a valid medical opinion as to the probability of sudden death, loss of consciousness, pain or weakness sufficient to cause loss of control of a vehicle.

My questions are:

1. What are the qualifications and credentials of the medical consultants of the Department of Transport, given that the cardiologist who has certified the bus driver as fit to return to work as a commercial bus driver is a specialist in coronary heart disease and a Fellow of the Royal College of Physicians?

2. On what grounds does the Minister, in effect, support the Department of Transport official's 'off the record' statement that the bus driver has 'lost his licence for life' when the National Medical Guidelines state that the bus driver can renew his bus licence after 12 months if he is assessed as being suitable to return to work (as has already been done)?

3. Given that the National Medical Guidelines are only recommendations and that the cardiologist has twice assessed the bus driver to be fit for work (once in September and again this month), why is the Department of Transport digging in its heels by not renewing the bus driver's licence so that he can return to work after Christmas?

4. Given that the National Medical Guidelines state that there is a lack of conclusive data on the relationship between coronary heart disease and accidents and that a medical practitioner could give a valid opinion—the man's cardiologist has given a very strong opinion—is there room for a further review of this case?

The Hon. DIANA LAIDLAW: I will have the matter reviewed. I do not have at hand information concerning the credentials of the medical practitioners to whom the department refers, but I will ascertain that for the honourable member. I certainly did not say in my letter to which the honourable member refers that the gentleman concerned had lost his licence for life. As I recall, some opportunity exists for the matter to be assessed within 12 months on the basis of the National Medical Guidelines, to which the honourable member refers. I do not believe that the department is digging in or being stubborn. I suspect it is being cautious in the public interest, and I would always support that caution. Nevertheless, I will have the matter reviewed.

PESTICIDES

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General, representing

the Minister for Primary Industries, a question about pesticide safety.

Leave granted.

The Hon. T.G. ROBERTS: In this Council over the past three to four weeks a number of concerns have been raised about pesticide safety and the implications of unsafe and inappropriate use of chemicals. There is a motion on the Notice Paper to ban the sale of Benlate, and the Hon. Mr Crothers last week raised the issue of pesticide poisoning of cotton trash and the subsequent downstream contamination of beef supply.

Fortunately for our overseas exporters, there appears to be a drawing together of our consumers or customers in those countries who are trying to minimise the impact of that unfortunate incident. But it points to some of the problems associated with the residues of some of the chemicals that are used in agriculture, horticulture and other pursuits.

There is now a book out called *Pesticide Risk in the Lucky Country* by Dr Kate Short. In it, Dr Short deals with the very interesting results of a survey in New South Wales. I will read those results into *Hansard* to inform members of some of the attitudes of people in the industry. In South Australia we have legislation which was brought into Parliament in a bipartisan way and which tried to come to terms with some of the problems raised in the survey. I am sure that members would like to see an update on attitudes in the industry, and perhaps a survey could be put together in South Australia similar to the one in New South Wales so that we can update our information base.

The survey, which was conducted in New South Wales, asked farmers living near suburban Sydney about their knowledge of and adherence to pesticide laws, regulations and safe work practices. Ms Short stated that the results of the survey were alarming. They indicated that only 44 per cent read safety directions; 23 per cent read first aid instructions; 48 per cent claimed they did not know the meaning of 'active constituent'; 60 per cent said they could not accurately define 'active constituent' (the figure was 90 per cent for vegetable growers); 24 per cent claimed not to know the meaning of 'withholding period' (and that rose to 43 per cent for vegetable growers)—and it is an important fact of downstream contamination for their produce; 43 per cent said they could not accurately define 'withholding period' (the figure being 57 per cent for vegetable growers); 10 per cent of growers wore full protective clothing; 31 per cent felt sick after mixing or spraying; 55 per cent had blood tests for pesticides; 50 per cent were aware of the Pesticides Act; 41 per cent were aware of the pesticide regulations; 40 per cent thought there was enough control over pesticides; 73 per cent kept no records of spray applications; and 64 per cent of containers were disposed of at the local refuse tip. They are indeed alarming results. For the interests of those associated with and in those industries, I ask:

1. In view of the survey results in New South Wales, will the Government conduct a similar survey amongst pesticide users in South Australia?

2. If the results are the same or similar, will the Government conduct education seminars in the community to alert users of the potential dangers while using pesticides?

The Hon. K.T. GRIFFIN: I will refer the questions to my colleague the Minister for Primary Industries and bring back a reply.

FARM HOLIDAYS

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Tourism, a question about farm holidays for Asian tourists.

Leave granted.

The Hon. BERNICE PFITZNER: On a recent trip to Asia, some Singaporean mothers queried why farm holidays were so difficult to access in Australia. On further discussion, it appeared that this family, which had initially stopped in Sydney, of course, wanted to experience the delights of a rural area. There were advised to go to the Hunter Valley for this farming holiday. They took a five hour taxi trip to the Hunter Valley and were greeted by, in their words, 'grinning and staring farm workers leaning over the fence'. They were then shown into tin sheds with dormitory style accommodation, with the temperature hovering around the 35 to 40 degree mark. Of course, they returned to Sydney in the same cab forthwith.

On further discussions as to why a farm holiday was so high on their priority list, the mothers described it as being simply for the children. They said that the children had seen cows and sheep in films, but they wanted to know, 'Did the cows have fur?' and, 'How do you cut the wool off the sheep?' They had not seen a pig, real or otherwise, and they asked, 'Was a pig smooth and without skin or did it have hair?' The final query was most astounding: 'Did all chickens have brown skins? Were they smooth skinned, or did they have some kind of covering over their crispy brown skins?' They had no notion of feathers, nor fluffy yellow chickens.

This is a true account, as Singapore receives almost all its foodstuffs from off shore. Taking this revelation into account, will the Minister not only promote the comfortable environment and lifestyle of Adelaide but also look into promoting farm holidays? Will he also make sure that there are such ordinary creatures as chickens, ducks, rabbits, etc., on these farms? As Asian tourists usually take their whole families along on holiday, will he also ensure that a package is available not only for shopping, golfing, wine tasting, casinos and good food but also for farmyard experience?

The Hon. K.T. GRIFFIN: I will have to refer those questions to my colleague the Minister for Tourism. If the honourable member cares to make more detailed information available it may be possible to look more carefully and closely at the experience which they had. Quite obviously, South Australians are anxious to promote their countryside; and farm stays and other facilities, including bed and breakfast facilities, are certainly growing in availability and popularity and would be well sought after. I will refer all the questions. I am not sure about rabbits being available on farms. Most farmers tend to be averse to rabbits, because of the damage which occurs, but even that might be possible in the context of animal nursery-type arrangements which on occasions are available.

LAW COUNCIL FIGHTING FUND

The Hon. M.S. FELEPPA: I seek leave to make a brief explanation before asking the Attorney-General a question about the Law Council fighting fund.

Leave granted.

The Hon. M.S. FELEPPA: With the indulgence of the Council, I wish to draw to the attention of the Attorney-General a 10-line article which appeared in the *Advertiser* of

26 November 1994 and which relates to the establishment of a fighting fund to assist in the maintenance of an independent judiciary. It states:

A $100 000 fighting fund set up—

Members interjecting:

The PRESIDENT: Order! There is far too much background noise.

The Hon. M.S. FELEPPA: I want the Attorney-General to hear my question. The article states:

A $100 000 fighting fund set up the Law Council of Australia will be used by judges to challenge Governments over the abolition of courts. The fund will meet the cost of judges taking action against Governments which repeal laws. The council said Governments had failed to understand judicial independence.

Let me hasten to add—

Members interjecting:

The PRESIDENT: Order!

The Hon. M.S. FELEPPA: —that this Parliament has shown its awareness of judicial independence in recent years and has added to its awareness by giving in-depth consideration to this issue through legislation and through the conduct of the Legislate Review Committee, which is due to report on this fundamental matter shortly. However, it is of great concern to me that the judges find it necessary to challenge Governments over the abolition of courts and of even greater concern that the Law Council finds it necessary to establish a fund to support the judges.

The concept of a free and independent judiciary is one of the cornerstones of our system of democracy and without it our justice system could easily degenerate into a corrupt and unworkable system. Therefore, it is of great concern that many in the legal system feel so threatened by the actions of Government that they have formed this fund. It should be of concern to all members in this Council that our actions may be perceived at times to be an attack on judicial independence. Knowing of the high principle of the Attorney-General in this place, I ask the following questions:

1. Is the Attorney-General aware whether judges in South Australia are supporting the establishment of this fighting fund by the Law Council of Australia?

2. Has the Attorney-General been approached by any member of the judiciary in South Australia expressing concern about his Government's approach to judicial independence and, if so, what concerns were raised?

3. Can the Attorney-General assure the South Australian judicial community that it has nothing to fear from this Government by giving an assurance that this Government will not arbitrarily interfere with judicial independence by abolishing a court or a section of a court?

The Hon. K.T. GRIFFIN: It really is a matter for the Law Council of Australia what it does with is funds and the funds of its members. If it decides to set up a fighting fund it is entitled to do so; however much one might disagree with the proposition, it is entitled to do it. It is a private organisation representing the interests of legal practitioners around Australia and, if it wishes to do so, that is a matter for that organisation.

I must confess that it is somewhat surprising that it should feel it necessary to establish such a fund. Obviously there have been issues around Australia which relate to questions of judicial independence but not always are they issues that would, I suspect, fall within the framework of the objects of that fund. Of course, you have the notorious case at the Federal level, when, I think, Mr Hawke was Prime Minister, of Justice Staples and the changes made by the Federal Labor Government from the Industrial Conciliation and Arbitration Commission to the present commission, when Justice Staples was not reappointed. One did not hear very much uproar about that at the time.

The issue of judicial independence is an important one. This Government supports it fully. It does, though, depend upon what one means by judicial independence. The courts themselves and the legal profession share divided views with respect to judicial independence. Some suggest that once the Parliament sets up a court it can never abolish the court. To my way of thinking, that is absolute nonsense. It means that it will continue to grow and you will have proliferations of courts and tribunals. The important issue is the extent to which a Government of the day may interfere with the judicial decision making of the court or tribunal and the extent to which the tenure of a judicial officer might be preserved.

I do not support the view that a Parliament, elected by the people, can never decide to abolish a court. On the other hand, a Parliament has to be conscious of what is happening, but more particularly has to seek to ensure as much as it is possible to do so that the tenure of judicial office is preserved. Quite obviously under the Constitution Act judges can be removed without cause by resolution of both Houses of Parliament, but that is the only mechanism by which the Parliament can in some means deal with a judge whose behaviour may be contrary to the public interest, disgraceful or whatever.

I have raised, without making any secret of it, the fact that I think the Parliament, courts, judges, legal profession and the community ought to be giving consideration to how the issue of judicial accountability is to be addressed. The Hon. Robert Lawson raised a question about it only a week or so ago following a comment by the Chief Justice about a code of conduct to be formulated and administered by judges. I have expressed concern about that. But it is an important issue that has to be addressed. How does one ensure that judicial office bearers are accountable not for their judicial decision making but for their other behaviour and approach to responsibilities. Their judicial decision making will be an issue that can be resolved ultimately by the High Court of Australia.

So there are important issues to be addressed both constitutionally and in terms of the basic principle of judicial independence. On occasions I have made the point that I have a different point of view from that of the present Chief Justice and the previous Attorney-General who both felt that the Courts Administration Authority was necessary to preserve judicial independence, although both of them acknowledged that not at that time and in the foreseeable future was prejudice likely to occur to judicial independence. I do not think that a Courts Administration Authority is necessarily an institution that has to be supported for the purpose only of ensuring judicial independence.

It is an issue of concern. A free and independent judiciary as well as the question of judicial accountability should be an issue of concern to the whole community. The honourable member asked whether South Australian judges are supporting this. I have no idea. If they decide to support it, it is a matter for them. But they are not members of the Law Council of Australia. I would be surprised if they could support it—certainly not financially but perhaps in spirit. I have not been approached by any judge in relation to the Law Council fighting fund. As we have heard in debates on other Bills, comments have been made to me and to the Government by the Chief Justice in relation to the Industrial

Relations Court, but not the commission, and they are issues upon which there has been disagreement. Even in that context, if one looked carefully at amendments which were proposed, one always sought to ensure that the status and responsibilities of judicial officers was maintained and that they were not arbitrarily dismissed. So far as I am concerned, in this State no judges have anything to fear from this Government on the issue of judicial independence.

SOUTH AUSTRALIAN GOVERNMENT FINANCING AUTHORITY

In reply to **Hon. T.G. CAMERON** (1 November).

The Hon. R.I. LUCAS: My colleague the Treasurer has provided the following response.

1. SAFA is the central borrowing authority for the South Australian public sector and carries responsibility for fund raising and management of almost all of the public sector's debt. SAFA manages that debt on a pooled basis under guidelines approved by the Treasurer.

Reference has been made to paper losses incurred by insurance companies and other financial institutions as a result of the recent increases in bond interest rates. Those institutions manage asset portfolios representing funds contributed by members. As interest rates rise the market value of fixed interest rate assets falls and thereby a paper (unrealised) loss is incurred.

SAFA on the other hand manages a pool of net borrowings (comprising both borrowings and hedge assets). As interest rates rise the market value of SAFA's net fixed rate debt falls through a combination of 'paper losses' on fixed rate hedge assets and 'paper gains' on fixed rate borrowings. Overall 'paper gains' have arisen due to the net fixed rate borrowing position within the portfolio. The rise in market interest rates this year has led to an increase in interest costs for the budget.

Since the Government has taken office, SAFA has moved to progressively lengthen the duration of its portfolio to increase the relative stability of the State's interest costs.

2. It is not practical to provide individual details of interest rates and term as there are 1500 individual borrowings by SAFA which make up total borrowings of $21 267 million. I refer the honourable member to SAFA's balance sheet and notes 5 6 7 and 8 to the financial statements contained in SAFA's 1993-94 Annual Report.

3. SAFA does not take foreign currency exposure on overseas borrowings. All such borrowings are hedged or converted to Australian dollars. This has been a long standing practice for SAFA.

STATE GOVERNMENT INSURANCE COMMISSION

In reply to **Hon. T.G. CAMERON** (2 November).

The Hon. R.I. LUCAS: My colleague the Treasurer has provided the following response.

1. The investment portfolio of the capital guaranteed fund has always been conservatively and prudently managed, in accordance with the expectations of those who invest in capital guaranteed products.

All privately owned life insurance companies are required by the Federal Insurance and Superannuation Commission to hold reserves in order to protect the value of investments held in capital guaranteed funds. Although not obliged to do so, SGIC fully complies with the requirements of the ISC including regular reporting and compliance with reserve requirements. As at 30 June 1994 SGIC exceeded the solvency margin reserves as specified by circular 273 issued by the ISC. In fact, SGIC's solvency reserves were 153 per cent of the minimum ISC reserve requirements. These reserves are more than adequate to meet any short term fluctuations in the market value of policyholders' investments.

2. The ISC reserve requirements specifically address fluctuations in interest rates and equity markets. The increase in interest rates, whilst producing an initial 'paper' loss, as the honourable member calls it, actually results in the cash flow of the fund being greater because maturing investments are invested at higher yields than they could previously. This will ultimately result in policyholders receiving higher returns so long as they maintain their policies in force. Any product that is capital guaranteed will suffer no loss of retirement benefit.

I would point out that the SGIC Life Fund has consistently performed in the top quartile of all funds in Australia over the last six years. Additionally, *Personal Investment Magazin*e in July 1994 positioned SGIC in the top 10 per cent of all funds in Australia. The same magazine designated SGIC as one of the top fund managers of the decade.

BANKRUPTCY

In reply to **Hon. L.H. DAVIS** (2 November).

The Hon. R.I. LUCAS: My colleague the Treasurer has provided the following response.

1. Since coming to office, the Government has placed a very high priority on policies designed to improve economic growth and development in South Australia. This has included both significant reform of public finances which will, *inter alia*, restore investor confidence in the State as well as a reordering of budgetary priorities to include a broad range of expenditure measures and tax rebates related to economic development.

These measures should enhance the economic recovery currently under way, and thus flow through to improved trading conditions for many small businesses. General support measures to assist economic growth are important because economic conditions are a significant factor influencing the incidence of bankruptcy. One quarter of business bankruptcies during 1993-94 were stated to be due to prevailing economic conditions, while 28 per cent of non-business bankruptcies were attributed to unemployment.

More specifically, the Small Business Centre provides a number of services that aim to reduce the incidence of bankruptcy among small businesses. These services include:

- Management advice: in South Australia, lack of business ability was the major cause of small business bankruptcies administered by official receivers and registered trustees during 1993-94—accounting for over one quarter of all business bankruptcies.
- Bookkeeping: often a first warning sign of impending financial difficulties will come when financiers ask to scrutinise financial records—the Small Business Centre can provide bookkeeping services to get the books up to date.
- Crisis management services: small businesses in financial trouble can receive free and confidential counselling by either centre staff or, in more complex cases, an insolvency practitioner.

2. The Department of Treasury and Finance monitors overall bankruptcy levels as an indicator of microeconomic conditions.

The Small Business Centre has, in the past, analysed the bankruptcy statistics in more detail—including industry breakdowns and causes of bankruptcy.

The Government's restructuring of industry support services has led to the Small Business Centre being re-established within the Economic Development Authority. As part of this restructuring, the Small Business Centre will no longer undertake research work, including that related to bankruptcies. Any research work in this area will now be undertaken by the EDA.

The policy implications of disaggregated bankruptcy statistics is limited because of the long time lag between the onset of financial difficulties and the eventual translation into bankruptcy. Recent bankruptcy statistics in most instances reflect economic conditions or other causes apparent 12 or 18 months earlier.

3. The Family and Community Service (FACS) has a senior financial counsellor heading financial counselling teams in 19 district offices, in country and metropolitan regions.

The senior and workers in each financial team assist people of all ages and lifestyle backgrounds, through casework to deal with their financial management.

The options for debt repayments are discussed by the worker with the customer/debtor. These can include—

- make an informed offer of payment by instalment
- pro-rata repayment options
- deferred payments
- moratorium in temporary circumstances
- debt consolidation
- part X of the Bankruptcy Act—which can be one of the following alternative arrangements with creditors (a deed of assignment, a deed of arrangement or a composition)
- voluntary bankruptcy.

The FACS financial caseworker can negotiate on behalf of the debtor with the creditors to come to a workable arrangement.

If the debtor chooses the option of bankruptcy the worker can explain the consequences of bankruptcy and the rights and responsibilities of a bankrupt and assist the customer/debtor in filling out the forms.

People can ring 'Debt Line,' the telephone financial counselling service within the FACS Anti-Poverty Unit, and speak anonymously with a financial counsellor about their situation and discuss the above. This is particularly helpful to people living in isolation—for whatever reason. 'Debt Line' has a rural toll-free number plus metropolitan phone numbers.

The Insolvency and Trustee Service, in their information sheet, advise inquiring debtors to contact a financial counselling service and give names and phone numbers.

NARACOORTE NORTH KINDERGARTEN

In reply to **Hon M.J. ELLIOTT** (1 November).

The Hon. R.I. LUCAS: Services in small rural communities with attendances of less than 20 children are not affected by the changed staff/child ratio. This is for obvious reasons associated with children in these areas having limited access to many of the early childhood services, provided in the metropolitan and larger rural communities. In contrast, Naracoorte has a wide range of services, including two full-time kindergartens, a child care centre, family day care and a session of funded occasional care, which children and families can access.

Naracoorte North Kindergarten has projected enrolments (59) significantly lower than their 1994 enrolments, indicating that the proposed staffing reduction is warranted for the beginning of 1995. Attendances will be reviewed at the end of term 1, 1995, when the Children's Services Office will undertake a fine tuning exercise to ensure appropriate decisions are made.

The child/staff ratio of South Australian kindergartens still remains one of the best in the country. For Naracoorte North Kindergarten, there will continue to be two qualified staff at all times. The reduction is 0.5 of an early childhood worker time.

Providing quality preschool education is not only a question of staff/children ratio. Other essential conditions include:

- a safe, secure and interesting physical environment
- a program that enhances all aspects of development
- high quality interactions among the adults and children.

These conditions will be maintained at Naracoorte North Kindergarten. Specialist early interventions services such as speech pathology, the early literacy initiatives and specialist curriculum projects such as 'The Foundation Areas of Learning' are also available under additional allocated funding.

The minimal impact of budget cuts in the staffing area is more than offset by specific funding allocated to support workers for children with additional needs, including an additional 0.5 speech pathologist position for the South-East. Rural communities will also benefit from the extra injection of funding targeted at the provision of additional occasional care programs for rural communities.

RADIOACTIVE MATERIAL

In reply to **Hon. M.S. FELEPPA** (1 November).

The Hon. R.I. LUCAS: My colleague the Premier has provided the following response.

1. The current proposal to temporarily store low-level nuclear waste on Commonwealth land at Woomera is the outcome of discussions initiated between the Commonwealth and the former South Australian Labor Government some years ago. At no stage during those discussions was the Commonwealth told that the former South Australian Labor Government would take action to stop the storage of this waste. In the circumstances, the present South Australian Government, ultimately, has no power to do so.
2. No.
3. No.

WORKERS COMPENSATION

The Hon. T. CROTHERS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Industrial Affairs, a question about work-related injures and deaths in South Australia and the Government's white paper, 'Future Options for Injured Workers in South Australia'.

Leave granted.

The Hon. T. CROTHERS: The State Government recently put out a discussion paper entitled, 'Future Options for the Workers Compensation System in South Australia'. My colleagues in the trade union movement inform me that the discussion paper is deficient in some areas, not so much in the subjects with which it deals but in the failure to mention at all subjects they believe ought to be up for discussion when one is considering the future options of this State's workers compensation system, matters such as the rehabilitation of workers, fair compensation, reduction of the incidence of injures and other socially related objectives. In their view it is lamentable and does not reflect well on the basic premises upon which the Government is approaching policy in this area. It makes them suspicious that the primary emphasis by the Government in this discussion paper is more in minimising employer costs than in protecting South Australian workers' interests.

On the other hand, the South Australian union movement acknowledges that, up until recently, the shape of the South Australian Workers Compensation Act, coupled with other related Acts such as the occupational health and safety legislation, have put South Australia and its citizens in the vanguard of workers health and safety when compared with any other Australian State. For example, the first ever data kept nationally (and is nationally comparable data) on compensated occupational injures and diseases has just been released and clearly spells out how good is the position here when compared with all other Australian States.

These figures that have just been released are for the period 1991 through to 1992. For example, in respect of industrial fatalities, the figures per annum were: Victoria, 195; New South Wales, 147; Queensland, 57; Western Australia, 26; Tasmania, eight; South Australia, six; and, Northern Territory, five. So, as can be seen from even the most casual of glances—and no matter how one cares to look at it—South Australia's record was by far and away superior to all other States. Again, it gives me no consolation to be able to report that because, when you total up those figures, one can see that some 400 Australian workers died in 1991-92 as a consequence of injures received at work.

Again, when one looks at new workers compensation figures for 1991-92 relative to incidence and frequency of new compensation cases being reported, it shows that South Australia is much better placed than is Tasmania, Western Australia, Queensland, Victoria and New South Wales, and about on par with the Northern Territory: clearly a record of which all South Australians should be proud. It must be said that the Australian Labor Party was in Government here in 1991-92 and it does make one wonder what future statistics will show, particularly for the period 1994-95 and onwards—statistics which I shall watch and scrutinise most carefully. In light of the contents of my brief statement, I ask the Minister:

1. Does he agree with the South Australian trade union movement that he is more concerned with minimising employer costs than with South Australian worker safety and, if not, why not?

2. Does he think that the 1991-92 figures on workers compensation, particularly as they relate to fatalities, incidents and frequency, show that the South Australian system then in place was infinitely better than any other in Australia at the time?

3. Does he believe that these sort of figures can continue in place here in South Australia?

4. If he believes that, why then does he continue to persist in making radical changes to the Workers Compensation Act and other related Acts when clearly the first ever released compensation and fatality figures on a national basis shows

South Australia to be clearly the State with by far the best record in the field?

5. Finally, but by no means conclusively or exhaustively, will he do something to remedy his discussion paper on future options for compensation in the State when it is so clearly deficient in addressing matters such as the rehabilitation of workers, fair compensation, reduction of the incidence of injuries and other social objectives?

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

NATIVE TITLE (SOUTH AUSTRALIA) BILL

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. K.T. GRIFFIN: I understand that a conference has been organised between managers of both Houses in relation to the correctional services Bill and will start shortly. Rather than proceeding with a detailed debate on the various amendments on this Bill, I believe it would be sensible if we were to do it all in one process to make it easier for the table staff as well as for members and those who ultimately have to read the debate in *Hansard*. I suggest we report progress and, as soon as the conference in relation to correctional services has been concluded, we will resume the Committee on this Bill.

Progress reported; Committee to sit again.

STAMP DUTIES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 22 November. Page 885.)

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I thank members for their contributions. There are one or two issues that will need to be resolved in Committee and I will therefore leave any further comment until then.

Bill read a second time.

In Committee.

Clause 1 passed.

New clause 1A—'Stamp duty on application for motor vehicle registration.'

The Hon. R.I. LUCAS: I move:

Page 1, after line 11—Insert new clause as follows:

Amendment of s. 42B—Stamp duty on application for motor vehicle registration.

1A. Section 42B of the principal Act is amended—

(a) by striking out from subsection (1a)(b) ', subject to subsection (1b),';

(b) by striking out subsections (1b) and (1c);

(c) by striking out from subsection (2) 'or (1b)'

(d) by striking out from subsection (7) 'section' and substituting 'Act'.

There has been some discussion about the package of amendments that the Government intends to move to the legislation between, as I understand it, representatives of the Government and of the Opposition. I know that the Leader of the Opposition will be formally and officially placing on the record her Party's views and the reasons for those views in relation to other amendments to be moved in relation to what I think is an agreement between the parties.

Suggested new clause inserted.

Clauses 2 and 3 passed.

New clause 3A—'Exemption from duty in respect of certain transfers between spouses or former spouses.'

The Hon. CAROLYN PICKLES: The Opposition will not be moving its amendment because it will be supporting the Government's amendment. However, I would like to make a few remarks. The principle behind the amendment to be moved by the Opposition and the Government is easily understood. Men and women in de facto relationships who decide to transfer property between each other upon the irretrievable breakdown of their relationship should have a stamp duty exemption on the transfer of such property equivalent to stamp duty exemption enjoyed by the parties to a marriage who transfer property between each other in similar circumstances. The Opposition placed on the record in another place its desire to have an amendment in relation to this and was pleased to see that the Government has moved such an amendment. We believe that in fact the Government's amendment has neater wording and we are prepared to accept it.

The Hon. R.I. LUCAS: I move:

Page 2, after line 12—Insert new clause as follows:

Substitution of s. 71CB

3A. Section 71CB of the principal Act is repealed and the following section is substituted:

Exemption from duty in respect of certain transfers between spouses or former spouses

71CB. (1) In this section—

'matrimonial home' means—

(a) in relation to spouses—their principal place of residence of which both or either of them is owner;

(b) in relation to former spouses—their last principal place of residence of which both or either or them was owner,

but does not include premises that form part of industrial or commercial premises;

'spouses' includes persons who have cohabited continuously as de facto husband and wife for at least five years.

(2) Subject to subsection (3), an instrument of which the sole effect is to transfer—

(a) an interest in the matrimonial home; or

(b) registration of a motor vehicle,

between parties who are spouses or former spouses is exempt from stamp duty.

(3) An instrument described in subsection (2) between parties who are former spouses is only exempt from stamp duty if the Commissioner is satisfied that the instrument has been executed as a result of the irretrievable breakdown of the parties' marriage or de facto relationship.

(4) Where an instrument was not exempt from stamp duty under this section by reason only that the Commissioner was not satisfied that the instrument had been executed as a result of the irretrievable breakdown of the parties' marriage or de facto relationship, the party by whom stamp duty was paid on the instrument is entitled to a refund of the duty if the Commissioner is subsequently satisfied that the instrument had been executed as a result of the irretrievable breakdown of the parties' marriage or de facto relationship.

(5) The Commissioner may require a party to an instrument in respect of which an exemption is claimed under this section to provide such evidence (verified, if the Commissioner so requires, by statutory declaration) as the Commissioner may require for the purpose of determining whether the instrument is exempt from duty under this section.

(6) This section applies in relation to instruments executed after its commencement.

I thank the Leader of the Opposition for the indication of support for the Government's position. It is indeed correct to indicate that the Opposition in another place first raised this issue when there was debate some weeks ago on this issue. The Treasurer, on behalf of the Government, gave an indication to the Opposition of his willingness to explore the issue further. He has done so and had an appropriate amendment drafted. I again thank members of the Opposition and the Leader of the Opposition in this place for their consideration of this matter and the eventual agreement that has been reached between the two parties.

Suggested new clause inserted.

Clauses 4 to 6 passed.

New clause 6A—'Acquisitions to which this Part does not apply.'

The Hon. R.I. LUCAS: I move:

Page 4, after line 27—Insert new clause as follows:

Amendment of s. 93—Acquisitions to which this Part does not apply.

6A. Section 93 of the principal Act is amended by striking out from subsection (1)(d) '59B' and substituting '90V'.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

Suggested new clause inserted.

Clause 7 passed.

New clause 7A—'Amendment of schedule 2.'

The Hon. R.I. LUCAS: I move:

Page 5, after line 9—Insert new clause as follows:

7A. Schedule 2 of the principal Act is amended by inserting after item 21 of the clause headed 'General exemptions from all stamp duties' the following item:

22. Conveyance or transfer of American Depositary Shares or of American Depositary Receipts that relate to American Depositary Shares, that causes or results in a change in the beneficial ownership of an estate or interest in marketable securities of a South Australian registered company.

I am advised that a further matter has been brought to the attention of the Government in respect of the revised nexus provisions for off-market dealings in marketable securities. Whilst very technical and perhaps even arguable, the change in nexus provisions may have seen a potential liability to stamp duty on trading in American Depositary Receipts (ADRs) by United States citizens in America. ADRs are an arrangement under which shares in an Australian company are issued to a nominee company which holds them on behalf of a depositary company in the United States. The depositary company will issue American Depositary Shares, evidenced by certificates in the form of ADRs, to investors in the US who then trade those instruments on US securities markets. Trading in ADRs is an important part of the operations of major Australian based companies with operations in the United States and with a need to access the capital markets of that country. Clearly, the South Australian Stamp Duties Act has never sought to tax such transactions between two US residents and, therefore, to put the matter beyond doubt the amendment will be moved to include an exemption from stamp duty for such transactions.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

Suggested new clause inserted.

Clause 8, schedule and title passed.

Bill read a third time and passed.

NATIVE TITLE (SOUTH AUSTRALIA) BILL

Adjourned debate in Committee (resumed on motion).

(Continued from page 962.)

Clause 2 passed.

Clause 3—'Interpretation of Acts and statutory instruments.'

The Hon. SANDRA KANCK: I move:

Page 2, line 26—After paragraph (c) of the definition of 'native title question' insert—

(ca) compensation payable under a law relating to exploration for, or recovery of, minerals, petroleum or other natural resources; or

This is an amendment that the Opposition in the other place indicated it would move, and I expected that it would be moved here. I am told that the Opposition feels that it is no longer necessary, but I am asking that it be included so that it is absolutely clear and there is no doubt what the position is.

The Hon. CAROLYN PICKLES: The Opposition is not proceeding with the amendment to the definition of 'native title question' as was moved in the House of Assembly. Our amendment in the other place was to specify 'native title question' and include a question about compensation payable under a law relating to exploration for, or recovery of, minerals, petroleum or other natural resources. Upon further consideration, the Opposition has come to the view that these matters would probably be covered in paragraphs (c), (d) or (e) of the existing definition.

The Attorney may wish to confirm that that is his view of the matter and to assure us that the definition will be made more inclusive, as previously suggested by the Opposition, if the courts unduly restrict the scope of the meaning of 'native title question'. Therefore, we do not consider that the amendment is any longer necessary and we oppose it.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. What the Hon. Carolyn Pickles has indicated is correct. She said that it probably is covered but I say that it is definitely covered. The definition of 'native title question' at clause 3(1) provides:

(c) compensation payable for extinguishment or impairment of native title. . .

That is in the broad, not just limited to mining. A whole range of possibilities are covered by that. It is my advice, as well as my view, that compensation payable under a law relating to exploration in relation to the recovery of minerals, petroleum or other natural resources is well covered by that. I know that the Aboriginal Legal Rights Movement were trying to make the point that this ought to go in just out of an excess of caution. However, it was never able to point to any uncertainty which could be demonstrated about the extent of the cover given by paragraph (c).

Therefore, I am not inclined to agree to clutter up the legislation with something which is there only because some people say, 'Well, maybe it is a possibility,' when on the advice I have there is no doubt about what is covered. I draw attention also to paragraph (e) of that definition, which states:

Any other matter related to native title.

So, even if my advice is wrong (and I do not believe that to be the case), it would be encompassed by paragraph (e). I do not believe that there is a need for this amendment to be supported, and I therefore oppose it.

Amendment negatived.

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

Page 2, after line 29—Insert '(but does not include a question arising in criminal proceedings)'.

I am pleased to see that the Hon. Sandra Kanck supports my amendment, which confines the very broad definition of 'native title question' by excluding native title questions that arise during criminal proceedings. It seems to the Government that it makes commonsense to exclude issues relating to criminal proceedings, because in the Mabo decision the High Court focused upon civil issues—upon the common law as it related to property rights. That is what the decision related to, not to criminal proceedings. So, as I say, in the Government's view it makes commonsense to limit this definition in this way.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

The Hon. R.D. LAWSON: I ask the Attorney: what type of criminal proceedings are envisaged in which a native title issue might arise?

The Hon. K.T. GRIFFIN: I think there are a number of areas. There have been cases in the Northern Territory where I think Aboriginal customary law has been used as a defence in criminal proceedings. There is also the case, I think in New South Wales, where a person was charged with illegally taking and selling abalone, so it was a commercial enterprise. The defence was that the defendant was a member of a tribe which had traditional rights over a particular area and in relation to abalone. A defence was sought to be raised that, by virtue of customary law and native title, he should not be convicted of the criminal offence of unlawfully taking abalone for commercial purposes.

The converse of that, of course, is that he was arguing that because he was a member of a tribe he was not subject to the laws which related to either the protection or management of the fishery and that, therefore, he was not liable to be prosecuted for the offence. One might argue about rights in relation to the taking of abalone, but the issue as far as the Government is concerned is quite clear: this is not an area in which confusion ought to be introduced about native title rights when, in fact, those sorts of rights can be determined away from the criminal law. That is the issue which we are trying to address by way of this amendment.

Amendment carried.

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

Page 2, after line 34—Insert—'registered representative' of persons who are registered under the law of the Commonwealth or the State as claimants to native title in the land means—

(a) the person registered under the Native Title act 1993 (Commonwealth) in the Register of Native Title Claims as the registered native title claimant; or

(b) the person registered in the State Native Title Register as the registered representative of the claimants;

This amendment, which is to be read in conjunction with later amendments to the Bill, seeks to clarify the position in relation to claimants for native title. It provides for there to be a registered representative of claimants. That registered representative, when identified, is to receive all notices and other things that have to be served on the claimants and has the recognised right to negotiate on behalf of claimants. The registered representative will be the person registered in either the Commonwealth or the State register as the registered representative of the claimants. In effect, this is the same as the Commonwealth provisions in sections 29, 30, 186(1)(d) and the definition of 'registered native title claimant' in section 253 of the Commonwealth Native Title Act. So we are trying to eliminate any area of confusion. If members want me to read the relevant Commonwealth sections I am happy to do so, but I hope that they would rely upon my assurance that that is the case.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

Amendment carried.

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

Page 3, after line 21—Insert:
'Commonwealth Act' means the Native Title Act 1993 (Cwth);

This is quite a straightforward amendment to facilitate references in State legislation to the Commonwealth Native Title Act. It is for clarity of drafting.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

Amendment carried.

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

Page 3, lines 26 to 29—Leave out definition of 'Court' and insert:
'Court' means the Supreme Court or the ERD Court;

The amendment has been made to remove unnecessary words in the existing definition, that is, paragraph (b) in relation to proceedings before the Supreme Court under this Act. It is a change which has been made to improve the drafting of the definition.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

Amendment carried.

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

Page 4, after line 4—Insert:
'proceedings' does not include criminal proceedings;

It is consequential on the first amendment we resolved. Wherever the word 'proceedings' is used in the Bill, we are making it absolutely clear that it does not include criminal proceedings.

Amendment carried.

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

Page 4, after line 7—Insert:
(4) An explanatory note to a provision of this Act forms part of the provision to which it relates.

There has been some discussion about the use of explanatory notes and, rather than seeking to address the whole issue of principle across all statutes, the view has been taken by me that we ought to address the issue specifically in relation only to this package of Bills. We will have a chance at some later stage to debate the substantive issue in relation to all legislation. The amendment is self-explanatory and, as far as I know, there is only one explanatory note in this Bill, but it is important for the courts to have the issue put beyond doubt. Is an explanatory note a footnote which is therefore not part of the legislation or is it part of the legislation? This puts it beyond doubt.

The Hon. CAROLYN PICKLES: We support the amendment.

Amendment carried; clause as amended passed.

Clause 4—'Native title.'

The Hon. CAROLYN PICKLES: I move:

Page 4, line 18—Leave out paragraph (d) and insert:
(d) the rights and interests have not been extinguished or have revived.[1]

[1] If section 47 of the Native Title Act 1993 (Cwth) is a valid enactment of the Commonwealth Parliament, it is possible that native title may revive in certain circumstances under that section.

Our amendment is the same as that of the Government. The Opposition was concerned that the definition of 'native title' should include the scenario where native title rights have been ostensibly extinguished but later revived by virtue of the operation of section 47 of the Commonwealth Native Title

Act. We would have had preferred a footnote in more definite terms, but we acknowledge that the Government would prefer the footnote to reflect the fact that certain aspects of the Commonwealth legislation are subject to current High Court challenge. The footnote is there only to cross reference the word 'revived' to the Commonwealth Act, and we are happy to adopt the Attorney's wording. Perhaps the Attorney might like to support our amendment.

The Hon. K.T. GRIFFIN: I will not be churlish about it. There has been a lot of consultation between the Government, the Opposition and the Australian Democrats. During the course of my second reading reply, I made the point clear that we had offered and that both the Opposition and the Australian Democrats had accepted a number of briefings from Government officers on the legislation, and the same applies in relation to amendments. There are some areas of contention, but at least we all know at the moment where we stand in respect of those. This is one of the amendments that was put to the Government as being, in a sense, a drafting matter but also to recognise that in certain circumstances rights and interest may have revived. This, therefore, recognises it, and I am happy to support the honourable member's amendment.

Amendment carried.

The Hon. CAROLYN PICKLES: I move:

Page 4, lines 31 to 33, and page 5, lines 1 to 3—Leave out subclause (5).

This is a critical issue but it is by no means the only issue in respect of the impact of pastoral leases granted in South Australia upon native title rights. I accept that the Government sincerely believes that the granting of pastoral leases in South Australia has extinguished native title. Certainly, the farmers and miners who are interested in exploring for mineral deposits on pastoral leasehold land wish very strongly that the Government's view of the matter is correct, but all the wishful thinking in the world will not pre-empt a High Court decision in favour of these interested groups. The fact is that there is a very high probability that a prospective native title holder whose traditional pursuits have continued throughout the period of European colonisation, despite the coming and going of various pastoral leaseholders, will take this point through the legal system to the High Court.

It is the appropriate way, and the only way, to resolve this legal issue concerning the impact of the granting of pastoral leases in this State. We do not take the position that the Government is utterly wrong in its view of the matter. The point is that there is a good, arguable case for potential native title holders who have maintained their traditional activities on what is now pastoral leasehold land. I do not propose to argue the High Court case here and now, but I can outline the basis for the Opposition's belief that there is an arguable case for potential claimants in this situation.

The answer is to be found by reference to two sources. Obviously one must take into account the actual wording of pastoral leases granted in South Australia at various times. For example, in the period between 1900 and 1989 there was a reservation in favour of Aborigines in the following form:

Reserved to Aboriginal inhabitants of the said State and their descendants full and free rights of access into, over, upon and from the said land, except such parts as improvements have been erected upon, and in and to the springs and surface waters thereon, and to make and erect wurleys and other native dwellings, and to take and use the food, birds and animals, *ferae naturae* as if this lease had not been made. . .

A similar reservation appears in the pastoral leases granted prior to 1900. A nice question therefore arises for the lawyers (and there are plenty in this place): did the Government extinguish native title rights when granting the pastoral lease while, at the same time, giving certain defined rights back to the Aboriginal people, or did the grant of the pastoral lease leave scope, a kind of gap, in which native title rights could continue to be exercised?

The other point of reference to solve this dilemma is the High Court decision itself, Mabo (No. 2), decided in 1992. Justice Brennan, with whom Chief Justice Mason and Justice McHugh agreed, stated that 'a Crown grant which vests in the grantee an interest in land which is inconsistent with the continued right to enjoy a native title with respect to the same land necessarily extinguishes the native title'. Presumably native title claimants will argue that native title is only extinguished if the grant of land in the pastoral lease is necessarily inconsistent with the continued enjoyment of native title rights in respect of the same land.

In reality, which is perhaps more important than a strictly legalistic view of the property law involved, the grant of the lease in itself is not inconsistent with continued enjoyment of native title rights. It is easy to imagine uninterrupted continuation of traditional pursuits in some parts of this State, even on pastoral leasehold land, completely irrespective of the grant of the lease. The potential claimants' arguments can similarly be made with respect to the judgment of Justices Deane and Gaudron. They said:

The personal rights conferred by common law native title do not constitute an estate or interest in the land itself. They are extinguished but an unqualified grant of an inconsistent estate in land by the Crown. . .

The point is that the South Australian pastoral leases cannot be said to be an unqualified grant of an estate in land inconsistent with native title rights.

In conclusion, I reiterate that there is an arguable case that South Australian pastoral leases have not extinguished native title. That argument will only be resolved in the High Court. It is therefore pointless to enact clause 4(5). It is not only pointless, it is potentially misleading. If non-native title interest groups seek comfort in a provision such as clause 4(5), it is false comfort. We have considered whether there might be some compromise in the wording, but the law will be decided one way or the other. Because we do not know yet, it would be better to have nothing at all like clause 4(5) in the legislation.

In relation to an amendment that will be moved by the Attorney-General, it is doubtful whether the inclusion of the word 'valid' before the word 'grant' in paragraphs (a) and (c) will have any real effect. The fact remains that there could be pre-1975 grants of freehold interest in land or rights to exclusive possession (for example, to the Aboriginal Land Trust) which would not extinguish native title under the terms of the Commonwealth Native Title Act.

Judicial support for this can be found in the Full Federal decision of *Pareroultja v. Tickner*, which was decided in 1993 and reported in volume 42 of the Federal Court Reports. Whether the Government argument on this point is stronger or weaker with respect to pastoral leasehold land is beside the point. The point is that there is some doubt about the matter. Because clause 4(5) does not do anything and is only meant to be declaratory, we would be better not having it in at all because of the very real risk that this purported declaration of the law is in fact wrong and misleading.

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

Page 4, line 32—Before 'grant' insert 'valid'.
Page 5, line 1—Before 'grant' insert 'valid'.

The Government opposes the amendment of the Hon. Ms Pickles. I would have thought that it was obvious that one can only have a grant of freehold if it is a valid grant. It might purport to be a grant, but if it is invalid it is certainly not a grant. To avoid that sort of debate, I am prepared to move for the insertion of those words.

We accept, as a Government, that only valid grants of freehold interest will have extinguished native title and have amended the provision to say so; and we also accept that only the valid grant assumption or exercise of power by the Crown of rights to exclusive possession of land have extinguished native title and have amended the provision to say so. This is the big issue in this Bill that we need to debate at some length.

The Government has a very strong view about it, as do a number of other members of the community. In fact, the Prime Minister said on a number of occasions that it was the Commonwealth's view and it was its intention, and it takes the view with respect to pastoral leases, that valid grants of pastoral leases extinguish native title. That is the position from the Commonwealth's point of view and also the position from the State's point of view. In fact, the Prime Minister did say, when this was a matter of debate earlier this year, that the Commonwealth will fund the National Farmers Federation in establishing that principle through the courts and, ultimately, that, if the courts decide what the Commonwealth, State and many others believe to be the position is not the position at law, the Commonwealth will legislate to put that in place.

In those circumstances there seems to us to be no doubt about the principle which has been established. We believe that it is important from the South Australian perspective to reflect that in our legislation. The assumption that pastoral leases extinguish native title is really one of those assumptions which lies at the foundation of the Native Title Act. Although the Commonwealth has said that in its view pastoral leases have extinguished native title, it has been criticised as a Commonwealth Government for not making the position concerning pastoral leases and native title clear on the face of the legislation. We are, as a Government, by the proposition which we have in the Bill, trying not to leave the South Australian community in that same state of uncertainty.

The Government's legal advice, like that of the Commonwealth, suggests quite clearly that the grant of pastoral leases extinguish native title. It is appropriate for this Parliament to make a statement to that effect on the face of this legislation rather than to leave it to the back-room bureaucrats to make a decision on a case-by-case basis. The provision we have in the Bill does make that statement. I acknowledge that ultimately the High Court may well make a decision on the matter in due course because some groups in the community have said that they will take the first opportunity to challenge this issue and will challenge it on a number of grounds, not the least of which is the effect of reservations by contract or by statute to preserve certain rights to those who might have rights to hunt or cross over land or go onto land to conduct ceremonies or for other purposes and that there has been a breach of fiduciary duty by State Governments in granting pastoral leases, for example, without proper regard to the interests of native titleholders.

We reject as a Government those propositions and acknowledge that those who argue it have a right to go to the courts in the early stages. When we were determining our position as a Government back in March, April or May, there were discussions with representatives of Aboriginal groups in the community. We took the view that there ought to be continuing consultation and, even though we might end up on the opposite side in court, we recognised each other's right to take those positions and to argue them before the independent courts and, ultimately, to have an interpretation made by the courts, but that that would not prejudice our continuing negotiation on these and related issues affecting native title. I am pleased that both Government and other interests have accepted a mature position in that regard and are continuing to proceed in that way.

We certainly do not seek as a Government to deny the rights of any group in the community to have their rights tested in the courts, but we reserve the right if we disagree with what is being done to equally put as strongly as we can the perspective from which the Government views that issue. It may well be that this issue ultimately goes to the High Court. There are two claims: the Wik people's claim in Queensland and the claim in the Northern Territory. The State Government is keeping a close watching brief on where those cases might end up because they affect the issue of a pastoral lease and the extinguishment of native title. I understand that the National Farmers Federation is represented in the Wik people's claim and I understand that some Commonwealth funding is going towards supporting their argument. That was the position the Prime Minister put earlier this year, and I commend him for so doing, except I believe that it should have been sorted out in the legislation rather than being left to the court.

The State Government is confident that the High Court will find that pastoral leases were true leases at law and conferred rights of exclusive possession on the lessees and thereby extinguished native title. It is interesting to take honourable members back to the High Court decision in Mabo No. 2, where the effect on native title of a 20 year lease over the islands of Dauar and Waier for the purpose of establishing a sardine factory were considered, albeit somewhat briefly in a rather lengthy series of judgments. The lease was granted to two persons who were not Meriam people. Special conditions which attached to the lease precluded the lessees from interfering with the use by the Murray Island natives of their tribal gardens and plantations or with the operations of the Murray Island natives who fish around the reefs. Justices Deane and Gaudron suggested, without finally determining the issue, that the lease would not have extinguished native title and stated:

> This lease recognised and protected usufructuary rights of the Murray Islanders and was subsequently forfeited. It would seem likely that, if it was valid, it neither extinguished nor had any continuing adverse effect upon rights of Murray Islanders under common law native title. It is, however, appropriate to leave the question of the validity and possible effect of that lease until another day.

On the other hand, Justice Brennan (with whom Chief Justice Mason and Justice McHugh agreed) and Justice Dawson held the view that the lease extinguished native title. They said:

> By granting the lease the Crown purported to confer possessory rights on the lessee and to acquire for itself the reversion expectant on the termination of the lease. The sum of those rights would have left no room for the continued existence of rights and interests derived from Meriam laws and customs.

That was Justice Brennan. Justice Dawson made the following comment:

> The granting. . . of the lease for the purposes of a sardine factory (is) inconsistent with the preservation of native title, although in the latter case the lease was subject to conditions that the lessees would not in any way obstruct or interfere with the use of the Murray Island natives, of 'their tribal gardens and plantations', on the demised land. . .

So it is quite clear that, even in that Mabo case, this issue was considered and I would have thought that even that would have put beyond doubt the issue of pastoral leases extinguishing native title. On the basis that there is doubt, we wish to have this provision included in the Bill.

I turn briefly to the reservation commonly found in pastoral leases. In our view it amounts to a statutory right in favour of all Aboriginal inhabitants of the State to enter and pass over pastoral lands in following their traditional pursuits. That was originally a contractual provision and not incorporated in statute. It has now been included in section 47 of the Pastoral Land Management and Conservation Act of 1989. There is no intention to alter the statutory rights of access and to camp, hunt and carry out ceremonies that Aboriginal people have always enjoyed and continue to enjoy on pastoral lands. That is quite clear. What we seek to do is record what is commonly regarded at the State and Federal level and in the wider community as a consequence of the Mabo decision and the Native Title Act that pastoral leases and other valid grants extinguish native title.

The South Australian Farmers Federation has been particularly persistent in this. It has made a statement. I am not sure to how many members it was sent, but it would be helpful to have on the record the statements made by the Farmers Federation. It has to be recognised that the Farmers Federation has been particularly close to Aboriginal communities in seeking to resolve a number of issues outstanding. I will quote from a lengthy statement, which deals first with socioeconomic impacts and states:

> There has been a great deal of confusion within the general community regarding native title, which has resulted in unnecessary fear being established in the minds of many landholders and unrealistic expectations being built up within segments of Aboriginal communities. If this uncertainty is unchecked or unmanaged, increased conflict can be expected between Aboriginal and non-Aboriginal people. Ambit native title claims equating to occupation of pastoral land have already been lodged and promoted through the media. The nature of the rights being sought, and the manner in which they are being sought, has already caused great personal stress to landholders and it is likely to cost them in financial terms as well.
>
> Media speculation and generally low levels of understanding about native title within the community may also lead to the devaluation of properties in the marketplace. Financial institutions will react as debt to equity ratios vary, and will translate perceptions of increased risk into higher interest rates. Initiatives to develop land care and pastoral management programs between Aboriginal and non-Aboriginal communities will be stalled, if not abandoned.
>
> Political leaders have a social responsibility to remove as much confusion from the issue of native title as possible.

Then they turn to the legal position as follows:

> The general legal interpretation of the impact of recognition of native title has been that valid pastoral leases have completely extinguished native title. This assessment is at the foundation of the Commonwealth's Native Title Act. A pastoral lease provides exclusive occupation rights to the landholder. While various statutory rights of access are granted to Aboriginal people (for example, for hunting and ceremonial activities), those rights have no greater impact upon the tenure than do equivalent rights granted to mining companies to enter the land to prospect and extract minerals.
>
> Neither traditional access rights or mining access rights challenge the exclusive occupation rights granted by a valid pastoral lease. Both the Federal and South Australian legislation is based on the belief that native title did not coexist with the pastoral lease, and is more likely to occur in the areas that are unallotted Crown land or similar. Consequently, the rights provided to native title holders by the legislation equate with those for a freehold landowner—for example, in terms of rights to negotiate with miners, and for compensation upon compulsory acquisition. The statutory rights developed for native title holders reflect a view that the holders of those rights occupy the land—they do not readily lend themselves to a situation where native title coexisted with tenure granting exclusive occupation to another party.
>
> It has been suggested that an argument can be made for existing statutory access rights in favour of Aboriginal people to be converted to a limited form of native title—although most legal opinion is that such arguments would be unsuccessful. In the event those arguments were successful, it would be completely inappropriate to provide negotiation rights equivalent to those of a freehold landowner to the holders of a limited form of native title. This is particularly so if the limited native title coexisted with a tenure granting exclusive occupation, but reduced rights to negotiate (such as a pastoral lease). If such a difference existed on the basis of race, it would be considered as discriminatory.
>
> Either: legislation needs to recognise native title has been extinguished by other forms of tenure granting occupation of the land (for example, a pastoral lease), in which case where native title exists, if the land is occupied, it will be occupied by the native title holders and the negotiating rights provided by the Native Title Act may be appropriate; or the legislation should treat native title as a limited package of rights, coexisting with other tenures and, therefore, with appropriately restricted negotiating powers.
>
> In the latter situation, it would also be necessary to clarify exactly who is to benefit from those rights and how they were to be exercised to avoid conflict with the registered landowner. The Mining Act deals with issues for mining rights and the same issues would need to be dealt with regarding native title, including aspects such as notice of entry, determining liability for any damages or injury, and establishing a code of conduct, etc.
>
> Legislation which declines to recognise the general legal opinion and attempts to take 'a bob each way' (mixing coexistence with a package of native title rights equivalent to freehold ownership) will fail in application.
>
> Conclusion re pastoral leases: the South Australian Farmers Federation therefore strongly supports section 4(5) the Bill, publicly confirming the generally acceptable legal position that a valid pastoral lease completely extinguishes native title. It is also recognised that the clause in no way limits the maintenance of the existing traditional access rights enjoyed by Aboriginal people.
>
> The clause sends a clear message to the community at large, to property markets and to financial institutions. It will help to constrain conflict within Outback communities, without depriving anyone of their legal right to land. If this section was deleted from the legislation, it would weaken the structure of the Act, leaving it vulnerable to future challenge and confused application.

The document goes on to talk about sections 28 to 32 and section 36. It then summaries their views as follows:

> The inclusion of section 4(5) will help to minimise the damaging social conflict that is beginning to emerge due to uncertainty and confusion about native title. It confirms the best legal advice available to the State and Federal Governments. It is a responsible step for Parliament to be taking. Additionally, the section maintains the integrity of the legislative response, which provides a considerable package of rights to native title holders on the assumption that those rights will not overlap or interfere with the rights of other landowners.

The document concludes:

> The federation welcomes the State Government's initiative in recognising native title and seeking to do so in a manner likely to help contribute to consistency between States and the Federal Government.

That is a very clear view. I have taken the liberty of reading a lot of it into *Hansard* because the Farmers Federation, above all, has been taking a very strong view in relation to this particular issue. I know from the extent to which it and the pastoral lessees have been holding meetings in the north of this State how much they are concerned about this provision. As a Government we have endeavoured to put their

minds at rest about the State Government's program and we have been quite open about it in relation to the mining industry and to native title holders and those who might be claimants. We have nothing to hide in relation to the way in which we are approaching this issue. We want all the cards on the table and therefore it is important, in relation to the Farmers Federation, to ensure that that point is made.

I will now refer briefly to the Prime Minister's second reading speech in relation to the Commonwealth Native Title Bill. It merely reaffirms what I have been saying and provides the basis for his public statements about the extinguishment of native title by pastoral leases in the period since the enactment of the legislation. He talks about validation, which we certainly deal with in this Bill, and says:

> Validation covers not only past invalid grants—made before 31 December 1993—but renewals and extensions as defined in the Bill. It also covers invalid actions of Government. And it covers laws made before 30 June 1993. Validation by the Commonwealth, or in line with the Commonwealth regime, limits the extinguishment of native title. Only validated freehold grants, residential, commercial and pastoral or agricultural leases, and validated Crown actions basically involving permanent public works, will extinguish native title. Naturally, existing reservations for the benefit of Aboriginal and Torres Strait Islander people will be preserved.
>
> I draw attention also to the recording in the preamble of the Bill of the Government's view that under the common law past valid freehold and leasehold grants extinguish native title. There is therefore no obstacle or hindrance to renewal of pastoral leases in the future, whether validated or already valid.

That is a very clear statement. I just make the point again that the Government feels very strongly about this provision, that it ought to be included in the Bill as an accurate reflection of the law recognised by the State and by the Commonwealth. There are two points that need to be made about it, though. The first is that if we are wrong about the law then whatever decision is taken in the High Court will quite obviously prevail. The second point is that the enactment of this provision does not preclude any interested person, particularly representatives of Aboriginal people, from taking action in the courts, and ultimately to the High Court, to challenge this issue. So, it does not prejudice their position. However, it does send a message of comfort to a range of people in the South Australian community about native title consistent with the Prime Minister's and the Federal Government's position on this issue.

The Hon. SANDRA KANCK: I indicate, first, that I will not be supporting the Attorney-General's amendments, because I do not think they add or clarify anything; there is simply no value in having them. The Attorney has said that it is appropriate to make this statement in the Bill. He also said that it should be included as an accurate reflection of the law.

I do not believe that it is an accurate reflection of the law and, as such, I cannot agree to its remaining in the Bill. I have some sympathy for those people who hold pastoral leases, and I am sure they would like to be given certainty with a clause like this remaining in the Bill but, as a point of law, I do not believe that it is accurate. If I were to accept its remaining in the Bill, I would actually be lying to myself. I do not believe that native title has been extinguished on pastoral leases. I do not intend to labour the point on this, as I spoke on it in my second reading contribution. I have on file the same amendment as the Opposition, and I will therefore support the Opposition's amendment.

The Hon. R.D. LAWSON: I support the Attorney's support of clause 4(5) of this Bill. Speaking very briefly in support of it, I mention two points raised by the Leader of the Opposition. First, the Leader of the Opposition in this place said that this clause is merely wishful thinking. Secondly, she said that there is a good, arguable case to the contrary of the proposition advanced in the clause. This is not a matter of wishful thinking: this is a matter of the law of this State, passed in response to the Commonwealth legislation and to the Mabo decision, embodying what the Mabo decision itself envisaged. As I said in my second reading speech, Justice Brennan, in Mabo (No. 2), indicated very clearly that an unqualified grant of an estate in fee simple or of some lesser estate, such as a leasehold, was inconsistent with the rights under common law native title and would have extinguished that title.

That position by Justice Brennan was accepted by other judges in the case, namely, the Chief Justice and Justice McHugh. Justice Dawson, it is fair to say, who disagreed with the result, would have agreed with that proposition, consistent with his reasoning. So, it is not merely a matter of wishful thinking to say that the grant of pastoral leases before October 1975 extinguished native title; it is in fact an expression of the opinion not only of the judges but also of the Commonwealth Government, the State Government and many others. This is not simply making some empty gesture: it is a statement of our best belief of the position.

It is said by the Leader of the Opposition that there is a good, arguable case to the contrary. We on this side happen to disagree, but lawyers will tell you that there is a good, arguable case about almost any proposition—certainly an arguable case, and a good one if they are given the brief to argue it. But the point is that, if this provision precluded anyone from advancing that so-called good, arguable case; if it foreclosed Aboriginal interests, for example, from advancing that proposition; if it irrevocably damaged their interests, then there might be some force in the argument made against this particular clause.

But the fact is that the clause does not prevent anyone, be it Aboriginal group, miner, pastoralist, environmentalist, busybody or anybody, from raising the argument. They are entitled to claim and, no doubt, will claim in some courts, either next month, next year, the next 20 years, or the next 50 years and perhaps time and again to challenge the proposition that particular pastoral leases have extinguished particular native title in respect of particular situations and particular groups. These questions are not foreclosed. No-one is prevented by this clause from raising the argument.

It is suggested by the Hon. Sandra Kanck that, because she does not believe the proposition—and she does not give the House the benefit of why she does not believe the proposition—that valid pastoral leases extinguish native title when granted before 1975, there is no value in having this provision. Well, there is indeed a value in having this provision, because it states the position of the South Australian Legislature; it states what we believe to be the position, based upon the judgment in the High Court and the opinions of our Crown Law officers, of our Attorney-General and of all who have looked at the position. There is nothing to be lost and no interest to be damaged by the inclusion of this clause, but much is to be saved, and I support it.

The Hon. CAROLINE SCHAEFER: Obviously, anything that I say will not have any influence whatsoever on the Hon. Sandra Kanck or the Opposition, but they need to consider that there is another minority group out there that they have not considered at all, that is, people who are currently living and attempting to make a living on pastoral

leases. By moving this amendment, the honourable member has, in fact, devalued their properties by anything up to 30 per cent. She has probably taken away any security of lifestyle that they have, and she has flown in the face of the legislation which is already in existence in Canberra and which was accepted in both the first and second court decisions brought down on the Mabo case.

She has not, as I see it, done anything to support the Aborigines who wish to make native title claim. In fact, all she has done is open up a can of worms, which can be taken from court to court and batted backwards and forwards by anyone who has the money to do it. And that is unlikely to be the pastoralists.

The Hon. CAROLYN PICKLES: If there were no doubt at common law, there would be no need to enact clause 4(5). The fact that the Government seeks to enact this provision itself suggests that there is some doubt about the legal issues concerned. Government members have already raised some questions and said that, if there is a doubt, it will go to the High Court. The effect of the—

The Hon. Diana Laidlaw: Do you want there to be any doubt?

The Hon. CAROLYN PICKLES: No, I want there to be clarity. The effect of the declaration, if wrong, taken in conjunction with the Mining (Native Title) Amendment Bill, which has already been introduced with the amendments that the Attorney has tabled, would be to ensure the invalidity of mining tenements over pastoral land. Put simply, the right to negotiate procedure operates only in relation to native title land. As a result of the declarations in clause 4(5), the right to negotiate procedure does not apply to pastoral land. Even if an agreement is entered into between the miner and those who claim native title, it is unlikely to secure the tenement's validity. If this clause 4(5) were not included, miners might ensure the validity of a tenement to be granted by means of a negotiated agreement with native titleholders. So, there are other people involved in this issue.

The Hon. K.T. GRIFFIN: I draw the Hon. Ms Pickles' attention to section 223 of the Commonwealth Native Title Act. It deals with common law rights and interests, and it adopts in subsection (4) basically what we have done in our subclause (4). It provides:

> To avoid any doubt, subsection (3) does not apply to rights and interests created by a reservation or condition (and which are not native title rights and interests):
> (a) in a pastoral lease granted before 1 January 1994; or
> (b) in legislation made before 1 July 1993, where the reservation or condition applies because of the grant of a pastoral lease before 1 January 1994.

So, ours is in exactly the same form as this, and we have just sought to continue that to avoid any doubt, as follows:

> To avoid doubt—
> (a) the grant of a freehold interest in land; or
> (b) the valid grant of a lease (including a pastoral lease but not a mining lease); or
> (c) the grant, assumption or exercise by the Crown of a right to exclusive possession of land,
> at any time before 31 October 1975 extinguished native title.

The Hon. Diana Laidlaw: The Hon. Carolyn Pickles said a moment ago that she didn't want there to be doubt.

The Hon. K.T. GRIFFIN: All that I am pointing out is that the Government is following the mechanism adopted by the Commonwealth. It must be asked why the Commonwealth needed to put subsection (4) in. It was put in to avoid any doubt. Why do we need to put it in? We are saying, 'To avoid any doubt,' and we are saying that this reflects what we and the Commonwealth believe to be the law.

I have made the point that it is there for the purpose of providing comfort to a range of people throughout the South Australian community. I have made the point also that if we are wrong (and I do not believe that we are) and ultimately the High Court decides that we are wrong, then the Federal legislation and the State legislation in particular will be invalid. From the Government's perspective it is there as a matter of a clear statement of the law as we believe it to be and to provide comfort. It still does not prevent Aboriginal communities and those who claim native title from challenging either the Commonwealth belief or the State legislation.

In the discussions with Commonwealth officers they have not raised any concern about this, and have in fact suggested that we insert the word 'valid'. Therefore, it seems to the Government that it is important to push on with this. I said that the State legislation would be invalid: I was using a bit of quick shorthand. The declaratory provision which we have will simply be rendered nugatory (that is, of no effect), and I suppose that is not the same as being invalid. I want to put that on record to clarify it in case it is used against me on another occasion.

The Committee divided on the amendment:

AYES (8)

Elliott, M. J.	Feleppa, M. S.
Kanck, S. M.	Pickles, C. A. (teller)
Roberts, R. R.	Roberts, T. G.
Weatherill, G.	Wiese, B. J.

NOES (7)

Griffin, K. T. (teller)	Irwin, J. C.
Laidlaw, D. V.	Lawson, R. D.
Pfitzner, B. S. L.	Redford, A. J.
Schaefer, C. V.	

PAIRS

Davis, L. H.	Cameron, T. G.
Lucas, R. I.	Crothers, T.
Stefani, J. F.	Levy, J. A. W.

Majority of 1 for the Ayes.

Hon. Carolyn Pickles's amendment thus carried; clause as amended passed.

Clause 5 passed.

Clause 6—'Reference of proceedings between courts.'

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

> Page 6, lines 20 to 24—Leave out subclause (1) and insert—
> (1) The Supreme Court may, and other courts of the State must, refer proceedings involving a native title question to the ERD Court for hearing and determination.

This amendment seeks to improve the drafting style. I do not think it is contentious.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

The Hon. SANDRA KANCK: The Democrats support this amendment because the wording will be a little less verbose. However, there appears to be some duplication between clause 6 of this Bill and clause 8 of the ERD Court Bill (new section 20A). What is the difference between these two sources of instruction; what is the purpose of this duplication?

The Hon. K.T. GRIFFIN: I do not quite understand the question, but I will try to make the situation a little clearer. We are trying to ensure that the Supreme Court has, in a sense, a concurrent jurisdiction. We took that decision as a Government very early on, but we also wanted the ERD

Court, in a sense, to be the primary trial court for the purpose of determining native title questions. What we propose by way of clause 6 is that the Supreme Court may refer proceedings involving a native title question to the ERD Court. But that is a matter for the discretion of the Supreme Court, and it may be that native title issues will arise not only in relation to native title specifically but incidental to other issues that are being heard in a matter before the court. So, we suggest that the Supreme Court should be able to refer proceedings if it decides that it is appropriate to do so. If proceedings in other courts involve a native title question, because they are not superior courts but may be of equivalent status to the ERD Court—that is, a district court, a youth court (although that is unlikely, because that court deals only with criminal matters) or perhaps even a warden's court, which is an inferior jurisdiction, or a magistrate's court—we seek to ensure that all those proceedings must be referred to the ERD Court as the primary court for resolving those issues.

There is no inconsistency, as I see it, between what I am now moving in relation to clause 6 of the Native Title (South Australia) Bill and what is contained in clause 8 of the ERD Court Bill, because under clause (8) the Environment, Resources and Development Court may refer proceedings to which this section applies to the Supreme Court for hearing and determination. So, if the proceedings are initiated in the ERD Court, the ERD Court may on its own initiative or on application refer the matter to the Supreme Court, but equally the Supreme Court may, on its own initiative or on application by a party, remove to the Supreme Court proceedings which might involve an important question of law or some other significant issue.

So, I suggest that they mesh together fairly comfortably. I do not think there is a major problem, or any problem for that matter, with the transfer between jurisdictions. If that has not explained the position adequately for the honourable member, if other issues impinge upon it, perhaps she could indicate what they are and I will try to take the matter further.

The Hon. SANDRA KANCK: It just seems to me that clause 6 of the Native Title (South Australia) Bill and clause 8 of the ERD Court Bill are duplicated. I am not suggesting there is any conflict; I just wonder why there is that duplication.

The Hon. K.T. GRIFFIN: I am advised that the people who pick up the ERD Court Act, when it is amended, will have in front of them the transfer of jurisdiction provisions. If they pick up the Native Title (South Australia) Bill, the same position will apply. They are there as a matter of cross-reference; there is no inconsistency. They are there as much for ease of reference as for anything else.

Amendment carried; clause as amended passed.

Clauses 7 to 15 passed.

Clause 16—'Notice of hearing and determination of native title questions.'

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

Page 8, lines 27 and 28—Leave out paragraph (a) and insert—

(a) that an interested person may apply to the court, within two months after the notice is given, to be joined as a party to the proceedings;

This amendment deletes the reference to 'a person with a proper interest'. The rewritten provision now refers to 'an interested person'. My next amendment sets out who is 'an interested person' for the purposes of the section, and it is appropriate to refer to them now. They are: the registered representatives of claimants to or holders of native title in the land (I will seek to make a minor drafting change to the next amendment on the run); a person whose interests would be affected by the existence of native title in the land, including a person who proposes to carry out mining operations on the land; a representative of an Aboriginal body; the State Minister; and the Commonwealth Minister. This amendment essentially seeks to clarify the drafting, again for the benefit of those who seek to have as many as possible of the unanswered questions answered.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

Amendment carried.

The Hon. K.T. GRIFFIN: I move my amendment in an amended form, as follows:

Page 8, after line 31—insert:

(3) The following are interested persons—

(a) the registered representative of claimants to, or holders of, native title in the land; and

(b) a person whose interests would be affected by the existence of native title in the land (including a person who proposes to carry out mining operations on the land); and

(c) a representative Aboriginal body; and

(d) the State Minister; and

(e) the Commonwealth Minister.

In paragraph (a) we are dealing both with claimants and with holders. It seems to me that that is proper drafting. That brings them within the definition of 'interested persons'. I am informed that was just a drafting slip, and this will now put it into proper order. It includes all the people required by the Commonwealth, including the Commonwealth Minister, as required by section 68(2)(a) of the Commonwealth Native Title Act.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

Amendment carried; clause as amended passed.

Clause 17 passed.

Progress reported; Committee to sit again.

ELECTRICITY CORPORATIONS BILL

Adjourned debate on second reading.

(Continued from 24 November. Page 949.)

The Hon. T.G. ROBERTS: I rise on behalf of the Opposition to indicate tentative support for the Bill. Some questions placed on notice by previous speakers have to be answered, and I understand that some amendments are being drafted that will make the presentation of the Bill a bit more acceptable. The contributions of other members in relation to the presentation of the corporation through the restructuring of the Act to allow for the desegregation of the generation, supply and distribution of electricity to this State makes this a measure that probably would be difficult to oppose at this time. If a single State decided to hold out against the restructuring program that has been put in place by the Federal Government, then it would place that State in a very parlous position. It would be very difficult for the State to operate its infrastructure, particularly relating to electricity, in a nationally coordinated way, and it would leave the State in a very difficult position.

The intentions of the Bill are to break the generation, supply and distribution of electricity into three parts and to corporatise the statutory authority that now administers the three arms of generation, supply and distribution into three separate and distinct bodies, and the legislation is framed in such a way as to set up those separate corporations. The Bill does not go all the way to privatisation. It is a matter of

degree, I guess. This could be seen as the first stage step to privatisation, but it has been indicated that the Government's intentions are to corporatise rather than to privatise, and it is interesting to see that different States have handled the breakup of the power generation, distribution and supply programs into different models. Each State has a different model, and the South Australian model is being supported by the Opposition, as I have said, with some reservations that I hope to place on record.

The States have been negotiating with the Federal Government, through COAG and other bodies, to bring about a single national supply grid for electricity and to eliminate the cross-subsidisation programs that are run through supply, generation and distribution to allow for a freer, more transparent look at the way in which the costs, supply and the pricing programs of electricity are applied in each State, so that the Prices Justification Tribunal can make sure in its own mind that there are no inhibitors to the supply and distribution of electricity and that there are no inhibitors to free trade. By having the Prices Justification Tribunal looking over the shoulder of what are now statutory authorities, I believe it is vital that each State be seen to be supplying, generating and distributing power in a free market program so that it is not seen by the Federal Government as providing unfair competition to the other States.

In my view South Australia will be particularly hard pressed to compete on the national grid. The national power grid programs that have been put in place in Victoria, which I think has five private distributors supplying power into the national grid, will make it difficult for South Australia to compete because of the inbuilt inefficiencies and structural deficiencies within its generating distribution and supply program. I think that Victoria is negotiating with potential South Australian consumers to supply power to the State grid. In my view, because of that and because of pressure from other States for cheaper power into the grid it will be difficult for South Australia to maintain its full operating program.

Another area facing the break-up of supply and distribution is water. There has been a break-up of the communications network from a single supplier to multi-suppliers. This trend has been promoted by the Federal Government to bring about efficiencies in 'best international practice' and to supply an infrastructure program through transport, electricity, water and other areas that make up a national economy. 'International best practice' are the key buzz words in the Hilmer and other reports which advocate the breakdown and sale of many of the public sector's programs which traditionally—

The Hon. Sandra Kanck: What do those buzz words mean?

The Hon. T.G. ROBERTS: 'International best practice', like some of the other buzz words, basically means whatever you want it to mean in terms of your understanding of the arguments that have been placed in the arena to date.

The Hon. Diana Laidlaw interjecting:

The Hon. T.G. ROBERTS: The Minister says that it means being competitive, and I guess that means being efficient—

The Hon. Diana Laidlaw interjecting:

The Hon. T.G. ROBERTS: Those are the arguments that have been put—efficiency, effectiveness and being able to supply at best standards and price. Unfortunately, it will mean a change in philosophical direction for this nation. For over 100 years Australia has been developed with cross-subsidies applying to particular States, regions or areas. This has ensured a development program for the nation, which historically has had cross-subsidising components, which allows fledgling colonies or areas of later growth to get off the ground and thrive. In a lot of programs protective mechanisms have to be put in place in the early stages of a development, and it does not matter whether they are private or public sector driven.

I do not know of any section of the private sector which is not prepared to cross-subsidise other areas of the private sector to make sure that programs get off the ground and grow in relation to their competitors. It does not matter whether it is a monopoly controlling interest or a State or national interest, mechanisms will be put in place to allow fledgling enterprises to get off the ground, establish and grow. It may be that we have reached the time where we have developed electricity supply distribution to a point where the challenge now is to dismantle what I would have thought was an effective system of production and distribution of supply. Electricity, in particular, is one of those components of the public supply area that we can deliver from a centralised system in an effective and efficient way. As with water, I suspect that in terms of quality, effectiveness and efficiency, there are some areas of enterprise which lend themselves to monopoly control and efficiencies and to large scale Government support.

What we are being asked to do is to dismantle a structure which has been very efficient and effective on behalf of this State and to buy the argument that is being put forward by the Commonwealth to corporatise or privatise what would be regarded as an efficient operation, break it into smaller components and compete with organisational structures in other States which, historically, over the past 100 years, have had many more benefits to run effective and more efficient industry sectors than the South Australian network. Victoria, New South Wales and, to some extent, Queensland have coking coal and coal deposits which are much larger than South Australia's deposits. Their deposits contain a different type of coal. The bituminous content and the BTUs (British thermal units) that their coal generates is much higher than it is in South Australian coal. All our coal deposits are young in geographical terms; it is mainly brown coal which is highly inefficient as a fuel for generating electricity.

Also, South Australia has longer transmission lines, and that causes inefficiencies because of loss of power through distribution. What we are being asked to do now, overnight basically, is to turn our inefficient State infrastructure over to competition with a highly effective and efficient national grid. I would say that it would be pretty clear sailing for New South Wales, and particularly for the Victorians, who have excess capacity within their grids to start supplying to South Australia.

I hope that the Commonwealth, after we pass our legislation, by faith, will be able to supply to South Australia the funding that will be required to restructure the regional economies that will be affected by the possible dismantling of some of our supply networks. What we have, through Hilmer, are requests for a lot of public infrastructure to be privatised or corporatised. We will now be driven by the Eastern States' efficiencies in terms of their ability not only to generate power more cheaply, effectively and efficiently but to get into the marketing and distribution of that power.

There are some problems, not with the Bill itself in terms of its breaking up of the Electricity Trust (the old ETSA) into three separate corporate bodies but with the implications which will flow from the legislation. Many intergovernmental

negotiations and discussions will continue around power, water and transport and there will be Federal moves to get Australia one effective, efficient trading network. I hope that the Commonwealth can wear the cross-subsidised programs with regard to power distribution and can transfer those programs into a changed taxation network, thereby providing a redistribution of wealth through subsidies which used to apply to the distribution of power but which hopefully can be applied through taxation revenue.

That is not part of this Bill, but hopefully will be addressed by the State Government in its discussions and negotiations through the intergovernmental bodies that will be meeting regularly to look at the implications associated with the restructuring that will have to take place after the breaking up of the State's networks are completed or in progress. One of the difficulties we have is that State Governments have been operating on behalf of their constituents for almost a decade and structured inefficiencies have been built into the network over a very short period of time. Logically, had people been more forward thinking, say, 40 years ago when they decided on the massive investment programs in power generation and distribution, these may not have been put in place with a national network. Had we been working off a national generating program, we may not have had the investment programs we have had over the past 40 years.

Unfortunately, we have had competing States and built-in efficiencies with those States because the constitutional requirement of Governments at a State level was to act on behalf of their State's constituents. If it was to build power stations at whatever cost to attract industry into those States, that was the responsibility of those Governments to do that. You could not have a growing economy without having an infrastructure base that had concessions built into it in supplying water, land, cheaper electricity or coal, or a dispensation on rates and taxes. Each State was on the auction block to ensure that they were in there to attract business for growth in those States. It still goes on.

We may not be giving concessions on power or we may be asked to withdraw some of the concessions around power distribution so that there is a more transparent operation and so that those people in the prices justification arena can argue that all the impediments to free sale of electricity have been removed, but some States will still have the advantage over others in supplying concessions for growth in those State arenas where the populations are larger and the infrastructure programs are more attractive. Again we will find, as South Australia dismantles its monopoly control over electricity, water and infrastructure, those concessions and benefits that will go with larger population centres, with more thriving regional and growth centres, will attract most of the overseas investment and national capital into their programs and South Australia will be left struggling.

I have alluded in other contributions to the fact that there are economic hot spots in the national economy, that Queensland has added opportunities over South Australia, that Sydney and the business regional sections of Victoria all have distinct advantages of cheaper transport costs to population centres or growing economic units that are able to be self-sustainable. They have all those advantages over South Australia. South Australia is basically a city State: most of our population resides in the metropolitan area and any power generation, transport and water distribution costs are much higher to regional and country areas than they are in Victoria, New South Wales or in the south of Queensland. If you look at Queensland, it is broken down into three population centres as well. It will have some economic hot spots and many people in the regional areas will be left behind.

There are also moves through Hilmer and other reports to break up not only the telecommunications sections but also the post and telegraph area as well, so that we will end up with a leaner, more corporatised, or in some cases more privatised, machinery process that is supposed to supply, through competition, the business sector with cheaper inputs through the public infrastructure that has been supplied traditionally. So I make these few remarks, and firing a few shots across the bows of the privatisers and Friedmanites of this world. In 1984 the Friedman policies were being espoused and we are now seeing the fruits of the visit paid by Mr Friedman and others in putting forward arguments.

I suspect that legislators in this State will have to work much harder to attract business and economic growth than perhaps those in many of the other States and regions. I do not like making pessimistic predictions, but I suspect we may have growth loss from this State, with possibly an exodus of people to the eastern States. If we cannot get an advantage over the eastern States with regard to potential growth in a new economic order based on international best practice and international growth, South Australia's economy could be destined to trying to attract growth in areas other than where those specialised areas in other States already reside. With those few reserved comments, I support the Government's Bill. I point out that the Hon. Mr Crothers has some questions on notice that will be answered, and I understand that some amendments will be moved.

The Hon. SANDRA KANCK: In the space of a week, this is the second piece of legislation that I have had to deal with that is based on the recommendations of the Hilmer report and, subsequent to that, the Audit Commission Report. As with the South Australian Water Corporation Bill, again we are finding that the underlying assumptions that are the cause of the changes are not either being properly analysed by the Government or deservedly challenged. The economic thinking which brings us to this point needs proper analysis. In the 1930s and 1940s people like Galbraith promoted the idea that increased efficiency makes a firm more competitive. However, in the 1990s this has been turned on its head and instead it has become 'competition increases efficiency'. This thinking is the basis of the Hilmer report and no-one dares challenge it. It has become 'the truth' with capital letters, and it is regarded as almost heretical to suggest anything else. As one person has put to me, it is like saying, 'Every time I buy a litre of milk I spend a dollar' and turning it around to read, 'Every time I spend a dollar I buy a litre of milk'. They are not the same concept and one cannot draw one statement from the other, yet we do this when deciding the economic future of our State.

I must say that I have been very surprised not to be lobbied by the unions on this Bill, and telephone messages to get them to contact us so that we can ascertain their position have not be been returned. I can only assume that they, too, have swallowed this form of economic rationalism. However, I must say that I did receive a fax early this afternoon which was a copy of the fax sent to the shadow Minister for Infrastructure. In it they raise concerns about electrical inspections. So I at least have some indication of one part about which they are not happy. The fax states, in part:

> What happens to the vital link with the supplier of the electricity that currently allows an ETSA inspector to disconnect an unsafe installation from ETSA supply? All the powers, standards and guidelines are contained in ETSA's distribution supply and service rules, which certainly could not be enforced by a department such as Consumer Affairs.

Further it states:

> To transfer the functions of the ETSA electrical inspectorate to a Government department such as Consumer Affairs is fraught with danger and will downgrade the high standards set in the past by ETSA inspectors and avoid compliance with Australian Standard AS3000.

I will be very interested to hear what the Minister has to say on that later.

There is a sense of fatalism about the path we are taking with this Bill. People seem to see it as inevitable; that it is useless to question it, let alone to oppose it. Clearly, the Opposition is supporting this Bill, albeit somewhat tentatively, judging from the contributions we have had from the Hon. Trevor Crothers and the Hon. Terry Roberts.

Ironically, we are told that we need this Bill because we must have increased efficiency. Yet, the ultimate splitting up of ETSA into three entities will require three boards each with five to seven members and three CEOs, and that is hardly an increase in efficiency. Presuming that there is no overlap in personnel in the three boards, we could have up to 21 board members plus the three CEOs; that is, a total of 24 people, as opposed to the current board of seven members and one CEO—eight people. So, we are looking at a tripling of the number of people involved in running these three corporations as opposed to the current ETSA scenario.

Ideally, we should not be continuing with this Bill until the report on ETSA from the Statutory Authorities Review Committee, which is due next year, is tabled in this Parliament. It seems stupid to waste six months of committee work and all those taxpayers' dollars spent investigating the role and function of ETSA, especially since the findings of the committee will have direct relevance to this legislation.

Underlying this push for increased competition is faith in the concept of a national electricity grid. This lemming-like move for States to be part of a national electricity grid cannot advantage South Australia. Because we are half an hour behind the Eastern States we will almost always not be able to sell power to the Eastern States. There will always be a half hour period of time in both the morning and the afternoon when the Eastern States have got through their peak load time and we still have a half an hour to go in our peak load time when they will be able to sell power to us. When we have excess generating capacity the chances are that there will be no-one interested in buying it. So, general speaking, the only advantage to us is that we might be able to buy some Eastern States electricity at a cheaper rate than we can generate it here in South Australia, but it is not likely to go the other way.

The reality is that this logic could lead to our becoming more and more dependent on Eastern States electricity generation, which, of course, would have direct impact in terms of job losses in this State. We are making changes which look good on one side of the ledger but which ignore the other side. The other side contains the social and environmental consequences.

In recent times, ETSA has made work force changes that have lead to greater efficiencies, and I understand that this has allowed South Australia to offer electricity to the grid at a rate competitive with that of Victoria. However, Victoria is now instituting the same reforms and, when that is completed, any advantage we might have built up will be gone. My prediction is that, once we go down that path, electricity generation here in South Australia will be as a back-up and top-up to the Eastern States. It will result in a further reduction in employment numbers in the new corporation and a greater casualisation of the remaining work force. That will be the first cost: increased unemployment.

It is useful to note in passing that a grid of this size would be needed if a nuclear power plant were to be set up in this country. One State on its own would not have a large enough grid to justify the generation of nuclear power. Members should not be surprised, therefore, if after a period of time, when we are all part of the national grid, a push emerges for the construction of a nuclear power plant in Australia. When it happens, the grid itself will be used as part of the justification for that idea. It is something that the Democrats do not welcome, but the pressure will come and then, like the whole of the Hilmer report and competition, no-one will question it. The Government will argue that this is not part of the agenda at the present time. Well, it may not be part of its agenda but it is being naive if it does not realise that it is part of the agenda of others. So, there will be the second cost: the advent of nuclear power in Australia.

I want to raise the issue of energy efficiency in the national grid. There are enormous losses of power in the transmission of electricity over distance. For instance, Torrens Island Power Station uses natural gas to bring turbines to the boil to make steam to drive the generators to make electricity. Then, we put that final product out on large transmission lines around the State. However, by the time we get that electricity into our homes we get only around 26 per cent of the original amount of energy that was in the natural gas. So, where is the environmental sense in transmitting power over hundreds and even thousands of kilometres when we lose power along the way? The sense occurs only in terms of the economic arguments that are being used to promote the national grid. So, there is the third cost: simple wasting of energy.

South Australians should go down this path with their eyes wide open about what we are doing and its consequences. We must all be aware that becoming slaves to the Eastern States' power generation will make us here in South Australia substantial greenhouse contributors whenever we are using Victorian generated power, because that power is achieved by burning brown coal, which produces far more greenhouse gases than our natural gas. That is the fourth cost: the contribution of more greenhouse gases to the atmosphere.

Because the decision-making of the Hilmer report is based on economics only, the further development of energy saving alternatives will be retarded. Clause 5 of the Bill describes the functions of the proposed Electricity Generation Corporation. Clause 6 describes the functions of the proposed Electricity Transmission Corporation, while the distribution functions of ETSA itself are described in clause 7. None of these clauses gives those entities any up-front brief to develop alternative renewable energy.

The Minister no doubt will be told to reply to me that it is covered, for instance, in clause 5(2)(c). If so, that is a very pathetic and wimpish way to deal with it. Why not have an up-front commitment that spells it out? Similarly, in none of those descriptions of functions is there anything about a commitment to energy conservation. So, we will have a fifth cost: the reduction in progress towards development of renewable energy and a slower introduction of energy conservation measures. I indicate that I will have some

amendments to deal with this when we get to the Committee stage.

Ironically, the Liberal Party in its election promises said that it would ensure that within 10 years 20 per cent of the State's energy needs would be derived from renewable energy sources. I would say to the Government, given its non-questioning acceptance of the recommendations of both the Hilmer and Audit Commission reports, that it has a fat chance of achieving that.

I raise also the issue of dependence on another State for our electricity supplies. In the event of major generating or transmission failures or industrial action, would the Eastern States make the sacrifice and ensure that South Australia still got its power? My prediction is 'No.' I know that in the early 1980s, when the city of Broken Hill became part of the Victorian grid and generators broke down, the people of Broken Hill experienced the same brown-outs that were occurring in the rest of Victoria. In fact, to add insult to injury, some energy manufacturing technology (which still luckily existed in the town) was started up, but not to make sure that the people of Broken Hill got full-on power: rather, it was started up again to feed back power into the Victorian grid. So, I predict a sixth cost; that is, in an energy emergency in the Eastern States we in South Australia will have to make the sacrifice. I am sorry to have to tell members in this place but the emperor has no clothes and, as in the time honoured tradition of that story, everyone is pretending otherwise.

There is no doubt that this Bill will pass, but it will happen with very little awareness or involvement by the public, who have a great deal to lose by the passage of this Bill. I am considering whether it is worth enrolling the Opposition in supporting me to assist in the slowing down of this Bill so that we can examine the report of the Statutory Authorities Review Committee when it is tabled next year. I recognise that, on our own, the Democrats will not change the economic thinking that is leading this State down this path of no return. I will not seek to divide on this matter but I am indicating our opposition to this short-term economic rationalism that has no ultimate guiding wisdom. Therefore, I oppose the second reading.

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

[Sitting suspended from 5.54 to 7.45 p.m.]

NATIVE TITLE (SOUTH AUSTRALIA) BILL

In Committee (resumed on motion).

(Continued from page 970.)

Clause 18—'Registration of claims to native title.'

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

Page 10, line 7—Leave out 'reasonably ascertainable' and insert 'known to or reasonably ascertainable from public records'.

The amendment seeks to pick up one of the concerns that has been expressed to us. I note that the Opposition and the Australian Democrats have another proposition on file, and I will deal with that at the same time. Our amendment requires a native title claimant to provide the information that he or she has in relation to the land and also to make some effort to find out what is available in public records in relation to the tenure history of the land.

The Government is of the view that it is reasonable that an applicant for a native title determination should be required to make a reasonable effort to provide relevant tenure history and other details of the land, because some information will be available to the claimant which might be in the nature of family history and which ought to be the subject of disclosure, and there ought to be at least some onus to provide information as the basis for making a claim and not to leave the development of the information to other people.

We seek to ensure that information that is known to a claimant is made available, and we think also that there ought to be some obligation at least to provide information that might be reasonably ascertainable from public records. There is a difficulty with the Opposition and Democrat amendments, but I will deal with that when the Leader of the Opposition has had a chance to explain it.

The point has been made to us that 'reasonably ascertainable from public records' is still too broad. It is a bit difficult to know how one defines it, because there is the same defect in what the Opposition and the Australian Democrats will be proposing. My view is that, undoubtedly, the courts will propose some rules that will to some extent define the boundaries of what is to be provided, what sort of information will come from public records, and so on, without making it a major task. If there is a claim I come back to the point that it is the Government's view that we should be at least requiring some basic information that is reasonably ascertainable from public records, information which might be known to the claimants to be put on the public record as the basis for the claim.

The Hon. CAROLYN PICKLES: I move:

Page 10, line 7—Leave out 'reasonably ascertainable by the applicant' and insert 'known to the applicant after reasonable inquiry'.

As the Attorney has indicated, the Opposition has similar amendments. We prefer the wording of our amendment although we believe that the Government and the Opposition are heading in the same direction. When an applicant makes a claim for a native title determination we say that the applicant should state in the application the relevant facts known to the applicant after reasonable inquiry. This imposes a twofold obligation upon the applicant. First, the applicant must make reasonable inquiries regarding the facts which would be relevant to the claim. One would think this would be at least to make a fair search (but not an exhaustive search) of readily available public records. 'Reasonable inquiry' might also mean interviewing tribal elders, for example. The second part of the obligation after these inquiries are made is to set down in the application the facts that are known to the applicant at that stage. This would include material discovered in the course of making reasonable inquiries in addition to facts known to the applicant before the inquiries were commenced.

The Government, on the other hand, requires the applicant to set down material known to or reasonably ascertainable from public records. The concern is that 'reasonably ascertainable from public records' could impose an obligation to make an exhaustive search of public records. If one searched through the Lands Titles Office for six months one might eventually come up with all information that is reasonably ascertainable from these records, yet nobody really desires that such an exhaustive process should be undertaken at that stage. It should be sufficient for the applicant to generally put other affected parties on notice about the land and the history

of the land, the present and former association by Aboriginal peoples with the land and, therefore, the reasons generally for making the application.

All in all, the Opposition considers that our amendment imposes fair and reasonable obligations on applicants without the risk of later interpretations of the wording which could create unduly onerous obligations at the stage of making the claim. The Opposition opposes the Government's amendment. We notice that the Australian Democrats have the same amendment as the Opposition. If our amendment is lost (and it does not look as though it will be) we would prefer the Government amendment to the existing clause.

The Hon. K.T. GRIFFIN: I should make a couple of observations on the amendment moved by the Leader of the Opposition. If one looks at it, the applicant is required to provide information known to the applicant after reasonable inquiry. It is arguable whether that means that already information which is known without inquiry should be made available, and the Government takes the view that it is ambiguous in that respect. The Government thinks that the claimant ought to be required to provide the information and also to make some effort to find out what is available in public records in relation to the matter. Again, the problem with the Opposition's amendment, which it might be argued is a problem with the Government's amendment, is what is 'reasonable inquiry'? The same sorts of arguments might be made against that as are being made against the Government's amendment. At least we limit it to public records.

What is 'reasonable inquiry' and what information should be accessed, both public and private? Should there be searches at the museum in relation to material which is not on the public record? What we had in mind with public records was that there would be, in some respect, a land tenure history search which can be reasonably readily ascertained from the public record. We are not looking to require a reasonable inquiry at the museum. We are not looking in relation to information which is not on the public record. There are those sorts of issues which arise under both propositions. I come back to the point I made at the beginning. I think that ultimately this will be, to some extent, resolved by rules of court which might be promulgated. They are subject to disallowance but they would seek to define the sort of information which may be required at each stage of the process.

The Government was trying to acknowledge that there may be a problem about the breadth of what we have: information which is reasonably ascertainable by the applicant. I would have thought that 'reasonable inquiry' can probably be regarded as being on an almost equal pegging. That was the dilemma we had and we recognised that, at least initially, it should not be a hugely onerous task imposed upon applicants. After all, they are seeking to establish native title and ultimately there may be significant onus placed upon them, but initially with the application we are saying that the information is on public records and 'records' is to be distinguished from 'publicly accessible information' which may not be records and also information which is known to the applicant. That is the basis for the preference of the Government, which I have indicated, and that is for the amendment which we are proposing. It covers the two areas: information known to the applicants and information reasonably ascertainable from public records.

Hon. K.T. Griffin's amendment negatived; Hon. Carolyn Pickles's amendment carried.

The Hon. K.T. GRIFFIN: I do not intend to divide on some of these issues: the record will show the relative positions. There are some issues, as did the first major one before the dinner break, which require a division. It may be possible to reach some compromise on this but it will end up being at a conference anyway, and it is important to therefore recognise that that is not acceptable to the Government but we will consider it further. I move:

Page 10, lines 19 to 23—Leave out subclause (5) and insert—

(5) If, in the Registrar's opinion—

(a) the application is frivolous or vexatious; or

(b) the application cannot be made out for obvious reasons,

the Registrar must refer the application to a Judge of the ERD Court, or at the direction of the Judge to a Master of the ERD Court, and, if the Judge or Master agrees with the Registrar's assessment of the application, the Registrar must reject the application but, if the Judge or Master does not agree, the Registrar must register the claim.

The amendment provides that the claim must be registered if the Master disagrees with the Registrar's assessment that a claim is frivolous, etc. It also requires that the matter be referred to a judge or at the direction of a judge to a master. The amendment was made at the request of the ERD Court to cater for the situation where the court may not have the services of a master to it, so it is essentially procedural.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment. We have also been advised that due to limited resources it may not always be possible to have a master available to preside in the Environment, Resources and Development Court, and we believe this amendment allows for some flexibility.

Amendment carried; clause as amended passed.

Clause 19 passed.

Clause 20—'Application for native title declaration.'

The Hon. CAROLYN PICKLES: I move:

Page 11, line 13—Leave out 'reasonably ascertainable by the applicant', and insert 'known to the applicant after reasonable inquiry'.

This amendment is consequential on my amendment to clause 18.

The Hon. K.T. GRIFFIN: I will not move my amendment if only for the reason that I acknowledge that this is the same issue on which I was defeated in relation to clause 18, and it will be taken up again later.

Amendment carried; clause as amended passed.

New clause 20A—'Concurrent proceedings.'

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

Page 11, after line 26—Insert new clause as follows:

20A. (1) If a non-claimant application is made under this Act, and there is a concurrent claimant application under the Commonwealth Act (accepted before or after the non-claimant application is made)—

(a) the non-claimant application under this Act is, to the extent that it relates to the same land as the claimant application, stayed while proceedings based on the claimant application continue; and

(b) to the extent that the non-claimant application relates to land that becomes subject to a native title declaration under the Commonwealth Act, is permanently stayed.

Explanatory note—

A claimant application is an application for a declaration that land is subject to native title made on behalf of the persons who claim to be entitled to the native title by the registered representative of those persons. A non-claimant application is any other application for a native title declaration.

(2) However if a native title declaration under the Commonwealth Act is varied or revoked, the

application revives to the extent that it relates to land that ceases to be subject to the declaration.

This clause is inserted to cater for the situation where a non-claimant application is lodged in the State jurisdiction and a claimant application is lodged in the Commonwealth jurisdiction. It provides that the non-claimant application in the State court is stayed in so far as the claimant application made under the Native Title Act relates to the same land. The Government does not believe that it is necessary to provide that the applications are dismissed nor that a Crown application is entirely dismissed on any claimant application being made for any of the area. The stay of proceedings is as effective as a dismissal of proceedings in protecting the interests of native title claimants.

New clause 20B contemplates that the State Minister and the Commonwealth Minister may enter into a cross-vesting scheme providing for the transfer of proceedings to one or other jurisdiction to avoid multiplicity of proceedings. To that extent, the two clauses are inter-related. It should be noted that the Native Title Act already makes provision for the reverse situation, that is, where a non-claimant application is lodged in the Commonwealth jurisdiction and a claimant application is lodged in the State jurisdiction. In that event, section 67(2) provides that the non-claimant application yields to the claimant application.

The Hon. CAROLYN PICKLES: The Attorney has described in detail some of the notes I have before me. The Opposition is pleased to support the amendment.

New clause inserted.

New clause 20B—'Cross-vesting scheme.'

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

Page 11, after line 26—Insert new clause as follows:

20B. (1) For the purpose of avoiding multiplicity of proceedings, the State Minister and the Commonwealth Minister may enter into an arrangement (a 'cross-vesting scheme') providing reciprocal powers for the transfer of proceedings involving native title questions between the Court and Commonwealth authorities with power to adjudicate on native title questions.

(2) If proceedings are transferred to a Commonwealth authority under a cross-vesting scheme, the Commonwealth authority has, subject to the conditions of the scheme, jurisdiction to decide native title questions and also other questions arising in the proceedings.

I have already spoken to this clause.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

New clause inserted.

Clause 21—'Hearing and determination of application for native title declaration.'

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

Page 11, after line 30—Insert—

(1a) The following are interested persons—

(a) the registered representative of claimants to native title in the land; and

(b) a person whose interests would be affected by the existence of native title in the land (including a person who proposes to carry out mining operations on the land); and

(c) a representative Aboriginal body; and

(d) the State Minister; and

(e) the Commonwealth Minister; and

(f) any other person who, in the court's opinion, may be in a position to contribute to the proper resolution of the questions at issue.

This amendment lists the interested persons who may be heard on a native title declaration. It includes all the usual parties such as the representative Aboriginal body, the State and Commonwealth Ministers, etc., and also any person who, in the court's opinion, may be in a position to contribute to the proper resolution of the questions at issue. This amendment is similar to the one which I moved in relation to clause 16 but not identical because we have added in paragraph (f) to give additional breadth which we believe is important in the context of the consideration of determinations of applications for native title declarations.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

Amendment carried.

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

Page 11, lines 31 to 35, page 12, lines 1 and 2—Leave out subclause (2) and insert—

(2) If, after hearing the evidence and submissions, the court is satisfied that native title exists in the land or a particular part of the land, the court must, on the application of the representative of the claimants to native title in the land—

(a) define the land in which the native title exists; and

(b) state who holds the native title; and

(c) define the nature and extent of the rights and interests conferred by the native title and, in particular—

(i) state whether the native title confers rights to the possession, occupation, use and enjoyment of the land to the exclusion of all others; and

(ii) state the rights and interests of the holders of the native title that the court considers to be of importance; and

(d) state the nature and extent of other interests in the land that may affect the native title or rights and interests deriving from the native title.

The clause has been amended to replicate more closely the provisions of section 225 of the Native Title Act. That section defines what amounts to a determination of native title. The provision as proposed to be amended now reproduces all the requirements in the Commonwealth provision as to what comprises a determination of native title.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

Amendment carried; clause as amended passed.

Clause 22—'Registration of representative.'

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

Page 12, lines 21 and 22—Leave out subclause (2) and insert—

(2) A body corporate—

(a) is not eligible for nomination as the registered representative of the holders of native title in land unless it complies with the principles of eligibility prescribed by regulation; but

(b) if it does comply with the principles of eligibility—may be the registered representative of different groups of Aboriginal people who hold different rights and interests in the same land or who hold rights and interests in different land.

This amendment contemplates that a body corporate can be nominated to be the registered representative of the common law holders of native title only if it complies with principles of eligibility prescribed by regulation. The regulations have not yet been prepared, but it is intended that the matters prescribed in the regulations will be to the same or similar effect as the relevant provisions of the Native Title Act (in particular, section 56(4)) and Commonwealth regulations. This provision, as proposed to be amended, also allows for the possibility of a body corporate being the registered representative of different groups of Aboriginal people who hold rights and interests in the same land or even in different

land. This can happen only with the consent of the relevant common law holders.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

Amendment carried.

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

Page 13, lines 3 and 4—Leave out 'in whom native title is vested' and insert 'who are recognised at common law as the holders of native title in land'.

The amendment is proposed in order to refer to a representative of the common law holders rather than to a representative of the persons in whom native title is vested, as the native title may be vested in the registered representative as trustee.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

Amendment carried; clause as amended passed.

Clause 23 passed.

Clause 24—'Merger of proceedings.'

The Hon. SANDRA KANCK: This clause provides that separate proceedings for the same land should be heard together unless there is good reason for them to be heard separately. What sort of circumstances would constitute good reason, and who would make that decision?

The Hon. K.T. GRIFFIN: It is quite obvious that, if there are separate proceedings in which the native title declarations are sought, they should be heard together because they might impinge upon the other. So they must be heard together. What we have sought to do is provide some flexibility so that the court makes the decision based on all the information which it has; for example, it may be that the parties are at loggerheads. It may be that there is only a small part of the land which overlaps, in which event it may be appropriate to deal with them separately. In the application of this legislation, I suppose it may well be that there are lots of other unforeseen reasons why the court may decide that, in the circumstances of that matter it has before it, they should be heard separately. There are some reasons which I have indicated where the court may decide that it is appropriate to hear them separately. We have left the discretion to the court to make that judgment, which we think is appropriate.

Clause passed.

Clause 25 passed.

Clause 26—'Service on native title holder where title registered.'

The Hon. CAROLYN PICKLES: I move:

Page 14, lines 4 to 7—Leave out subclause (1) and insert:

(1) If native title is registered under the law of the Commonwealth or the State, a notice or other document is validly served on the holders of the native title if the notice or other document is given personally or by post to—

(a) their registered representative; and

(b) the relevant representative Aboriginal body for the land.

The Opposition moved this amendment in another place. The Government has now agreed with the Opposition's position and has the same amendment. I urge members to support it.

The Hon. K.T. GRIFFIN: I support the amendment; it is identical to the one that I have on file. It has to be recognised that we have taken it a step further because we are now seeking later to put in a new clause 26A. It is related to the new definition of 'registered representative' of registered claimants in clause 3. Both this amendment and new clause 26A provide that the relevant representative Aboriginal body will always be served where the registered representative of native title holders is served, that claimants may be served by serving their registered representative. Clause 26 now relates solely to the holders of native title, and new clause 26A, which we will get to shortly, relates to claimants. On the basis of that development of it, as I said, I indicate support.

The Hon. R.D. LAWSON: This clause speaks of a native title being registered under a law of the Commonwealth. Is it the case that under the Commonwealth legislation there is any registration of native title? There are certainly determinations of native title, but I had understood that the Commonwealth deliberately eschewed adopting the language of registration, because, of course, it has no constitutional power in relation to registration of title; but I may be wrong.

The Hon. K.T. GRIFFIN: Section 192 of the Commonwealth Native Title Act establishes a register known as the National Native Title Register. Section 193(1) provides that the register must contain the information set out in subsection (2) in relation to the following: approved determinations of native title by the National Native Title Tribunal, the Federal Court or the High Court; approved determinations of native title by registered State or Territory bodies; other determinations of or in relation to native title in decisions of courts or tribunals. Subsection (2) provides that the register is to contain the following information in relation to each determination. It sets out the name of the body that made the determination, the date on which the determination was made, the area of land or waters covered by the determination, the matters determined, including who are the common law holders of the native title area, the name of the prescribed body corporate that holds the native title rights and interests on trust, and the name and address of the prescribed body corporate determined under section 56 or 57 in relation to the native title. Subsection (3) provides:

The Registrar may include in the register such other details about the determination or decision as the Registrar thinks appropriate.

So this is aiming to refer particularly to the native title registered under law of the Commonwealth, in the context of that provision to which I have just referred. That then addresses the issue adequately.

Amendment carried; clause as amended passed.

New clause 26A—'Service on native title claimants.'

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

Page 14, after line 17—Insert new clause as follows:

26A. If a claim to native title is registered under the law of the Commonwealth or the State, a notice or other document is validly served on the claimants to that native title if the notice or other document is given personally or by post to—

(a) their registered representative; and

(b) the relevant representative Aboriginal body for the land.

This new clause, as I have already said, deals solely with service on claimants. Claimants may be served by serving their registered representative and the relevant representative Aboriginal body for the land. I would suggest it is a sensible amendment and is consistent with the effect of the definitions of 'registered native title claimant', 'native title party' and sections 29(2) and 30 of the Native Title Act.

The Hon. CAROLYN PICKLES: The Opposition supports the new clause.

New clause inserted.

Clause 27—'Service where existence of native title or identity of native title holders uncertain.'

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

Page 14, line 23—Insert 'registered representatives of' after 'all'.

This relates to earlier amendments. It is to cure a drafting anomaly in existing clause 27(1)(a)(ii) to require service on

the registered representative of claimants rather than on all the claimants individually.

The Hon. CAROLYN PICKLES: I support the amendment.

Amendment carried; clause as amended passed.

Clauses 28 to 35 passed.

Clause 36—'Confirmation.'

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

Page 18, lines 15 to 21—[Omit footnote] Insert—

(5) Nothing in this section—

(a) extinguishes or impairs native title; or

(b) affects land or an interest in land held by Aboriginal peoples under a law that confers benefits only on Aboriginal peoples.

This amendment makes the footnote to the heading of clause 36 an operative part of the clause by incorporating it as subclause (5). It reproduces the content of section 212(3) of the Native Title Act in case the States have a power to confirm independently of section 212.

The Hon. CAROLYN PICKLES: We support the amendment.

Amendment carried; clause as amended passed.

Clause 37, schedule and title passed.

Bill read a third time and passed.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT (NATIVE TITLE) AMENDMENT BILL

In Committee.

Clauses 1 to 7 passed.

Clause 8—'Transfer of cases between the Court and Supreme Court.'

The Hon. SANDRA KANCK: I move:

Page 3, line 15—Leave out paragraph (a).

I believe that paragraph (a) is superfluous. It is covered in clause 6 of the Native Title Bill. When we were dealing with that Bill earlier this evening I asked the Attorney-General about the duplication of clause 6 with regard to clause 8 of this Bill. I assume, from the answer that I received from the Attorney-General, that he will reject my amendment. The code in clause 6 of the Native Title Bill is a more complete code. It explains with greater clarity what will happen and how it will be used. I believe that there is the possibility that someone reading the ERD Court Bill may become confused. If the Attorney-General rejects my amendment, could he consider the introduction of a footnote 4(a), indicating that people consult Part 3, Division 1 of the Native Title (South Australia) Act.

The Hon. K.T. GRIFFIN: I oppose the amendment. I have spoken about the relationship of this provision to the previous Bill. I make the point that I made earlier, that this is here to assist rather than hinder and confuse. I do not think that there would be any difficulty in putting in a footnote which would help the cross-referencing process. That can be done by Parliamentary Council in the final preparation of the Royal Arms Bill which is assented to. I will arrange for that to be done.

The Hon. CAROLYN PICKLES: The Opposition moved similar amendment in the other place. Following discussions with an officer from the Attorney's office, we realise this is no longer necessary. We are grateful that the Attorney has agreed with a footnote to clarify the issue.

Amendment negatived; clause passed.

Title passed.

Bill read a third time and passed.

LAND ACQUISITION (NATIVE TITLE) AMENDMENT BILL

In Committee.

Clauses 1 to 4 passed.

Clause 5—'Amendment of s.6—Interpretation.'

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

Page 2, after line 21—Insert:

(f) by inserting after its present contents (now to be designated as subsection (1)) the following:

(2) An explanatory note to a provision of this Act forms part of the provision to which it relates.

This amendment is similar to one I moved to the Native Title (South Australia) Bill and it relates to explanatory notes which, for the purposes of this Bill also, will be part of the provisions to which it relates and that puts the issue beyond doubt. If there is ever a dispute about it in the court, the court does not have to make a judgment as to whether it is a footnote or explanatory note, whether they are the same or different; and whether or not it is part of the provisions to which it relates. This puts it beyond doubt.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

Amendment carried; clause as amended passed.

Clause 6 passed.

Clause 7—'Notice of intention to acquire land.'

The Hon. CAROLYN PICKLES: I move:

Page 3, lines 8 to 13—Leave out proposed subsection (2) and insert—

(2) If the Authority proposes to acquire native title in land, the Authority must—

(a) if there is a registered representative of the native title holders—give notice of intention to acquire the land to the registered representative and the relevant representative Aboriginal body; or

(b) if there is no registered representative of the native title holders—give notice of intention to acquire the land to all persons who hold, or may hold, native title in the land[1] and give a copy of the notice to the Registrar of the ERD Court.

[1]For method of service see Native Title (South Australia) Act 1994.

The Opposition moved this amendment unsuccessfully in another place. The Government now has the same amendment on file. It includes the drafting of clause 7a, which contains replacements for subsections 10(1) and (2) of the Land Acquisition Act. It also includes reference to the relevant representative Aboriginal body, which I am sure will please all Aboriginal groups. Presumably the Attorney will support my amendment.

The Hon. K.T. GRIFFIN: Again I support the amendment as it is identical to the one I have on file. As the honourable member says, it provides for notification to be given to the registered representative of the native titleholders and the relevant representative Aboriginal body. That facilitates the issue of service.

Amendment carried; clause as amended passed.

Clause 8—'Explanation of acquisition scheme may be required.'

The Hon. CAROLYN PICKLES: I move:

Page 3, after line 28—Insert—

(1a) For the purposes of this section—

(a) the registered representative of claimants to, or holders of, native title in land is taken to have an interest in that land; and

(b) the relevant representative Aboriginal body is taken to have an interest in native title land.

Similarly the Opposition sought to move this amendment in another place and the Government has now agreed to support our amendment and has on file a similar amendment. My amendment effectively allows registered representatives of payments and relevant representatives of Aboriginal bodies to require the authority compulsorily acquiring land to provide an explanation of the reasons for the acquisition of a particular piece of land. On request by one of these groups the acquiring authority must also provide reasonable details of any statutory scheme in accordance with which the land is to be acquired. The amendment takes the place of the footnote, which is the subject of the following amendment.

The Hon. K.T. GRIFFIN: I indicate support for the amendment. I also have the same amendment on file and it is perfectly reasonable.

Amendment carried.

The Hon. CAROLYN PICKLES: I move:

Page 3, lines 32 to 34—[Omit footnote].

Footnotes do not have the force of legislation. Parliamentary Counsel has therefore put the substantive material of this footnote into the Bill via the previous amendment.

The Hon. K.T. GRIFFIN: We support it.

Amendment carried; clause as amended passed.

Clause 9—'Right to object.'

The Hon. CAROLYN PICKLES: I move:

Page 4, after line 12—Insert—

(la) For the purposes of this section—

(a) the registered representative of claimants to, or holders of, native title in land is taken to have an interest in that land; and

(b) the relevant representative Aboriginal body is taken to have an interest in native title land.

Similarly this amendment provides for registered representatives of payment or holders of native title and the relevant representative Aboriginal body to have the right to object to certain acquisitions of land.

The Hon. K.T. GRIFFIN: We support it.

Amendment carried.

The Hon. CAROLYN PICKLES: I move:

Page 4, lines 28 to 30—[Omit footnote].

Amendment carried; clause as amended passed.

Clause 10 passed.

Clause 11—'Notice of acquisition.'

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

Page 5, lines 24 and 25—Leave out'from when notice of intention to acquire land was given' and insert'from the last occasion on which notice of intention to acquire was given to a person'.

The amendment replaces the footnote with a substantive provision that clarifies that time begins to run after notice of intention to require is last given. It is for the removal of doubt and should not be contentious. It is perhaps not framed in the same language as in relation to the first Bill to avoid doubt, but that is really the object of it.

The Hon. CAROLYN PICKLES: We support it.

Amendment carried.

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

Page 5, lines 27 and 28—[Omit footnote].

This is the footnote to which I have referred.

Amendment carried.

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

Page 5, after line 28—Insert—

(1a) If the notice of acquisition relates to native title land, the notice of acquisition must contain an explanation of what may happen if no claim for compensation is made by a person claiming native title in the land within two months after the date of publication of the notice of acquisition.1

1.See section 23D.

The amendment is proposed to be made in order to ensure that it is clear on the face of the notice given under clause 16(6) that if no claims are brought within two months the authority may apply under section 23D for *inter alia* a declaration that the land was not subject to native title at the time of the acquisition. This amendment was specifically sought by the Commonwealth.

I made the point earlier that Government officers have been in close consultation with Commonwealth officers in relation to the Bills and there has been consultation in relation to amendments. Generally speaking, Commonwealth officers are supportive of the whole scheme and the way in which we are proposing to put it in place. This is one the amendments that was specifically sought.

The Hon. CAROLYN PICKLES: I support the amendment.

Amendment carried.

The Hon. CAROLYN PICKLES: I move:

Page 6, lines 2 to 9—Leave out proposed subsection (3a) and insert—

(3a) However, the acquisition of land under this section is subject to the non-extinguishment principle so that the acquisition does not, in itself, extinguish native title in the land but native title is extinguished when the Authority, in giving effect to the purpose of the acquisition of the land, exercises rights obtained by the acquisition in a way that is wholly inconsistent with the continued existence, enjoyment or exercise of rights deriving from the native title.

Explanatory note

The non-extinguishment principle is the principle set out in section 238 of the Native Title Act 1993 (Cwth).

The background is the scheme of the Land Acquisition Act. Normally property is forfeited immediately upon the Government's gazetting the acquisition. Special provision is made here for native title. The Government amendment in conjunction with clause 11 of the Bill as it stands means that there would be two possible cases when considering the effect of an acquisition of land on native title rights. First, the Government says that there might be acquisitions where the purpose of the acquisition necessarily involves a right to exclusive possession of the land such as where the Government proposes to set up a rifle range or store uranium. In such cases the Government version dictates that native title is extinguished immediately upon the acquisition taking place, but the Government also envisages a second situation where native title is extinguished only where the acquiring authority exercises its right over the land in a way inconsistent with the continued existence of native title.

If our amendment fails we believe that there is bound to be litigation about the meaning of the purpose of the acquisition being to obtain a right to exclusive possession. We believe it is a nonsense, because rarely does a Government want to take over land simply to own it: it wants to do something on it or with it.

The Government amendment does not improve matters much; it also ensures litigation in the full Supreme Court and possibly the High Court. What is a purpose which necessarily involves the right to exclusive possession? We would prefer to see native title rights continuing until the land is actually used in a way inconsistent with the continued enjoyment of native title rights. That is what our amendment achieves. If

it is adopted then the extinguishment principle set out in section 238 of the Commonwealth Act can readily apply.

If the Government acquires land for any particular purpose and the purpose is not ultimately fulfilled, if Government plans are not acted on, the native title rights, to the extent that they might be temporarily impaired as a result of the Government's acquisition, are able to revive.

The Government will say that our amendment is unworkable because compensation becomes payable upon acquisition of the land according to the general scheme of the Land Acquisition Act. If compensation is to be determined upon acquisition of the land and acquisition itself does not extinguish native title, how is the compensating authority to determine the loss? We can say only that the compensating authority would be best to delay the decision as to compensation until the Government starts using the land in accordance with the purpose for which it was acquired. At that point, the loss of the native title rights should become apparent. Alternatively, we would say that it is not impossible for compensation to be determined, although there may ultimately be no loss or little loss. It is no different in principle to taking account of contingencies in personal injury cases, where the future implications of a particular injury are unknown at the time at which damages are assessed.

One of the main problems with the Government version of this clause is that if acquisition immediately extinguishes native title then continuance of traditional Aboriginal pursuits could become illegal, for example, trespass on the land to hunt kangaroo or to gather food. This is seen as unjust, particularly since the purpose for which the land is obtained may never be carried out. Incidentally, the farmers would complain in this situation that native title holders should receive no special consideration under the law of land acquisition. The farmers would prefer to stay in their homestead, for example, until the freeway was built across their land; that is, instead of the present situation, where the farmer must vacate his or her property immediately upon Government acquisition of his or her land—in this example for the building of a freeway.

Ultimately, our position is that native title should not be extinguished legally or in practice unless there is a compelling reason to do so. We will test our amendment and if it is not supported then we will support the Government's amendment, because we believe it would make more sense of the clause as it stands at the present time.

The Hon. K.T. GRIFFIN: I suggest that the Opposition's amendment would make compulsory acquisition basically unworkable where it involved land—

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: It will. I think you have to understand the scheme of the Land Acquisition Act, which endeavours to recognise interests properly. However, the moment notice of acquisition is gazetted the interest in the land is lost and compensation is paid over. The problem is that if you still allow native title to exist then at what point does the notice of acquisition operate? With respect, it really is a nonsense and we just cannot support this proposition.

Our amendment, which I will move, is designed to improve the drafting. It provides that native title is extinguished when the authority takes possession of the land if the purpose of the acquisition necessarily involves a right to exclusive possession. The amendment is aimed at excluding a possible technical argument that the purpose of an acquisition is not to obtain a right to exclusive possession but rather to build a freeway or whatever.

I think one has to recognise also that, in the context of the Land Acquisition Act, what we have been driving for is a position where all interests are treated equally so that there is no discrimination against one interest or another. Yet, the Opposition's amendment will, if one can interpret it (and that is not a criticism of the Opposition; is it a criticism of the Commonwealth Act that no-one really knows what it means), be unworkable in the context of our Land Acquisition Act because it allows interests to exist. If that occurs then it is discriminatory in relation to some interests as opposed to others.

The Government's advisers have sought to reproduce the effect, as best they can, of section 23(3) of the Native Title Act, which provides that the non-extinguishment principle applies to the compulsory acquisition of native title interests. However, on the other hand, acts done in giving effect to the purpose of the acquisition can extinguish native title. Neither the Commonwealth nor anyone else seems to know how the non-extinguishment principle is meant to operate in conjunction with the land acquisition process.

Quite clearly, the Commonwealth legislation envisages that there will compulsory acquisition of native title rights. However, of course, it has to be done in a fair, reasonable and proper way. That is what our provision and the amendment that we are moving seek to do. Clearly, if the purpose of the acquisition is to obtain or, as our amendment says, necessarily involves the authority's taking exclusive possession of the land, native title should be extinguished at that time and not at some indeterminate point in the future.

The existing philosophy and framework of the Land Acquisition Act—and one has remember that this is how it is addressed—is predicated on this assumption. For example, the land vests in the authority upon gazettal of the notice of acquisition and the authority pays over its offer of compensation as soon as the notice of acquisition is published. So, you have the gazettal and the payment of compensation. You may argue about whether or not that is fair and reasonable, but the fact of the matter is that that has been the law in South Australia for quite a long time. It applies equally to all interests in that land.

In the context of this provision, you can hardly have the notice of acquisition being gazetted, the authority's paying over compensation, but the interest not being extinguished. With respect, it makes a nonsense of the process.

The Opposition's amendment would really reintroduce the confusion that is inherent in the Commonwealth Act. My information is that, at least in discussions, the Commonwealth officials appear to have accepted that our provision makes more sense than the provisions in the Native Title Act. One must recognise that, to the extent that it does differ from the Native Title Act provisions, the Native Title Act provisions will prevail due to section 109 of the Constitution, which relates to inconsistency, provided, of course, that a court is able to interpret the meaning of the Commonwealth provision and, of course, provided that it is constitutionally valid.

We have tried to put some certainty into the process and not have this sort of lingering doubt—perhaps not a doubt but something more certain than that—hanging around where there is compulsory acquisition. That is the problem: the Opposition's amendments are unworkable, just as the Commonwealth Act is unworkable, and no-one can seem to interpret it. If the Opposition can come up with clearer drafting to address the issue but retain the certainty that we say we have included in the Bill and in the amendment that

I am moving, then we are happy to look at it. But the Commonwealth provision is a nonsense. No-one knows what it means, and it does not seem to us to be reasonable or sensible that we embark upon a recognition of that, really reinstating the uncertainty which there is no need to reinstate in State legislation.

The Hon. SANDRA KANCK: We will be supporting the amendments of the Hon. Carolyn Pickles and not those of the Hon. Trevor Griffin.

The Hon. K.T. GRIFFIN: I can see where the numbers are. I do not intend to divide, but I still vigorously put my point. Quite obviously, this will be discussed again at a later stage this week with a view to trying to resolve the issue. I just repeat: the Commonwealth legislation is, with respect, a nonsense.

Amendment carried; clause as amended passed.

Clauses 12 and 13 passed.

Clause 14—'Substitution of sections 18 to 23.'

The Hon. CAROLYN PICKLES: I move:

Page 7, lines 6 to 9—Leave out proposed section 18 and insert—

Application of division

18. This division applies if an authority proposes to acquire native title land for the purpose of conferring rights or interests on a person other than the Crown.

It is very important that the compensation and acquisition laws such as concern native title are activated when land is acquired for the purpose of conferring rights or interests on a person other than the Crown. We would use 'conferring' rather than 'transferring', because there are some interests in land that may not have previously existed and, therefore, cannot be transferred. For example, the Government might want to acquire land in order that a statutory corporation or an individual could come onto the land to take certain fruits or produce from the land. In legal terms, this would be conferring a *profit a prendre*.

Another example would be where a petroleum company actually becomes the acquiring authority under the provisions of the Petroleum Act with the purpose of conferring the right to build a pipeline to a subsidiary company. Rights would arguably be conferred without being transferred. We have used the phrase 'a person other than the Crown' in deference to section 26(2) of the Commonwealth Native Title Act. That subsection concerns similar subject matter and refers to persons other than the Government Party, which is elsewhere defined as 'the Crown'. In response to the Government's amendment to clause 14, we particularly object to the restriction of this division of the Land Acquisition Act to cases where the acquiring authority proposes to acquire land for statutory authorities or other instrumentalities of the Crown.

The trend these days is for statutory corporations to be given a very long leash and, in most of their operations, they can be indistinguishable from other public companies in the same field. Therefore, there is no good reason why statutory authorities should be able effectively to avoid the negotiation procedures simply because they are statutory corporations or otherwise instrumentalities of the Crown.

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

Page 7, lines 7 to 9—Leave out all words on these lines and insert—

This division applies if an authority proposes to acquire native title land for the purposes of transferring the land, or an interest in the land, to a person who is neither the Crown nor an instrumentality of the Crown.

I move my amendment and indicate a preference for that. It clarifies that the whole of division 1 of part 4 applies only to native title land, and that has now been addressed by the Hon. Carolyn Pickles. It also replaces what was in the footnote with a substantive part of the section, namely, that the division applies where an interest in the land will subsequently be conferred on a person who is not the Crown or an instrumentality of the Crown. It is acknowledged that the Hon. Carolyn Pickles's amendment more closely mirrors the wording of section 26(2) of the Native Title Act, but we say that it is too broad and, of course, does not pick up what is in the footnote and what is proposed to be inserted in our provision, that is, a reference to an instrumentality of the Crown, which we think needs to be there.

It limits it to transferring the land or an interest in the land rather than conferring rights or interests. I suppose one must question whether transferring is actually covered by conferring of rights or interests. Again, it may be that this is an issue that we can resolve at a subsequent stage, because we are not that far apart although we are sufficiently far apart for me to indicate preference for the Government's amendment.

The Hon. CAROLYN PICKLES: Just for the record, we oppose the Government's amendment but we are prepared to discuss this further and urge members to support our amendment.

The Hon. SANDRA KANCK: We have a similar amendment on file to that of Ms Pickles and will be supporting her amendment and not the Attorney-General's.

Hon. Carolyn Pickles's amendment carried.

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

Page 7, after line 13 (new section 19)—Insert—

Explanatory note—

The native title parties are the persons who are, at the end of the period of two months from when notice is given under subsection (1), registered under the law of the State or the Commonwealth as holders of, or claimants to, native title in the land. The negotiations are to be conducted with the registered representatives of those persons.

The explanatory note replaces the footnote that previously explained who the native title parties are. The description of the native title parties is consistent with the Native Title Act.

The Hon. CAROLYN PICKLES: We support the amendment.

Amendment carried.

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

Page 7, lines 19 to 21 (new section 19)—[omit footnote]

This omits the footnote and is consequential on the earlier amendment.

The Hon. CAROLYN PICKLES: We support the amendment.

Amendment carried.

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

Page 7, lines 26 to 28 (new section 20)—Leave out proposed subsection (2) and insert—

(2) On an application under this section, the ERD Court may determine whether the authority may acquire the land and, if so, the conditions on which the acquisition is to proceed (but compensation is not to be determined at this stage). 1

1. Compensation is determined under division 2 of part 4.

This amendment is to ensure that compensation is not determined at the stage of an application to the court for a determination about whether or not an acquisition for a private purpose may go ahead. It is only if that question is decided in the affirmative that compensation becomes an issue that is dealt with under Division 2 of Part 4. I suggest that the amendment ought not be contentious.

The Hon. CAROLYN PICKLES: We support the amendment.

Amendment carried; clause as amended passed.

Clause 15—'Registrar to be informed of applications, etc., involving native title questions.'

The Hon. CAROLYN PICKLES: I move:

Page 11, after line 2—Insert paragraph as follows—

(c) by inserting after its present contents (now to be designated as subsection (1)) the following:

(2) If native title land is acquired from native title holders, the native title holders must be compensated for the loss, diminution, impairment or other effect on the native title of the acquisition or the consequent use of the land for the purpose for which it was acquired.[1.]

1. Compare section 51(1) of the *Native Title Act* 1993 (Cwth).

There is clearly a tension between the obligation on the part of South Australia to compensate justly for loss or impairment of native title on compulsory acquisition of land as against the existing compulsory acquisition of land compensation scheme set out in the Land Acquisition Act. The theme of the present Act is to create a clean break when land is acquired. It is acquired in a very simple fashion. Compensation then becomes payable and is to be assessed as at the date of acquisition. The difficulty as we see it with native title as previously discussed in relation to clause 11 is that land might be acquired without the native title rights necessarily being extinguished, although subsequent use of the land by the acquiring authority in accordance with the purpose for which the land is acquired could well destroy or impair native title rights. It is therefore essential to import the notion of future loss or likely loss into the principles of compensation set out in section 25 of the principal Act. We have done this by reference to the consequent use of the land after acquisition has taken place.

The reference to loss, diminution, impairment or other effect on the native title reflects section 51 of the Commonwealth Native Title Act which deals with just compensation. I believe that this is an important amendment. It will signal to the courts, when they come to interpret the difficult grafting of native title compensation, principles onto the existing Land Acquisition Act, such that there is no risk of compensation for extinguished native title rights being partially minimised simply because the native title rights were not immediately lost or impaired upon acquisition of the land.

The Hon. K.T. GRIFFIN: This is an identical amendment to that which I have on file and I quite obviously support it. It is important to recognise that the new subsection applies only to native title interests, and it is appropriately geared toward compensating native titleholders for the loss of their interests in land.

Amendment carried; clause as amended passed.

Clauses 16 to 19 passed.

Clause 20—'Application for native title declaration.'

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

Page 12, lines 23 to 30 (new section 28A)—Leave out proposed subsections (1) and (2) and insert—

(1) Before the Authority, or a person authorised by the Authority, enters native title land to exercise a power conferred by this Part, the Authority must give written notice of the intended entry and the nature of the work to be carried out on the land to all who hold or may hold native title in the land.[1.]

(1a) The notice must be given—

(a) if the intended exercise of powers involves the removal of minerals from the land, or substantial interference with the land or its use or enjoyment—at least two months before entry;

(b) in other cases—at least seven days before entry.

(2) If the intended exercise of powers will involve the removal of minerals from the land, or substantial interference with the land or its use or enjoyment, the Authority must negotiate in good faith with the native title parties in an attempt to reach agreement on the conditions on which the Authority may enter and use the land.

Explanatory note—

The native title parties are the persons who are, at the end of the period of two months from when notice is given under subsection (1), registered under the law of the State or the Commonwealth as holders of, or claimants to, native title in the land. The negotiations are to be conducted with the registered representatives of those persons.

This clause is proposed to be amended to clearly provide that in the event that there will be a removal of minerals or substantial interference with the use and enjoyment of the land, two months' notice must be given where an authority intends to enter on native title land to temporarily use and occupy it. That is covered by proposed subclause (1a). Where there will be no removal of minerals from the land and no substantial interference with its use and enjoyment, a seven day period is prescribed. It has to be noted that this is the same as for non-native titleholders. As I have indicated throughout the debate on this package of Bills, the Government sought to ensure that there was, as much as possible, equal treatment for all holders of interest in land. Where there will be removal of minerals or substantial interference, negotiations are required. In all respects, the authority must negotiate in good faith.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

Amendment carried.

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

Page 13, lines 7 to 9—[Omit footnote 2]

This amendment is to omit the footnote which is now covered by the explanatory note in the previous amendment.

Amendment carried; clause as amended passed.

Clauses 21 to 24 passed.

Clause 25—'Protection of native title from encumbrance and execution.'

The Hon. K.T. GRIFFIN: I indicate opposition to clause 25. It gave rise to a great deal of confusion. The Government takes the view that we are better off without it because no-one will be prejudiced.

Clause negatived.

Title passed.

Bill read a third time and passed.

CORRECTIONAL SERVICES (PRIVATE MANAGEMENT AGREEMENTS) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General): I have to report that managers for the two Houses conferred together at the conference, but no agreement was reached.

The PRESIDENT: As no recommendation from the conference has been made, the Council, pursuant to Standing Order 338, must either resolve not to further insist on its amendments or lay the Bill aside.

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

That the Council do not further insist on its amendments.

It is quite disappointing that both the Opposition and the Australian Democrats could not see their way clear at least to give support to several of the correctional institutions in South Australia being operated by private management. This Bill sought to set in place a framework within which there could be appropriate private sector management of institutions, including the appointment of independent monitors and

other safeguards which would enable the process to be properly managed. The Opposition and the Democrats declined to move in that direction, even though it was clearly indicated that the employees at the Mount Gambier institution had been assisted with a Government grant of, I think, $10 000 to prepare a submission as part of the tendering process, because it was quite clearly indicated that the employees at the Mount Gambier institution, which is the first institution which the Government has in mind to be operated by private management, should be given an equal opportunity to tender for the efficient running of the new prison at Mount Gambier.

Notwithstanding that, the Opposition and the Democrats thumbed their noses at the proposition, I suspect because there is very heavy union pressure upon them, and now the Minister and the Government will have to deal with this on an administrative basis. The advice that has been given to the Minister is that the Government can still undertake private sector management of a substantial part of the institution and other institutions beyond Mount Gambier, and that is the way we will have to go unless there is a change of heart on the part of either the Opposition or the Democrats.

Quite obviously, some significant savings will have to be made in the prison system. During the course of the debate and the consideration of the issue at the conference, the figures were quite clearly identified. The costs incurred in caring for prisoners and maintaining security in South Australia's public sector run prison system are quite in excess of what is being incurred in other parts of Australia. Information was provided that private sector operators, or even public sector operators, who were successful at the tendering process could get those costs down quite substantially. One must remember that under the previous Government consideration was being given to private sector management of at least parts of the prison system, but the Opposition and the Democrats were not prepared to make any concessions at all in that respect. We suggested that they might decide that they could live with a proportion of institutions being opened up for private sector operation in much the same way as TransAdelaide bus routes, which seemed a quite sensible compromise—to test the process and give the whole transport system an opportunity to respond to the challenge of competition—but the Opposition and the Democrats declined even that opportunity.

The fact of the matter is that, at this stage, the Government only intends to bring private sector management into the new prison at Mount Gambier. It is an ideal opportunity to try out the processes which are in place in other prisons around Australia. Whilst there may have been some concern for the jobs of prison officers and others who work in the Mount Gambier system, one must recognise that we are now confronting that issue in relation to private sector employees with respect to outsourcing. Negotiations have been made in good faith between the Government and the United Trades and Labor Council and trade unions about the way in which this process will be managed and the extent to which those who are already employed within the Government system might retain some protection and have their interests recognised.

The other point that needs to be made is that private prisons are already in operation in other parts of Australia and the world, and no great calamity has occurred in those operations. It is quite clear that even under a Labor Administration Queensland is content to rely to some extent on private sector management of at least several of its institutions. The earth will not open up and the sky will not fall in if we move to some private sector management. In fact, the evidence is quite clear that prisoners will respond more favourably to a privately run prison system because it will be run on the basis of clear performance obligations outlined in the contract with the participating Government, and these performance outcomes will be measured.

The spirit of competition requires success, performance and assessment of performance against established guidelines. That is what makes this 'head in the sand' attitude of the Opposition and the Democrats so difficult to both understand and accept. It is detrimental to the interests of prisoners, prison staff and the wider community. Whilst over the space of, I think, in excess of a week, the Minister for Correctional Services endeavoured to convince the Opposition and the Democrats of the merits of at least going part of the way towards private sector management of our prisons, they could not be persuaded to budge.

They look like they have had their day, unless we are able to persuade them to back away from the position which they have maintained. But in the end, privatisation of prison management and the provision of service to the prison system will go ahead. On the experience in other parts of Australia and overseas, it will be shown quite clearly that the attitude of the Australian Democrats and the Opposition was a very blinkered view of where the prison system ought to be going and that they will regret the conservative approach they have taken to this issue.

The Hon. T.G. ROBERTS: The parameters by which we were negotiating and the differences that were emerging between the Government and the Opposition were not that marked. It was not as though the Opposition was not prepared to look at some of the reform processes that were being negotiated in the prison system and its structure. The suggestions we made to the Government were that the reforms that the Hon. Mr Matthews required were able to be negotiated within the structures that exist at the moment and that he should have been separating out the argument of privatisation from the argument of restructuring and cost savings. It was the view of the Opposition that the Western Australian model, under a Liberal Government, was the model that could have been chosen for South Australia. All those parties involved in prison reform, Correctional Services officers, prisoners and the department, and those voluntary organisations that support and assist in the rehabilitation of prisoners, could have been contacted and negotiations continued, with the intention of bringing about those reforms and cost savings that the Government was after and not sacrificing the programs associated with prison reform, the administration of justice and the carrying out of isolation and punishment that is a part of the prison system.

It is not as though we are comparing the prison system with, say, the issue we had before us prior to the dinner adjournment when we were debating the Electricity Corporations Bill. We are talking not about a statutory authority or a functioning body but about a prison system with people in it. We are talking about a whole history of management structures, rehabilitation, and the administration of punishment and justice. It is not something that the Opposition believes could have been introduced by way of legislation in the short time frames we are talking about. In one of the conferences we offered to the Minister a time frame that would allow for the negotiations to continue with all those people in the prison system to try to get the outcomes he required in prison reform and prison management to allow for

those cuts in expenditures that the Government was indicating, although we were not prepared to write an open cheque for the Government. We were asking him to consider a longer time frame, similar to the one in Western Australia, where those bodies were able to sit around tables and, if there was not a common agreement around outcomes and there was intransigence on the part of some sections of those people involved in prison and prison structure reform, then we could look at and consider our position. That was not an option the Minister considered.

The Minister had already made statements in the public arena that, if the Government could not get its reforms through the Legislative Council, then he would do it by regulation, using the old Act, anyway. So the feeling that the Opposition had was that the Government would not lose anything by losing the Bill and it would not gain anything by putting it through either—if it was able to do it under the existing Act. When we were negotiating the framework we considered allowing for a time frame that we thought was reasonable, and that was not a consideration the Minister was prepared to make. In relation to the cost comparisons we were looking at in terms of our own information, it was very difficult to gauge whether the comparisons of costs between public and private sector management were any different, because it was very difficult to compare apples with apples. It was quite obvious that the new Mount Gambier prison was an ideal prison for a private sector management structure. It was a medium to low security prison, had an extended structure, had bed numbers of over 100, did not present any structural difficulties as far as security was concerned, and was placed in a country area. In my view, that tends to lead to a more restive, less confrontationist position, anyway.

What we expected the Minister to then do is compare the cost of the Mount Gambier prison with the cost of other prisons in the State and then make continual arguments for the privatisation of other systems. The Minister could do that, anyway, and as I said before he did not need the enabling Bill that was before us to be able to do that. He did say that he was disappointed that we did not accept it in the spirit of bipartisanship to allow for an agreed structure to go ahead, which included a monitor that was responsible to the CEO, and the CEO, through the Minister, to the Parliament. He was disappointed that the one arm's length removed management structure would be a structure where he could get those reforms he was talking about away from the publicly owned structure and away from the influencing factor that was adversely affecting prison reform, that is, the PSA.

I do not know why the Mount Gambier Correctional Services officers still cannot tender, but obviously that has been ruled out. Again, it does not make a lot of sense to the Opposition whether a tender will be put in on behalf of a private management structure or on behalf of a public management structure. But apparently the punishment that the Mount Gambier Correctional Services officers will have is that they will no longer be able to tender. In the private sector, there is also privatisation and outsourcing going on, and they have taken a more realistic attitude to the achievable savings, goals and efficiencies that are available through outsourcing. In a lot of cases, many of the large private organisations have felt that they have gone too far in outsourcing and are losing a lot of control over their day to day management structures, so they have started to pull in a lot of the outsourcing programs that they have had running over a period of time and are now starting to expand their core structures rather than move them out.

The other factor that is involved in private outsourcing is that many of the outsourcing programs can be used for prisoner rehabilitation. In the areas of laundry and maintenance services, the preparation of food, and so on, prisoners can be reformed or at least trained and given skills to instil self-worth by using some of those training programs inherent in prison reform to make sure that they are not outsourced but they are kept in-house so they become part of the reform programs.

All these issues were discussed at the conferences, but unfortunately the parameters under which we were negotiating, that is, reforms within a public rather than a private structure, were rejected by the Minister. It was clear that he was not able to move towards our position in any way and that we were not able to move towards his position. The Minister is now left in a position, as he has indicated, where he will administer prisons under a private management system using the current Act. We may see the Bill back before us in nine or 12 months time for reconsideration, as the Government has indicated that it may reintroduce it.

The challenge before the Minister is to obtain the reforms that are required within the prisons system with the cooperation of all concerned—the correctional services officers, the voluntary organisations and the new management system—and in a manner that is conducive to good negotiation through enterprise bargaining. As I said, if it had adopted the Western Australian model the complicating factors and the confrontation which I expect through those negotiations might have been avoided.

The Hon. SANDRA KANCK: Despite what the Hon. Trevor Griffin has said, I believe that at all times the Democrats have acted responsibly and consistently with regard to this issue. We have said all along that prisons privatisation is unacceptable, and we have maintained that position. It is interesting to note that the evidence of the success of private prisons is not there. We have only three private prisons in Australia, one of which is at Junee in New South Wales. Just last week the report of the independent investigation (which is built into legislation in New South Wales) was brought down, and it showed that there were serious deficiencies at Junee in the areas of drug testing, rehabilitation, education and safety. This goes to show that there is nothing intrinsically good in the private running of a prison.

It is ironic that rehabilitation and education—the areas where Junee has been found to be deficient—are the areas that have been used by this Government as the justification to go ahead and privatise prisons. The Democrats have always told the Government that the solution to what is happening in our prisons—the increase in the number of prisoners—is to put more money into rehabilitation, counselling and education, and that that will reduce recidivism. If you have fewer prisoners you will save money—it is quite simple.

It is interesting that the Government continues to be infatuated with privatisation as the answer to all its problems. It is disappointing that the Government went ahead with its privatisation plans two months ago when the Democrats announced that it would not support this legislation. Within an hour or so of my making that announcement the Minister said that he would go ahead and privatise anyway, and that he did not need the legislation. I guess that means that the Minister has made his decision; he made it a number of months ago. So, he is out on his own, and it is on his head if it does not work. He has to bear that responsibility. The

Democrats' position is that some things—police, the judiciary and ultimately our prisons—should not be privatised.

The Council divided on the motion:

AYES (8)

Griffin, K. T. (teller)	Laidlaw, D. V.
Lawson, R. D.	Lucas, R. I.
Pfitzner, B. S. L.	Redford, A. J.
Schaefer, C. V.	Stefani, J. F.

NOES (9)

Crothers, T.	Elliott, M. J.
Feleppa, M. S.	Kanck, S. M.
Pickles, C. A.	Roberts, R. R.
Roberts, T. G. (teller)	Weatherill, G.
Wiese, B. J.	

PAIRS

Davis, L. H.	Cameron, T. G.
Irwin, J. C.	Levy, J. A. W.

Majority of 1 for the Noes.

Motion thus negatived.

Bill laid aside.

CONSUMER CREDIT (CREDIT PROVIDERS) AMENDMENT BILL

Returned from the House of Assembly with amendments.

SECOND-HAND VEHICLE DEALERS BILL

Returned from the House of Assembly with amendments. The House of Assembly drew the attention of the Legislative Council to the amended form in which the schedule, which was referred to the House of Assembly in erased type, had been inserted in the Bill.

LAND AGENTS BILL, CONVEYANCERS BILL AND LAND VALUERS BILL

The House of Assembly intimated that it had agreed to the recommendations of the conference.

Consideration in Committee of the recommendations of the conference.

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

That the recommendations of the conference be agreed to.

On this Bill there were a number of key issues which had to be resolved at the conference. I will briefly identify them, without specifically referring to the amendments by number on the message. The first related to the question whether the Commercial Tribunal or the District Court should be the body to deal with appeals, disciplinary and other matters.

The Government proposed an alternative on the basis that the Commercial Tribunal was not in our view the appropriate body to continue to exercise jurisdiction in relation to the real estate industry. It is also our view that it should not exercise any jurisdiction in relation to other areas of responsibility which it has presently, but that is for another day.

The proposition which the Government put was that the existing Administrative Appeals Division of the District Court should be reconstituted as the Administrative and Disciplinary Division of the District Court and that all matters should go to it rather than to the Commercial Tribunal. The conference accepted that proposal and I am pleased that it did so.

The reconstituted division will be comprised of a judge of the District Court, who may sit with lay assessors. There is a provision in the amendments for panels of lay assessors to be appointed by the Minister and then for the judge to make a decision should there or should there not be assessors sitting with the judge in determining issues brought before the division in respect of land agents, conveyancers and valuers.

The division will not necessarily be bound by the rules of evidence when considering this matter, except in relation to disciplinary matters, where the rules of evidence will apply, and in relation to objections to suitability to carry on a business. However, in other respects the proceedings will be carried on without regard to the formalities, but decisions will be taken according to equity and good conscience. That is a similar basis upon which the Commercial Tribunal presently operates, but it means that the Commercial Tribunal, or matters dealt with by it, are now under the umbrella of the District Court and can be better managed in the process.

The second issue was whether or not sales representatives should be registered. The Opposition had proposed that sales representatives should be registered in much the same way as real estate agents were proposed to be registered. The Government was very much opposed to that. We did not see a need for yet another layer of bureaucracy, although we acknowledge that we could tighten up on the negative licensing concept.

The conference agreed that sales representatives should not have to be formally registered, but that a person could not act as a sales representative if that person did not meet certain minimum educational standards which were to be prescribed, had convictions for dishonesty or had been disbarred from practice. It was not lawful for a person to employ as a sales representative a person who did not satisfy those criteria.

We introduced a negative licensing concept so that the Administrative and Disciplinary Division of the District Court, upon action mainly by the Commissioner but open to any party, could take action to challenge the capacity of the person to carry on practice as a sales representative. If the person had acted improperly or unfairly or in breach of the law, there was a capacity in the division of the District Court to disbar, suspend or impose conditions. The protections for consumers are maintained, but the bureaucratic requirement of registration is not therefore continued.

Delegations by the Commissioner for Consumer Affairs have been addressed directly. The conference did finally agree that there should be some limits on the power of delegation by the Commissioner, particularly in respect of agreements with organisations representative of the real estate industry. However, the conference also agreed that those delegations and the agreements with industry organisations should not be the subject of disallowance which, in the Government's view, would have made the whole proposition quite unworkable, although we acknowledged right from the start that we believed there should be openness in the delegations which were made to these industry organisations and had originally provided that within six sitting days of the agreements being made they should be laid on the table of both Houses of Parliament. So, there is an openness in the process.

The reality is that if something is being done which is not regarded as being proper by the Opposition, the Australian Democrats or the public at large, it will be there for all to see, and the Minister in particular and also the Government will have to withstand the scrutiny of those matters.

There was a question as to whether the money in the Agents Indemnity Fund could be used for educational purposes, among other things. The Opposition and the Democrats in this place proposed that the educational

activities be prescribed, which means that they have to be set out in regulations. The House of Assembly conceded that that should be the position, namely, that educational activities should be prescribed.

The other major issue was professional indemnity insurance and whether it should be compulsory. The Legislative Council had insisted that it be compulsory, whilst the House of Assembly sought not to make that provision. Finally, the conference agreed that professional indemnity insurance should not be compulsory.

There were arguments on both sides in relation to that matter. However, from the Government perspective, we took the view that it is not presently required, that there have not been significant, if any, problems with agents with respect to matters for which professional indemnity insurance might be an appropriate protection and, therefore, why should we seek to impose this as compulsory requirement by legislation? If an agent sought to belong to the Real Estate Institute, for example, a condition of membership was adequate professional indemnity insurance. As a Government we said that that should be the basis for a positive approach to promotion by the Real Estate Institute and agents who were members and who were thus insured for professional indemnity.

Other amendments from the package of amendments agreed by the conference are largely consequential upon those principle issues. I appreciate that the conference was able to reach an agreement on the issue that does not compromise the integrity of the legislation or create problems either for the real estate agents or consumers and I therefore record my appreciation for the way in which the conference of managers approached the task and was prepared to make some compromises.

The Hon. BARBARA WIESE: The Attorney has summed up very well the outcome of the conference. There are just a few comments that I would like to make about it. I think that the conference was generally a fairly cooperative forum and that there was a bit of give and take on all sides in reaching the conclusion that we have, and that is certainly to be applauded.

As was outlined during the second reading debate and in the Committee stage by my colleague the Hon. Anne Levy, the Opposition has felt very strongly that the benefits that are gained through the operations of the Commercial Tribunal should be maintained, and we certainly put that position very strongly. The position that we now have, which allows for disciplinary matters to go to the Disciplinary Division of the District Court of South Australia, certainly preserves the majority of the benefits that can be provided in the Commercial Tribunal in relation to disciplinary matters.

The key issues for us related to the informality of the Commercial Tribunal, the fact that no fees are required and also that it is not necessary to have legal representation. As I understand the Government's proposal, it will now be possible for a similar sort of arrangement to apply through the work of the Disciplinary Division of the District Court in respect of disciplinary matters.

However, I should point out that that will not deal with some of the issues which do not form part of the debate relating to these Bills before us at the moment but which relate to the consumer protection functions that are provided through the Commercial Tribunal in such matters as claims against builders, breaches of warranty against motor vehicle dealers and commercial tenancy issues. As I said, they are not matters that are before us in this legislation, but they are issues that relate to the Commercial Tribunal and why it is that the Opposition feels that the Commercial Tribunal should be preserved.

So, whilst we agree with the fact that there are now disciplinary matters that can be handled through the District Court in the way that has been outlined, we are still not happy with the intention of the Government with respect to some of these other functions, and we will have to debate those issues when the appropriate legislation is before us.

The Opposition felt strongly about the need to have some form of registration for sales representatives. We thought it was important that, if there were sales representatives who had been a bit shonky or who had performed misdeeds in the past, it ought to be possible for the public and potential new employers to know about that. I believe that the Government's proposition to extend the negative licensing system overcomes the major objections that we had to the original Bill, and we were therefore happy to accept that compromise in the conference.

As the Attorney has indicated, the question of whether there should be indemnity insurance or otherwise is a matter on which there are pros and cons. On the one hand, the industry association, the Real Estate Institute, certainly would like to have indemnity insurance made compulsory. It claims that about 80 per cent of real estate agents are already part of its scheme. Therefore, some would argue that in that case why not extend it to the rest. However, as the Attorney has pointed out, there are very few problems that we know about with respect to insurance issues in this field. Therefore, I suppose it is reasonable to suggest that if there are few problems then why should we make it compulsory.

In view of the progress that was being made in the conference with respect to some of the key issues, the Opposition certainly felt that it was one of those issues on which there are two sides to the argument and, in the spirit of compromise, we were therefore prepared to accept the Government's position. We were pleased, in return, that the Government accepted our position with respect to prescribing educational programs. We believed that it was important that there should not be a *carte blanche* power for the REI to claim anything and everything as an educational program; that it was reasonable that there should be some accountability and some checks in this area. I am pleased that the Government has agreed to that.

One of the major issues that had to be dealt with by the conference related to the question of delegations by the Commissioner for Consumer Affairs and the entering into of agreements between the Government and industry associations. The Opposition still feels that it is important that these agreements should be subject to parliamentary scrutiny and also to the possibility of disallowance. However, an agreement was reached on this matter between the Australian Democrats and the Government that enabled specific issues to be identified which limit the areas to be delegated in these industry agreements.

From our perspective, that certainly has improved the situation quite considerably, and it is true that the tabling of these documents in Parliament will give us all the opportunity to scrutinise the agreements being reached, if not the ability to debate and to disallow. As the Attorney says, should something be contained in those agreements that the Parliament does not agree with, or that the community feels is unsatisfactory, there is always the opportunity at a later date to take up those matters. So, although this compromise is still not what we would have hoped for, it is a step in the right direction, and the provisions are improved as a result of

the conference. On behalf of the Opposition I would like to thank the Government and the Australian Democrats for their cooperation during the conference, and I hope that the outcome of the Parliament's deliberations will be well received.

The Hon. SANDRA KANCK: I rise to support the amendments that will be made to these four Bills. The conference was conducted in a spirit of cooperation. Concessions were made by all sides. As the Hon. Ms Wiese said, everyone gave and took. The Democrats found that the Bills in their original form were unacceptable for a number of reasons, one of which at that early stage was the bypassing of the Commercial Tribunal and its replacement with the District Court. We supported the Opposition's amendments to reinsert the Commercial Tribunal because it was less formal, less legalistic and less confrontational. As a result of the conference, the Democrats' main concern that we should have a user friendly system has now been accommodated.

We were also concerned about the delegated powers that the Commissioner could give away to virtually any outside organisation. With the concessions that the Government has made on this matter, these concerns have now been addressed. On the issue of professional indemnity insurance for land agents, as the Hon. Ms Wiese has noted, we believe that 80 per cent of land agents are members of the REI, and the REI requires that its members have this coverage. It means that most of the land agents operating in this State are covered by professional indemnity insurance.

My suggestion is that the REI should encourage the land agents registered with it to make sure that they put a nice shiny plaque on their office walls to indicate to people that they do have such insurance, as a means to encourage consumer confidence. I am very happy with the outcome of the conference and think that as a result we have four workable Bills.

Motion carried.

STATE LOTTERIES (SCRATCH TICKETS) AMENDMENT BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendments Nos 1 and 6 and had disagreed to amendments Nos 2 to 5.

WHEAT MARKETING (BARLEY AND OATS) AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

The aim of this brief Bill is to empower the Australian Wheat Board in South Australia to trade in barley and, if it so desires, oats.

The South Australian *Wheat Marketing Act 1989* and its interstate counterparts authorise the Australian Wheat Board—a body established under Commonwealth law—to function within the States. However, South Australia's Act prevents the Board from trading domestically in barley and oats by excluding these from the definition of "grain" in section 3 of the Act.

In contrast, the Australian Barley Board, which is operated jointly by South Australia and Victoria, enjoys the power to trade domestically in wheat. Such trade is readily possible since deregulation of the domestic wheat market.

There have been representations from the Wheat Board urging removal of the constraints on domestic dealings in barley and oats in South Australia. The Board argues correctly that it is the only organisation to which such constraints apply. This situation is anomalous both in terms of a market driven economy and in light of the Australian Barley Board's powers to trade in wheat.

Victoria has restored balance already by passing relevant amendments to its *Wheat Marketing Act*. These amendments became operative on 3 May 1994.

It is desirable that the amendment be operative for the 1994/5 cereal harvest.

I commend the Bill to honourable members.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Amendment of s. 3—Interpretation

The proposed amendment to the definition of "grain" will mean that barley and oats are no longer excluded from the definition and the word will have the same meaning as that assigned to it by the *Wheat Marketing Act 1989* of the Commonwealth.

Clause 3: Further amendment of s. 3—Interpretation

This clause provides for the addition of a new subsection (3) after the present contents of that section. Proposed subsection (3) provides that in performing powers and functions in relation to barley within the meaning of the *Barley Marketing Act 1993*, the Board is subject to that Act.

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

PUBLIC FINANCE AND AUDIT (LOCAL GOVERNMENT CONTROLLING AUTHORITIES) AMENDMENT BILL

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

The Hon. K.T. Griffin, for 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.

This Bill amends the definition of a publicly funded body in the *Public Finance and Audit Act 1987* to include controlling authorities established under the *Local Government Act 1934.*

The provisions of the *Public Finance and Audit Act, 1987* enable the Auditor General to examine the affairs of local government councils at the request of the Treasurer. While the section in question (section 32) applies to councils as publicly funded bodies in the Local Government sphere, and by implication to controlling authorities set up by one council under section 199 of the *Local Government Act*, the section has not extended to controlling authorities established by more than one council under section 200 of the *Local Government Act 1934*.

The proposed amendment to the definition section of the Act will remedy this and clarify application of the section to all controlling authorities.

Resource sharing, reorganisation of functions on a regional basis, and isolation of specific cooperative activities are bringing Councils to make increasing use of section 200 controlling authorities. There is no reason why these controlling authorities should not be subject to essentially the same regime of accountability under the *Public Finance and Audit Act* for the conduct of their operations as other public sector organisations in the Local Government sphere, in particular the councils which establish them. Making this straightforward amendment to the *Public Finance and Audit Act* will complement the range of strategies for accountability to be further developed under the *Local Government Act.*

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Amendment of s. 4—Interpretation

The effect of this provision is to include controlling authorities constituted under the *Local Government Act 1934* as publicly funded bodies within the meaning of the Act.

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

LOCAL GOVERNMENT (1995 ELECTIONS) AMENDMENT BILL

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

The Hon. K.T. Griffin, for 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.

This short Bill amends the electoral provisions of the *Local Government Act* to empower the Governor to suspend, for a maximum of 12 months, the holding of elections otherwise due to take place in May 1995 for groups of two or more councils in cases where a formal proposal for the amalgamation of those councils has been lodged under the *Local Government Act*.

The Government has recently announced the initiatives it is taking to facilitate urgently needed improvements in Local Government structural arrangements. Many councils recognise that they must seriously examine changes to the ways in which they are structured so that they can deliver more effective and competitive services, participate effectively in strategies for the regional development of the State, and interact productively with the State and Commonwealth spheres of Government. In the coming months a Ministerial Advisory Group will be examining and making recommendations on how to achieve these improved arrangements in the shortest time with the greatest economy of resources and minimum community dislocation.

Some councils are now taking steps to reform their organisations. A small number are preparing amalgamation proposals for consideration under the process currently set out in the *Local Government Act* and it is these councils and their electors which may be able to benefit from the provisions of this Bill.

If, before the 16 February 1995, a formal proposal for the amalgamation of two or more councils has been lodged with the Local Government Association under section 18 of the *Local Government Act*, the councils affected by the proposal may apply for the suspension of their May 1995 elections for up to 12 months. The 16th of February is one week after the closing date for the Local Government voters roll and two weeks before nominations from candidates must be called for. Taking into account the time necessary for a proclamation to be made, this is considered to be the latest feasible time to approve the suspension of elections. The object of the suspension is to ensure some continuity in the examination of a proposal once it has commenced, so that the process is not wasteful, confusing, or unnecessarily prolonged.

There is some legislative precedent in South Australia for the suspension of elections by Governor's proclamation for those councils which have lodged a detailed amalgamation proposal. This was possible under the former provisions of the *Local Government Act* in cases where a proposal for amalgamation was before the Local Government Advisory Commission and the Commission advised that it would not be able to report on the proposal before the opening of nominations in an election year. The power was also included as part of the current process in the original *Local Government (Reform) Amendment Bill 1992* but it was removed during debate because of a general feeling that it had been over-used. This Bill limits the power to suspend elections to a one-off suspension for a defined period.

Before a proclamation to suspend elections can be made by the Governor, those councils making joint application will need to demonstrate that they have taken sufficient steps to make their electors aware of the proposal and of the processes under which it will be considered, and that copies of the proposal have been available to the electors for at least 14 days. Deferment of democratic elections, even for a limited and certain period, is a serious step and electors are entitled to full information about the proposal and their rights in relation to it.

When elections may be suspended in the context of an active amalgamation proposal, electors must be assured by their councils that they retain ways of registering their approval or disapproval of the proposal and influencing the decision. Under the procedures currently set out in Part II of the *Local Government Act* for dealing with amalgamation proposals, a formal program of public consultation and consultation with any organisation or association that represents persons who have a particular interest in the proposal (whether as ratepayers or residents, officers or employees of a council, employers within the local community, persons who are interested in relevant environmental issues, or otherwise) must occur before the independent panel dealing with the proposal makes its recommendation. In addition 10 per cent or more of electors for an area affected by a proposal can demand a poll on the panel's recommendation. The result of the poll will be binding if a total turnout of 25 per cent is achieved in the areas affected by the proposal, and even if that turnout is not achieved the panel must reconsider any recommendation opposed by electors.

The councils will also have to satisfy the Minister that there is a reasonable likelihood of the panel forwarding its report to the Minister within the next 12 months. Some proposals are more complex than others and the panel process relies heavily on the commitment and resourcing of the councils involved. There would be no point in suspending periodical elections for one year in cases where it appeared unlikely, at the outset, that the process of examining, consulting, and reporting on the proposal would be completed within that time.

The reinstatement of a power to suspend elections in order to facilitate consideration of an amalgamation proposal is supported by the Local Government Association and by those councils who may be in a position to apply for suspension. This Bill is an interim measure pending a fuller consideration in early 1995 of the current provisions for amalgamation and boundary change contained in the *Local Government Act*.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Amendment of s. 94—Date of elections

This clause amends the section of the principal Act that deals with the date on which elections are to be held. *New subsection (5)* will enable the Governor to make a proclamation suspending the 1995 elections for those councils who are the subject of an amalgamation proposal that has been initiated under the Act (by the councils or their electors) and referred to the Local Government Association. The councils concerned must apply for suspension and satisfy the Minister (before 16 February 1995) that they have taken proper action to inform electors of the proposal and of the processes for its consideration. Copies of the proposal must have been available to electors at least 14 days prior to applying to the Minister for suspension. The Minister must also be satisfied that there is a reasonable likelihood of the panel reporting to the Minister on the proposal within the next 12 months. *New subsection (6)* provides that the suspended elections must take place within 12 months of the 1995 polling day, subject to any other proclamation that may be made under Part II in the event of a decision being made that amalgamation will take place. *New subsections (6) and (7)* are facilitatory provisions.

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

NATIONAL ENVIRONMENT PROTECTION COUNCIL (SOUTH AUSTRALIA) BILL

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

STAMP DUTIES (MISCELLANEOUS) AMENDMENT BILL

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

ROAD TRAFFIC (MISCELLANEOUS) AMENDMENT BILL

Returned from the House of Assembly without amendment.

PUBLIC SECTOR MANAGEMENT BILL

Adjourned debate on second reading.

(Continued from 24 November. Page 938.)

The Hon. M.J. ELLIOTT: I support the second reading of this Bill. I begin by making the point that, before the last election, the Government gave a clear undertaking that it would maintain the Government Management and Employment Act. This is another broken promise. Before the last election the Public Service Association sent a questionnaire to all parties seeking to know what their policies were on particular issues and what they would do on certain matters. In relation to questions on public sector management, the answer from the now Premier was that the GME Act would remain. It could not be much clearer than that. A letter dated 9 November 1993 clearly signed by Dean Brown was written to Jan McMahon. It is now just a little over a year and that promise has clearly been broken. Not only is the Act not remaining but the Government, in bringing in new legislation to replace that Act, is seeking to make a most substantial change. I will get to the substance of some of those changes in a moment. First, I refer to what several Government Ministers said before the last election about the public sector and issues covered by the Act. In the third paragraph of the letter that the now Premier wrote to Jan McMahon, and he began the letter 'Dear Jan', he said:

> We will improve morale and productivity in the Public Service and develop pride in the job and satisfaction of achievement.

I can tell the Council that they have not achieved those goals. In fact, morale has plunged since the Government got in. Every action it has undertaken has pushed morale further down in the public sector, and I do not believe that productivity has made improvements. I fail to see how you can have improved productivity when morale is being destroyed. Nevertheless, when he wrote to Jan McMahon the Premier said that that was the Government's goal—one it has clearly failed in. I note among the other undertakings he gives:

> You will recall our support this year for the PSA's opposition to Government legislation to erode appeal rights. Our position is unaltered.

He is not the only Government member who has had something to say in recent times about aspects of the GME Act. Graham Ingerson said in the House of Assembly (*Hansard*, 11 November 1992):

> It is the Opposition's view that the present system of appeals is both equitable and fair and provides appropriate checks and balances against possible abuse of appointment provisions under the GME Act.

In the Legislative Council, the Hon. Rob Lucas said (*Hansard* of 4 August, 1993, page 29):

> The Liberal Party's firm view is that there needs to be some protection remaining within the Government Management and Employment Act to protect public servants in these situations from examples of nepotism, patronage or abuse of process.

The Hon. Robert Lucas (*Hansard* Legislative Council, 2 March 1993, page 1 375) said:

> Personally I do not support the American style of civil service, the Public Service, where, as each new Administration comes in the whole of the Public Service from top to bottom is turned over and rooted out. The Democrats are moved in and the Republicans are moved out, or *vice versa*. The model we have in Australia, which is closer to a model of an apolitical Public Service, a service which should serve impartially, is the sort of model which I would like to see here in South Australia and which I believe is the sort of model that I would wish a Liberal Government could serve with here in South Australia.

I can only agree absolutely with the sentiments of the Hon. Mr Lucas in making those statements, and I must say that I find it a great pity that the legislation that the Government has brought into this place, as it has been introduced, creates significant potential to create the exact opposite to—

The Hon. T.G. Roberts interjecting:

The Hon. M.J. ELLIOTT: I do not have the vaguest idea what sort of rolling around happens in their Caucus meetings, but it is hard to reconcile the legislation in this place with the sorts of comments that were made before the election. Clearly, some of those comments are broken promises. What the Premier said in relation to retaining the GME Act is clearly a broken pledge, but in terms of the substance of the legislation the independence of the public sector is at great risk, because of the way this legislation has currently been drafted. The public sector is in a very difficult position, because it is under some tension in terms of its obligations. The public sector has an obligation to the community, and in fact the very name, the public sector, the Public Service, clearly indicates that it is there for the benefit of and to service the public as a whole. Whether it be through education, whether it be through health, whether it be through primary industries or whatever, it is there to serve the public good in many different ways. Much of what it does is in fact occurring under legislation. Much of what public servants do is in response to legislation under which a department may be established or a number of Acts which have to be upheld.

So, there is that clear obligation and commitment through legislation to service the public. Then we have the demands of Government which are not always in agreement with what the legislation requires. I am not talking only about the present Government but about past Governments as well. I know of many occasions when, in fact, Ministers have intervened to attempt to instruct public servants not to carry out their duty as spelt out under legislation. I find that unacceptable. In fact, the legislation before us increases the power of Government to exert its will over the legislative requirements of public servants.

We have clear potential for the further expansion of the power of Executive Government. If there has ever been a dangerous trend in politics in Australia at both a Federal and State level under both Labor and Liberal Governments it has been the increasing power of Executive Government and all that that entails. It means that even within the political process power is being taken away from backbenchers. It is even being taken away from minor portfolio holders in ministries and shadow ministries, as a small clique within the Parties takes absolute control of what a Party does, but in terms of the Party which has formed the Government we have an increasingly non-accountable group that is making decisions and riding roughshod over members of its Party, over Parliament itself and quite often over legislative requirements.

What better example could you have of Executive Government and the way it rides roughshod than the EDS saga? I will quote from the person who I believe is the most authoritative reporter on politics in South Australia at the moment, Alex Kennedy, who, in the *City Messenger* only this week under the heading 'Brown, but still arrogance in the woodpile' referred to, in particular, the EDS saga, as follows:

> The EDS saga is even more serious. Brown's statement to the House last week about EDS was frightening. Was this really our Liberal Premier talking about a multi-million computer deal or was

it *deja vu*? Was it John Bannon at the State Bank Royal Commission talking about deals made in secret?

In the lead-up to the last election the Liberals chanted a mantra about abuse of power by the Executive under Labor, and how this would be redressed by a Liberal Government. But it hasn't been redressed. If anything, it has been reinforced.

Brown appeared proud of having kept Treasury out of secret negotiations for the massive EDS computer contract—a contract we now know he was advised at the time not to sign. So yet again we have a Premier with a small team around him which sees itself as above everything else, a team which believes it has the right to make secret negotiations about millions of dollars of taxpayers' money while shutting out Treasury from discussions with the excuse it was because they might leak.

I find it quite amazing that with Treasury having been shut out for months it took so long to leak. I think this shows that the integrity of Treasury was very high. In the circumstances, if anyone felt that a leak might be justified they would have done so very quickly, whereas, in fact, it has taken a very long time for this information to get out, and my suspicion is that, at the end of the day, it did not come from Treasury. The article continues:

So what is more important to South Australia's economic future; that we make a multi-million deal based in the right financial advice or that we make such a deal minus the advice because Brown doesn't trust even some of the most senior public servants? Or is it an excuse to use absolute power by an increasingly arrogant Premier's team?

I think Alex Kennedy has got it in one.

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: I have not seen her try that for quite some time.

The Hon. R.I. Lucas interjecting:

The ACTING PRESIDENT (Hon. M.S. Feleppa): Order! There is too much conversation.

The Hon. M.J. ELLIOTT: It is, of course, worth noting that the Hon. Mr Lucas is obviously part of that small inner clique. He has quite happily come into this Council and justified the same sort of behaviour. He has fallen for the very same trap that the Bannon Government fell for. The Bannon Government was constantly cooking up schemes with a very small clique of senior ministerial advisers—they were not public servants, most were in the Premier's own department—and a couple of Ministers. Brown and a couple of senior politicians and a few advisers are up to exactly the same stunts, and they will make exactly the same mistakes.

Nothing has been learned by the Liberals. Everything they said before the election in terms of the behaviour of the Bannon Government and the criticism they made was accurate, yet the moment they got into power they set about performing exactly the same stunts. They complained bitterly about the politicisation of the public sector, and the moment they got in they said, 'We have to get rid of the Labor people and put in our own people', and they carried out exactly the same politicisation process about which they complained so bitterly during their very long period in the wilderness. How quickly they forget!

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: It is all very well for the Hon. Mr Lucas to laugh, but I guarantee here and now that the Government will end up with the same sort of egg on its face as did the Bannon Government. Whether it will take 10 years or less I don't know. If we take the EDS deal as an example, we have stated quite clearly on the record that there is significant potential for gain for this State, but there is also significant potential for things to go wrong.

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: This is a typical cry of defence. It is exactly the same sort of nonsense that we used to hear from the previous Government. The Hon. Mr Lucas is playing exactly the same sort of games. If he wants to look at the same sorts of deals that were done, he should look at the MFP process at the time when it was being promulgated and it came before Parliament. We believed that the process had a great deal of potential, and we sought to amend it. The major thing we sought to achieve was to shift the focus to Technology Park where it now is. We were right from the beginning. Members should look at the amendments we moved and see that that is exactly what we tried to achieve. We said that the site was wrong. The present Government, in the light of the changes it has made—and even the previous Government admitted very late that it had made mistakes—has shifted the focus. That is the record. It is plainly there for anyone who cares to read *Hansard*. It is all very well to try to push away criticism of yourself with those sorts of stunts.

I have asked in this place repeatedly for the Government to allow for a far more public debate in relation to EDS, but what has it done? The Government has even withheld information. It would not even involve its own Treasury Department, let alone letting the rest of the State and other politicians in on what should be a constructive debate about what will be the biggest single deal that this Government is probably likely to achieve, a deal which certainly has the capacity to do a lot of good but which certainly also has the capacity to do a lot of harm.

I will now move to the specifics of the legislation. I will not go through all the minor detail of the legislation but will look at the more significant matters. We will move a number of amendments to Part 2 of the Bill, 'General Public Sector Aims and Standards'. I must say I am surprised that clause 4(a) involves public sectors aiming to be competitive when in many cases the public sector is not in a competitive position. Quite clearly, we are looking for a public sector which is efficient, not competitive. That notion is a nonsense.

I also want to insert within the aims a quite clearly spelt out requirement that the public sector has an obligation to implement legislative requirements. As I said in my introductory remarks, I am concerned that quite often, although public servants have legislative requirements, there are times when a Government chooses to intervene, and I simply request that it not do so. That makes a farce of the law making process. It makes a farce of the law itself, if a few people use their executive powers to overrule the law. I will be seeking to make quite plain in the aims of the public sector that it does have that as a responsibility.

Similarly, in relation to conduct standards, clause 6(c) provides that public sector employees are expected to deal with information of which they have knowledge as a result of their work only in accordance with the requirements of the Government and their agencies. Again, it seems to me that that is placing a higher emphasis on what the Government wants done with the information rather than what the legislation requires in that respect. For example, we had enough difficulties under the old GME Act, when public servants involved in the writing of environmental assessment process reports would write a report based upon the facts, and then an instruction would come from the Minister that the report was not suitable or was too critical of something and it would be rewritten. They should not worry about the facts.

The Hon. R.R. Roberts interjecting:

The Hon. M.J. ELLIOTT: It happened in many cases. So, we will certainly be making some amendments to Part 2.

The next area I will focus on is the role of chief executives. Under previous Governments (even under the old GME Act) not all but a large number of chief executives' positions have been politicised, and that is a great pity. It appears to me that it is something of an inevitability that that process will continue with this lot as much as it did with the previous lot. I do not have difficulty with much of what is presented within the Bill for chief executives, but I note that the area of legislative requirements must not be neglected.

Where there will be a substantial difference is in Part 5 and in consequential clauses through the Bill in relation to the role of the Commissioner. If we are going to talk about an independent public sector, the Commissioner's role has to be a far greater one than is currently envisaged by the Government. I intend to move amendments that will largely put back into this Bill the role of the Commissioner similar to that played by the Commissioner under the old GME Act. In terms of maintaining the independence and integrity of the public sector, it is important that the Commissioner play a more substantial role, so we will move an amendment accordingly.

Part 7 of the Bill deals with appointments of executive and other positions. Having said that I accept that the CEOs' positions will, to some extent, inevitably be politicised, I am concerned that that politicisation should not creep down through the public sector; it should not pollute either executive or general positions within the public sector. I find acceptable the notion that there will be a level within the public sector where people will be largely working on contract, which will be performance based. I see being in that category the most senior managers below the CEOs—the executive positions. I suppose I would compare them to the sort of position we have moved to in education, where principals are being appointed on contract for a fixed term, and they then have to win another position. However, one important qualification is that, if they fail to win another principal's position, they are not then out of a job; they simply return to a substantive position within the Education Department more generally.

I find acceptable the same sort of approach in the public sector. We will have a small tier of executive positions on contract, but those people will still need public sector protections so that they are not susceptible to the attitude of 'If you don't perform to the Government's whim and perhaps ignore other obligations, you will find yourself out of a job.' They would certainly be taking a risk that they would be losing a promotion position, and that in itself is a significant threat to any person. But if the Government were in a position simply to say, 'You are not performing as we wish, very much in a political sense, and therefore we will get rid of you,' that notion would be totally unacceptable.

The Hon. R.I. Lucas: What salary maintenance would you pay them? If they had come in at $100 000-plus to do a job and they can't do that job, and you are going to keep them in the Public Service, what salary will you pay them?

The Hon. M.J. ELLIOTT: I am talking about public servants who have been appointed to a senior position returning to the same remuneration level they were at before appointment into the contract.

The Hon. R.R. Roberts interjecting:

The Hon. M.J. ELLIOTT: That is a different position again.

The Hon. R.R. Roberts interjecting:

The Hon. M.J. ELLIOTT: Yes; I am talking about career public sector employees who have been appointed to a promotional executive position. I am saying that, if the contract comes to an end or the contract is terminated (not because they have done something criminal or anything like that; I would see it largely as being for political reasons or because the Government just feels that the person cannot perform at that level), they should revert to where they were before.

The Hon. R.I. Lucas: What do you suggest we do there?

The Hon. M.J. ELLIOTT: The only protections they will have will be within the contract itself. So I have drawn a distinction between those two. I am told already that there are people working in the public sector who have been offered contracts and have refused to take them because they have then lost their security. They obviously feel that that is a pretty dangerous thing to lose at the moment, and I understand that fear.

I accept the notion that executive positions will be performing under contract but, at least in terms of the career public servants, they should have a substantive position to return to at the end their contract period, or if the contract is terminated for some reason other than obviously criminal behaviour or that sort of thing, in which case they would be out of the public sector, no matter what position they were holding previously.

I am concerned that nowhere does the Bill define how a position is deemed to be 'executive', and that the Government, over time, could decide to use executive positions as a way of creeping down through the public sector and putting virtually the whole public sector under contract. Putting the whole public sector under contract some people would find attractive, but I believe and would argue strongly that that would make them extremely susceptible to political pressure and, therefore, undermine their independence.

So, I will move an amendment which will put a percentage on the number of people in the public sector who can hold executive positions. The figure I am looking at is 2 per cent, which is more than the number of people who currently hold senior positions under the old GME Act. Therefore, it is not placing a limitation greater than the number of people who currently hold those sorts of positions.

The Hon. T.G. Roberts interjecting:

The Hon. M.J. ELLIOTT: The Government can work that out for itself. All I am saying is that it is 2 per cent: you work it out.

The Hon. R.I. Lucas: Who goes to gaol if we go over?

The Hon. M.J. ELLIOTT: You. In fact, your name is specifically written into the legislation to make sure that you are the first one to go! Having looked at the executive positions—

The Hon. R.I. Lucas: It is a very reasonable amendment.

The Hon. M.J. ELLIOTT: I thought so. I am always very reasonable. It is one of the more positive things that I will have done in this place. It will make up for all the negative things I have done. I now look at the other positions, the great bulk of the public sector, and in this respect we are talking about 98 per cent of public sector employees. It is absolutely imperative that these people are not susceptible to pressure, other than pressure to perform satisfactorily, which is provided for in the old GME Act, anyway, and which will also find its way into this legislation.

People should be under contract only for special circumstances. I note that both the Government and the Opposition have tabled amendments which seek to spell that out even further. The expectation is that the vast majority of public sector employees will hold permanent positions, from which

they cannot be removed unless their performance is unsatisfactory or for criminality or other reasons for which one would want to remove them.

It appears to me that, if we want a public sector that is working efficiently, the challenge is not at the grassroots level but at the management level. In fact, in most workplaces that are not working efficiently it is usually the boss's fault, not that of the person at the other end. That is the reality. However, we do find that the employee might become the fall guy, the scapegoat. I have worked in enough workplaces now to see how they function and to see how people respond. Australia has taken a long time to get over the old English attitude to employer-employee relationships. Many companies are still developing this 'us and them' approach, this alienation. We see it in this Government, in its approach to the public—

The Hon. R.R. Roberts interjecting:

The Hon. M.J. ELLIOTT: That's right. The Government's attitude to the public sector is symptomatic of that very ancient approach of how to get the best out of people. We do not get the best out of people by treating them the way the Government treats its employees, and the way through legislation too often encourages other employers to treat their employees that way as well. They really are from a century ago.

I find the drafting of the Bill somewhat confusing. Part 7, Division 2, talks about other positions and how people are appointed, and Part 8, Division 1, refers to assignment between positions. Much of what is in clause 38, which is titled 'Assignment', is in a section in the old GME Act which is titled 'Reassignment' and which, more often than not, relates to people being appointed to temporary positions. But clause 38 contains nothing which spells out exactly what 'Assignment' means and how it relates to the filling of temporary positions. I will be moving amendments to clearly differentiate between this notion of assignment in Part 8 and the notion of appointment, and I will also move to reinstate from the old GME Act the process of people applying for and winning positions, something which this Bill totally neglects.

I have trouble with the way in which the Bill is structured. Clause 38(4) provides:

> No promotion of an employee to a higher remuneration level through assignment under this section may continue—
>
> (a) for more than three years;

Potentially the impact of that is that everyone who gets an appointment only has it for only three years before they have to go through some sort of wringer again. I do not know whether or not this is a drafting problem where the Government has failed to differentiate between filling temporary positions, because subclause (4) is similar to a subclause in the previous Act which clearly is related to temporary positions. But having not used the word 'temporary' anywhere, this provision can be applied to permanent positions. It creates confusion. As I said, I do not know whether it is a drafting problem or whether the Government intends that substantive positions be filled only every three years or less. I do not know the Government's intention, and I will be moving amendments to differentiate between the two.

There are some other amendments throughout Part 8, but I will leave those until the Committee stage. In relation to excess positions, I spent some time pondering this clause and decided that it was beyond redemption and would simply be moving to reinstate the excess positions provisions from the old GME Act. I find particularly unsatisfactory the notion that we no longer retire people but terminate them. Not only is the term 'terminate' an undesirable word but also there is some question about the legal implications in terms of rights to retirement benefits and the like. I do not know why the Government changed it from the term 'retire' to the term 'terminate'—

The Hon. R.I. Lucas: You're suggesting they would not get retirement benefits?

The Hon. M.J. ELLIOTT: I do not know what is the intention. I can tell you that there has been some legal confusion about it. As I said, I looked at the clause and decided that it was beyond redemption. I felt that the old excess employees clause in the GME Act worked perfectly well, and I will be moving for its reinstatement.

I do not the support the Government's approach in relation to the handling of appeals. I think that the setting up of these appellate authorities is too arbitrary. I will be opposing most of the clauses which relate to appeals and will be moving to reinstate the old appeals processes which were in the GME Act, because I believe we need a process which guarantees the sort of independence that the Hon. Mr Lucas seemed to think was so important when he spoke in this Council on several occasions prior to the last election.

That was a fairly quick excursion through the legislation. I hope that tomorrow I will be able to table my amendments, but at least in terms of the comments I have made people have an idea as to where I see the significant weaknesses in the legislation and give some indication of the direction my amendments will take when tabled in this place. The Democrats support the second reading. Before the election the Premier promised that the GME Act would be retained. He cannot pull any nonsense about mandates. Most people like to think that the Government has a mandate to keep promises and not to break them. It would be an extraordinary notion if that were being claimed, although it is being done so often, both in terms of specific issues such as this and in terms of general behaviour, criticising the previous Government for certain behaviour and then doing exactly the same things, perhaps worse, when given the same opportunity.

We support the Bill, but will be making a number of amendments. Those amendments will allow a great deal more flexibility for the CEO in terms of the internal functioning of departments, but importantly will retain important protections to maintain the integrity and independence of the public sector in South Australia.

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

THOMAS HUTCHINSON TRUST AND RELATED TRUSTS (WINDING UP) BILL

Adjourned debate on second reading.

(Continued from 23 November. Page 905.)

The Hon. T. CROTHERS: I rise to indicate that the Opposition supports the proposition, but in so doing for the record I will make some remarks so that I can reflect with some honesty the exact position of the Opposition with respect to this Bill. The Bill seeks to terminate certain trust deeds—four in number. The original trust deed was in about 1906 when a deceased person named Thomas Hutchinson left certain moneys so as to procure a medical facility for the treatment of people who lived in the Gawler area and the district surrounding Gawler. That was followed by three other

wills that bequeathed amounts of money for the same purpose. The consequence of all of that is that the Hutchinson Hospital building, having gone past its use-by date, has been closed. With the exception of some residential property, the trust that administered the deceased estates in trust of the four wills in question determined that the trust would be wound up and any moneys contained therein, after all debts and any other calls on the trust funds that existed were discharged, would then be disbursed back mainly to the new hospital in Gawler which, as I understand it, is a Government run hospital.

The Opposition has no objection at all to that being done. The select committee no doubt will agree to the way in which the Hutchison Trust has indicated to the Parliament those moneys should go, disbursed back again to the Gawler community and used mainly—85 per cent to 90 per cent—by the new hospital board for the new hospital at Gawler. However, it would in our view be a mistake and certainly would not accord with the dictates of the original people who bequeathed the money if at some time in the future that hospital at Gawler was privatised by the Government in such a manner that moneys that will pass from the trust in question would, in part at least, pass over to the private sector in respect of the medical treatment of the inhabitants of Gawler and district.

We understand that there are two ways that one can go with respect to the methods that are used relative to the decision making processes required to discharge the principles contained in the will from which the trust was set up. The first method is by suspension of Standing Orders, whereby the matter can be debated without its going to a select committee. The Attorney has indicated that his preference is for a select committee and that is also my preference because in that way you have a forum of people from all sides of the Chamber who carry on with the process of decision making. Generally it is done reasonably quickly: we have done it is on several other occasions. I think the Duke of Edinburgh's Trust was set up in 1896 for distressed seamen in the Port Adelaide area and involved many tens of thousands of dollars in the trust fund. It was wound up and the money passed by dint of a decision of a select committee of this Parliament to the sailing ship *Falie*. Again with respect to the Children's Hospital and the Queen Victoria Hospital certain bequests had to be handled in such a way that money passed over to the new joint venture of the Queen Victoria Hospital combined with the Adelaide Children's Hospital.

I commend the Bill to the Chamber with the reservation that the Government should consider very seriously any move it makes futuristically with respect to the privatisation of the new hospital at Gawler as we think it would be abhorrent to our conscience in respect to the way in which the original bequest was made and the Government would not at that stage have the right morally in our view (I do not know about legally) to privatise the new hospital at Gawler and still allow that hospital to retain those funds which it will shortly receive pursuant to the winding up of the Hutchinson Hospital Trust and by dint of report back to this House by the select committee now set up to progress the matter through to its final conclusion. I commend the Bill to the House, but again tell the Government that is my view and that of my colleagues with respect to those moneys.

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

ADJOURNMENT

At 11 p.m. the Council adjourned until Wednesday 30 November at 2.15 p.m.