LEGISLATIVE COUNCIL

Thursday 19 October 1995

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

PAPER TABLED

The following paper was laid on the table:

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

Premier's Report on Planning Strategy Implementation, 1994-95.

OPAL EXPLORATION LICENCES

A petition, signed by 634 residents of South Australia, praying that the Council would not legislate to introduce opal exploration licences into the Coober Pedy proclaimed precious stones field nor legislate to introduce 40 000 square metre opal development leases with an exclusion zone from a registered lease of only 500 metres, and thus preserve the livelihoods of small opal miners with interests in the Coober Pedy proclaimed precious stones field, was presented by the Hon. Sandra Kanck.

Petition received.

NATIVE TITLE

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to make a ministerial statement on the subject 'SA first to have alternative native title scheme'.

Leave granted.

The Hon. K.T. GRIFFIN: When the High Court Mabo judgment was handed down in June 1992, it signalled an important milestone in Australia's history. The ramifications of that decision have impacted on every State and Territory. For its part, the South Australian Liberal Government approached the issue of native title in a spirit of goodwill and made a number of important decisions to address the short and longer-term constitutional, legal and administrative issues arising from the judgment. Consequently, South Australia has become the first jurisdiction in the country to have an alternative native title scheme approved by the Federal Government. The significance of this should not be underestimated. It ensures that native title, land management and development issues can be dealt with within South Australia, and it gives native title claimants and non-claimants a choice about whether their cases are heard under the State scheme or the Commonwealth scheme.

All decisions as to whether or not mining activity can proceed on native title land will now be made in South Australia, as will decisions about whether or not compulsory acquisition of native title interests for non-government purposes can proceed.

Getting to this point, where the State has its own scheme for native title, has been a painstaking and demanding task, which began immediately after the 1993 State election when a Cabinet subcommittee was established to manage the native title issues on behalf of the Government. Officers working with the subcommittee must be commended for their efforts, in particular Ms Jenny Hart of the Crown Solicitor's Office.

At all times, the Government has consulted widely on the native title legislation before it became law, including with many groups and individuals representing the various competing interests. In fact, submissions were sought from about 40 agencies, organisations and individuals when the amendment Bills were released for public comment last year, and some alterations were made in response to the submissions received. Each of the Bills finally was resolved at deadlock conferences. There has also been extensive consultation and cooperation with Commonwealth officers. The Commonwealth's Special Minister of State recognised the level of our consultation when he said yesterday:

> I was particularly impressed by the level of consultations between the South Australian Government and indigenous interests in that State during the development of the South Australian legislation. The South Australian Government has faced the reality of native title and has acted to protect the interests of its indigenous people and industry.

The South Australian scheme, which is consistent with the Commonwealth's Native Title Act and Racial Discrimination Act, comprises four pieces of legislation: the Native Title (South Australia) Act; the Environment, Resources and Development (Native Title) Amendment Act; the Mining (Native Title) Amendment Act; and the Land Acquisition (Native Title) Amendment Act. The scheme recognises native title as defined in the Commonwealth Native Title Act; vests jurisdiction in the Supreme Court of South Australia and the Environment, Resources and Development Court in relation to native title questions, including questions about the existence of native title, the nature of the rights conferred by native title and compensation payable for adversely affecting native title; establishes a system for the declaration of native title in the State by the recognised State courts; creates a State native title register in which all native title claims will be registered along with details of actual native title holders once there has been a finding of native title; requires a procedure for negotiation with native title parties to be followed in all mining matters and in compulsory acquisitions conferring rights or interests on third parties; makes various amendments to ensure that the State's legislation is non-discriminatory; and is otherwise consistent with the Racial Discrimination Act and the Native Title Act.

The State Government sought to improve on the system in the Commonwealth's Native Title Act by adopting a more concise drafting style and, where possible, simpler procedures to produce a clearer scheme for dealing with native title in South Australia. While the decisions made have not always been agreed by all parties involved and the general community, the Government has always been prepared to sit down and talk about the issues relating to very difficult and complex legislation. The fact that this State has become the first jurisdiction to have its own native title scheme is an indication of the Government's commitment to creating a fair and equitable environment for all South Australians. It is a significant achievement for South Australia.

QUESTION TIME

MARKET RESEARCH

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 market research.

Leave granted.

The Hon. CAROLYN PICKLES: The Minister for Education and Children's Services yesterday blithely told the Council that he was confident that the Government would not be conducting Party-political market research. There seems

to be an inconsistency between that approach and the fact that the Minister's own office has been conducting political research with taxpayers' funds. A telephone survey of 400 metropolitan and 150 country households was undertaken by the Sexton Marketing Group for the Minister on 29 July this year. Each participant was asked four questions. The first question, about basic skills testing, and the fourth question, about whether small business management skills should be taught at school, are arguably matters about which the Minister had good cause to gauge public opinion. The second and third questions are in a different category. The second question was:

> The teachers' union, which is the South Australian Institute of Teachers, has stated it will seek to boycott or not support the introduction of basic skills tests. Do you agree or disagree with the teachers' union decision to boycott or not support the introduction of basic skills tests?

The Hon. R.I. Lucas: What was the answer?

The Hon. CAROLYN PICKLES: I have the answers as well.

Members interjecting:

The PRESIDENT: Order!

The Hon. CAROLYN PICKLES: Thanks to freedom of information, I have the answers.

The Hon. R.I. Lucas: What was the answer?

The PRESIDENT: Order!

The Hon. CAROLYN PICKLES: You can—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order! I call the Minister for Education to order.

The Hon. CAROLYN PICKLES: It is the questions in which we are interested.

The Hon. A.J. Redford: Are you going to tell us the answers?

The Hon. CAROLYN PICKLES: No, I will leave him to do it.

Members interjecting:

The PRESIDENT: Order! Order, on my right!

An honourable member interjecting:

The Hon. CAROLYN PICKLES: No, we have the information here and we can table it in Parliament for everyone to—

Members interjecting:

The PRESIDENT: The Leader of the Opposition will get on with her question. Order!

The Hon. CAROLYN PICKLES: The Minister is not responsible for the actions of SAIT, and the question is not about the merits of the basic skills tests themselves. It is about checking up on the Institute of Teachers. The persistent reference to SAIT as the teachers' union plays down the role of SAIT in advocating for better education standards. Members might consider the third market research question to be even more politically motivated. It is as follows:

> The teachers' union has lodged a salary increase claim for an extra $53 per week for teachers as well as 2½ hours less teaching instruction time for all teachers. Do you approve or disapprove of this claim by the teachers' union?

The question is clearly framed to capitalise on any anti-union sentiment. I am sure that the results would have been very different if the question had been: do you think our teachers deserve a pay rise—

Members interjecting:

The PRESIDENT: Order!

The Hon. CAROLYN PICKLES: It states:

> Do you think our teachers deserve a pay rise, especially considering the Government's actions to increase class sizes and cut numbers of support staff?

There might have been an interesting answer. It should be pointed out that the Education Department itself had nothing to do with that market research, which was all arranged with the Minister's office. My question to the Minister is in three parts:

1. Why did the Minister spend public funds to conduct political research?

2. Will the Minister now arrange for polling to be done in relation to the popularity of the plan to cut 250 school service officer positions by the beginning of next year?

3. Given that the Minister has said that cuts to school service officer jobs are necessary to pay for teachers' pay increases, has the Minister agreed to SAIT's claim?

The PRESIDENT: Order! Before the question is answered, I point out to the Leader of the Opposition that I have consistently asked that all questions be framed without opinion or for members to endeavour to get them as close as possible to being without opinion. The Leader, who is leading the Opposition, should know that it would be wiser not to include opinion. A considerable amount of opinion was included in that question. I remind members that they will get a response just as the Leader got then by including opinion in questions.

Members interjecting:

The PRESIDENT: Order! The Minister for Education and Children's Services.

The Hon. R.I. LUCAS: That is sad for the Leader of the Opposition. It was interesting when asked to respond about the answer to the second question to which the honourable member is objecting, because the honourable member has been provided with information by my office—

Members interjecting:

The Hon. R.I. LUCAS: No, all this information was released publicly—

The Hon. Carolyn Pickles: It was released under FOI.

The Hon. R.I. LUCAS: All this information was provided publicly. I provided it to members of the media some five or six weeks ago in relation to these questions. Yesterday, we saw the Leader having to rely on one of her backbenchers to draft her Address in Reply speech for her, as I indicated, to do a Helen Demidenko and plagiarise the hard work of the Hon. Mr Holloway. Now the Leader of the Opposition comes in and claims that this information is hot, saying, 'I have got this information under FOI and this is a big story.' In fact, this information on basic skills tests and the teachers' award case was released to the media four, five or six weeks ago. In fact, the Hon. Mr Elliott rang my office without going to FOI and said, 'Rob, would you give me a copy of that question on the teachers' award case?' I apologise to the Hon. Mr Elliott because it took me three or four weeks to get that information to him. He did not go to the bother of FOI: his office rang my office and said, 'I notice this is what you said. Would you provide me with a copy of the information?' It is not a question of, 'Shock, horror, FOI: we have got this information!' We publicly released it.

An honourable member interjecting:

The Hon. R.I. LUCAS: The cost of the research was $1 500 for the total research project out of $1 138 million a year spent by the Department for Education and Children's Services. There is the answer—

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: It would not even make the Port Pirie *Recorder*, for the Hon. Mr Roberts.

The Hon. L.H. Davis: It might make the classifieds.

The Hon. R.I. LUCAS: It might make the classifieds, but this is not a shock, horror story.

The Hon. T.G. Cameron interjecting:

The Hon. R.I. LUCAS: This has not been sent off to the Director of the Liberal Party. That is how the honourable member used to operate. The honourable member should not judge everyone by his own standards of behaviour when he was acting as the State Secretary of the Labor Party. This has not been—

The Hon. T.G. Cameron interjecting:

The Hon. R.I. LUCAS: The only person who can be judged in the way the honourable member has interjected—and I will not use that particular word—is the honourable member, whose integrity did not do very well in a recent Supreme Court judgment in relation to the advertisement or advertisements he authorised prior to the last election. If the honourable member wants to talk about those issues then he ought to judge himself by that court decision. The statement I made yesterday is completely consistent with what I revealed to the press five or six weeks ago. We have not undertaken Party political research.

The Hon. L.H. Davis interjecting:

The Hon. R.I. LUCAS: No. We have not undertaken Party political research and the information—

The Hon. T.G. Cameron interjecting:

The Hon. R.I. LUCAS: I have not undertaken Party political research and these results in relation to the basic skills test and the teachers' award, about which the honourable member is complaining, were provided to the media four to six weeks ago to enable them to run stories, to support, criticise or comment upon as freely as they wished. It is nonsense for the Leader of the Opposition to question in any way the open way in which I have conducted $1 500 worth of important public interest research on education and which I have shared with the public, unlike the Hon. Mr Cameron and the Labor Party who undertook hundreds of thousands of dollars of market research with a particular research company.

As I said, I am too much of a shrinking violet at this stage to go into all the details of which I am aware in relation to the Hon. Mr Cameron's arrangements with the Labor Party and the Labor Government prior to the last election. However, one never knows what one might say when provoked. At this stage, I am being restrained and I will not be provoked.

The Leader of the Opposition did not want to talk about the results because it indicated that the overwhelming majority of the community opposed the position which was supported by the Leader of the Opposition and the Institute of Teachers. The overwhelming majority of parents in the community said that they opposed the position being adopted by the Leader of the Opposition—not that they were asked—and the Institute of Teachers in relation to basic skills testing. I reject absolutely the suggestion by the Leader of the Opposition that this was Party political research. It was released publicly. It is not Party political research: it was research undertaken solely to elicit community views in relation to important issues with respect to public education.

Members interjecting:

The PRESIDENT: Order!

The Hon. T.G. CAMERON: I have a supplementary question. Will the Minister give full details of all market research surveys undertaken by his Government, the names of the companies which have conducted those research surveys and the total cost of such surveys?

The Hon. R.I. LUCAS: I would remind the honourable member that most of that question was asked by the Hon. Mr Elliott yesterday, and I have undertaken, on behalf of the Government, to refer it to the appropriate Ministers—

The Hon. T.G. Cameron: He didn't ask that.

The Hon. R.I. LUCAS: Yes, he did. If there is anything not covered by the Hon. Mr Elliott's comprehensive question yesterday that the Hon. Mr Cameron, 24 hours later, has not caught up with, then I will—

The Hon. L.H. Davis: At least he is not six weeks behind: he is only a day behind.

The Hon. R.I. LUCAS: That's right; he is only one day behind. The Leader of the Opposition is six weeks behind.

Members interjecting:

The Hon. R.I. LUCAS: No, I do not have to say 'Yes.' I have to say: I will refer the honourable member's question to the Premier on behalf of the Government and ask him to respond in an appropriate fashion to the parts of it that were not covered by the questions that were asked by the Hon. Mr Elliott yesterday.

GARIBALDI SMALLGOODS

The Hon. R.R. ROBERTS: I seek leave to make an explanation before asking the Parliamentary Secretary to the Minister for Multicultural and Ethnic Affairs, the Hon. Julian Stefani, a question about the HUS Garibaldi situation.

Leave granted.

The Hon. R.R. ROBERTS: Yesterday, Mr Stefani attempted to deflect a perfectly proper question about his records of the February meetings he arranged with Garibaldi Smallgoods. Members would remember that he engaged in theatrics, table banging and threats of law suits in this Chamber—

The PRESIDENT: Order! That is opinion. I have just ruled on that.

The Hon. R.R. ROBERTS: What do you mean 'That is opinion,' Mr President? It was here for everyone to see.

The PRESIDENT: It is not very clever, is it?

The Hon. R.R. ROBERTS: Also, Mr President, it has been reported to me as fact that Mr Stefani has mentioned to a number of staff here that he was very close to hitting members of the Opposition over this line of questioning. I assure everyone in this Chamber that the Opposition, and I in particular, will not be diverted from bringing out the full facts of this case—we on this side of the Council would otherwise be derelict in our duty to the Robinson family and to all those other people who will be subjected to ongoing medical attention for many years.

Mr Stefani has also suggested that the Opposition was linking him to the Garibaldi people purely because of his Italian heritage. Let me assure members that nothing is further from the truth. It is a palpable lie. Mr Stefani knows of my great affection and close association with the Italian community in South Australia. He has been to functions with me on many occasions. He knows that that allegation is palpable rubbish. I give notice that I will raise these matters again in another forum; it will be the subject of my contribution to the debate on the Racial Vilification Bill.

In relation to this sorry matter, the Opposition has not lost sight of the central issue. The central issue is the HUS outbreak at the beginning of this year, which had terrible

consequences for a number of young people and their families. The Government and the Health Commission chose not to do all that they could have done under the Food Act to limit the contamination, and the Opposition wants to know why. Members would remember throughout this incident the questions that I asked as the shadow Minister responsible for meat hygiene in this State. I asked a number of questions expressing our concern, and I would invite members to look at those questions. They will find that they were responsible in relation to the families and the industry concerned.

The Council would also remember the question that I asked the Minister last week in respect of what the Government intended to do in future if this matter were to raise its head again. To our surprise, the Minister told us that he would do nothing differently. We do not shrink from our responsibilities on behalf of the people of South Australia. As far as the Hon. Mr Stefani is concerned, I repeat: we are not making an issue of his background but are referring to public statements linked to him and the Garibaldi affair. The Premier himself has stated publicly that Garibaldi directors approached Mr Stefani on 3 February.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.R. ROBERTS: According to the Premier, it was Mr Stefani who brought the Garibaldi representatives to meet with the Premier at the State Administration Centre on 4 February. Mr Stefani then arranged a high level meeting at the Garibaldi premises for Dr Kirke to attend. Yesterday, there was a further link, as the Hon. Mr Elliott encourages me, in that a Liberal member of Parliament stated that the Garibaldi company helped the Liberal Party in the last two State elections by permitting electoral advertising on the Garibaldi premises to the exclusion of all other Parties. My question is: as the Hon. Mr Stefani has refused to lay on the table any notes or correspondence relating to the meetings he arranged, will he ask the Premier to provide the minutes or correspondence relating to those meetings that he held on those days and—

Members interjecting:

The Hon. R.R. ROBERTS: He represents the Minister for Multicultural and Ethnic Affairs. I ask the Premier to produce any of those documents and to lay them on the table. Secondly, was the Hon. Mr Stefani aware of the Garibaldi company's support for the Liberal Party when he arranged the meetings for the company in February at which the liquidation of the company was discussed? I would invite him to answer the last question 'Yes' or 'No'.

The Hon. R.I. LUCAS: The honourable member actually directed a question to the Premier and Minister for Multicultural and Ethnic Affairs, and I am the Minister in this Chamber who—

The Hon. R.R. ROBERTS: I rise on a point of order, Mr President. I did not direct my question to him.

The Hon. R.I. LUCAS: You did. You asked a question of the Premier.

The Hon. R.R. ROBERTS: The *Hansard* will show that I asked the Hon. Mr Stefani whether he would ask the Premier. The question was directed specifically to the Hon. Mr Stefani, asking whether he would ask the Premier. If he declines to answer and needs the protection of the Leader, that is fine, but let us get the record straight.

The PRESIDENT: My ruling is that it has to be a matter in which the member has an interest. It appears from your question that the Leader of the Government in the Council is the appropriate Minister.

The Hon. R.R. Roberts: No. The question is whether he has an interest.

The PRESIDENT: Order! The honourable member did ask that the question be asked of the Premier. In this Chamber the Minister for Education and Children's Services represents the Premier. I call the Minister for Education and Children's Services.

The Hon. R.I. LUCAS: It does not really matter who asks the Premier: in the end I represent the Premier in this Chamber. The honourable member is looking for information from the Premier.

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: No. The honourable member wants information from the Premier. I recall his asking for minutes, documents or whatever from the Premier. The Deputy Leader of the Opposition knows full well that I represent the Premier in this Chamber. If he is looking for information from the Premier, I will refer his questions to the Premier as the Minister responsible in this area and see whether I can bring back a reply. I assure the honourable member that the Hon. Mr Stefani, after the caning that he gave the Hon. Mr Roberts yesterday with his question, is the last person in the world to require my protection. The Hon. Mr Stefani does not require my protection given the caning that he delivered yesterday.

Members interjecting:

The PRESIDENT: Order! I refer honourable members to Standing Order 107 which states that if a question relates to a public matter it is addressed to the Minister, and the Minister in question is the Minister for Education and Children's Services.

The Hon. R.R. ROBERTS: I rise on a point of order, Mr President. Standing Order 107 also mentions that a question can be asked of any member in this Chamber if he has an interest in the matter.

The PRESIDENT: I suggest that you read Standing Order 107. The question related to a matter of public interest and it was directed to the Minister.

CATCHMENT MANAGEMENT PLANS

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for the Environment and Natural Resources, a question about catchment management plans.

Leave granted.

An honourable member interjecting:

The Hon. T.G. ROBERTS: I will accept that compliment. The *Southern Times* of 19 October 1995 carries a story on a $9 million creek project, under the headline, '$9 million creek project on hold as council pushes for control.' The article, by Jeremy Pudney, the journalist for the *Southern Times*, goes on to say:

> A much needed $9 million overhaul of Christies Creek to prevent flooding and erosion is on hold while Noarlunga council lobbies for control over the project. Council is eager to start work but wants 50 per cent funding from the State Government and an assurance that a catchment management board would not be handed control of the creek. The council says it does not want to spend millions on a project it may not control. The board, like those controlling the Torrens and the Patawalonga catchments, would oversee and fund any work.
>
> Mayor Ray Gilbert will meet with Environmental Minister David Wotton later this month to discuss both issues. The council last week signalled it would move quickly to upgrade the creek, by improving in principle the first $4.4 million work recommended in a consultant's report.

The work would remedy the creek's worst flooding and erosion problems along an 800 metre stretch from Main South Road to the Marston Drive Reserve, Morphett Vale.

The article goes on to point out some of the detail associated with the project. Inherent in the article are the clear indications that the legislation that we set up in relation to catchment management plans and the overlocking responsibilities, or the integrated management plans and the responsibilities of local government water catchment management boards and State Governments, obviously in this case are not working. From articles appearing in the *Advertiser* and letters to the Editor as recently as today, it is also obvious that the Torrens Lake management plan is not working, either. I am concerned about that, particularly in case the Premier or the Minister decides to swim in it; I would be concerned about their health.

It is quite clear that the integrated management plans in these cases are not working. The Government's intentions have not been indicated to local government or the water catchment management boards in relation to their responsibilities, because in this case an important project is being held up while arguments ensue between what appears to be competing authority interests rather than cooperative authority interests. I am concerned that that cooperation is not forthcoming between the three managing bodies, that is, the State Government, the water catchment management boards and local government. My questions are:

1. What steps are being taken by the Government to coordinate the integrated catchment management plans and the funding programs to ensure effective and efficient delivery of these important services?

2. Why has the Christies Creek flood mitigation and erosion prevention program stalled?

3. Why has the Torrens Lake clean-up program stalled?

The Hon. DIANA LAIDLAW: I am sure that the Premier will appreciate the concern that the honourable member has expressed in relation to his health, particularly in the future, if he undertakes that promise to swim across the Patawalonga. In the meantime, I will refer the honourable member's question—

The Hon. T.G. Roberts: He could walk across it.

The Hon. DIANA LAIDLAW: He could walk across it, but I don't think he is inclined to do either at the moment—to the Minister and bring back a reply.

NATIVE VEGETATION

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister representing the Minister for Environment and Natural Resources a question about native vegetation clearance.

Leave granted.

The Hon. M.J. ELLIOTT: A couple of months ago, I made a freedom of information request in relation to the clearance of native vegetation in South Australia. I did so because I had been approached by people who claimed that there had been a significant change in policy and that South Australia, which was leading the nation in terms of protection of native vegetation, was now allowing quite significant clearance to occur. They had also expressed concern about recent changes in the composition of the Native Vegetation Council and the implications of that—including a new Chair who, in the past, applied for significant clearance and had been refused.

In the light of all those concerns, I sought to get the statistics in relation to clearance. Those statistics show that, first, in percentage terms, there was a steady decline in the number of applications being refused. In 1992, the approval rate in 1992 was 2.2 per cent; in 1993, 7.7 per cent; and by 1995 it was 86.6 per cent. It had gone from 2.2 per cent in 1992 to 86.6 per cent in 1995. A more careful scrutiny of the statistics show that there was a steady drift from 1992 through 1993, and into the early part of 1994. Then, after March 1994—and it happened almost instantaneously—there was a massive increase in clearance approvals. I have the exact figures here. In January, February and March, the first three months of 1994, a total of 65 per cent were refused. In the last nine months, 20 per cent were refused.

An honourable member interjecting:

The Hon. M.J. ELLIOTT: It is an important question. It changed critically at the end of March 1994—critically and very dramatically. I have had a chance to explore the issue with a number of people who are quite close to what is happening, and there are a couple of explanations for the steady change. The first was that many farmers, I am told, were realising what was likely to be approved and what was not so more realistic applications were being made. I am also told that there has been a dramatic increase in the planting of vines, and that has placed pressure on native vegetation.

However, nothing in those explanations explains why there was that dramatic switch from March to April 1994, three months after the new Government came into office. I ask the Minister in this place to get the Minister in another place to explain why there has been such a dramatic reversal in the approval rates, and what happened in March 1994. Did a reinterpretation of the Act, or whatever, occur?

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

OPPOSITION BRIEFINGS

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Hon. Robert Lucas, as Leader of the Government in the Council, a question about briefings for the Opposition.

Leave granted.

The Hon. L.H. DAVIS: On Tuesday this week, the Hon. Ron Roberts, who is Deputy Leader of the Labor Opposition Party in the Legislative Council, delivered his Address in Reply speech. In his speech, the Hon. Ron Roberts made some colourful but wildly inaccurate claims about the South Australian Government's recent announcement that United Water was the preferred bidder for the SA Water contract. The Hon. Mr Roberts—better known to his colleagues as radiant Ron—clothed his language in the confident style an old-fashioned professional hawker would have used to sell recycled mops to an unsuspecting housewife. The Hon. Ron Roberts claimed that the State's water resources were to be 'flogged off'. He said:

If the Brown Government proceeds with selling off Adelaide's water and sewerage management service, people in the country will be left without the cross-subsidisation that currently applies.

Mr Roberts thundered:

This matter should be the subject of parliamentary scrutiny, because it might be worth looking at.

Mr Roberts concluded a contribution which, while delivered by someone known as 'Radiant', shed very little light on this important subject by soulfully proposing a toast with clean pure South Australian water to all EWS workers

claiming it will become a rare commodity. He said that in the future we will not be able to afford the water, so we will have to drink cheap French wine. The Hon. John Olsen, as the Minister presiding over the SA Water-United Water partnership, has made it plain on numerous occasions that the Government will retain complete control over the assets of SA Water. He has also made it clear that the Government and not United Water will set the price of water and waste water. Existing concessions will remain, and cross-subsidisation of country water prices will continue.

The contract with United Water requires the maintenance of water quality, and SA Water will be responsible for meeting environmental target performance and regulations set by the Environment Protection Authority, an independent watchdog. In addition to the Hon. Ron Roberts' farrago of fallacies, he gratuitously insulted his colleagues, the Hon. Terry Roberts and the Hon. Terry Cameron, both of whom are members of the select committee established by the Legislative Council for the very purpose of examining the SA Water outsourcing arrangement.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. Lucas interjecting:

The PRESIDENT: I call the Leader of the Council to order.

The Hon. L.H. DAVIS: The select committee has already had several meetings and, as the Chairman of that committee, I assure the Hon. Ron Roberts that his two colleagues have been both enthusiastic and tenacious in their questioning of witnesses. In other words, every—

The Hon. T.G. Cameron: We've only had one witness. We're still on the first witness.

The Hon. L.H. DAVIS: It's not quantity but quality, Terry; you'll learn that.

Members interjecting:

The PRESIDENT: Order! The Hon. Legh Davis.

The Hon. L.H. DAVIS: In other words, every point that the Hon. Ron Roberts paraded as a fact is indeed a fallacy. The Government is not selling the assets of SA Water, cross-subsidisation of country people will not be removed, prices for country water will not be increased, and there is parliamentary scrutiny of the process. My question to the Leader of the Government is: in view of the inability of a senior shadow Minister of the Labor Opposition to grasp even the most basic facts, will the Government arrange as a matter of urgency—if it has not already done so—a briefing about the SA Water-United Water contract for the Hon. Ron Roberts and other interested Labor members?

The PRESIDENT: Before the question is answered, I would like to say that, for some time, I have been asking that the preamble to questions be couched in reasonable English without insulting or using other than a member's proper name and without using opinion. I have not been successful in eliminating opinion, but I would like members to try.

The Hon. R.I. LUCAS: I really cannot add too much, because I think the honourable member has clearly outlined the wild inaccuracies in the Hon. Mr Roberts' contribution to this debate some two days ago. I think the Hon. Mr Roberts should have known better when he made those outrageous claims. However, in response to the honourable member's question, this afternoon I will undertake to speak with the Minister's office to see whether the Minister thinks it might be worth while, in the light of his judgment of the capacity of the Hon. Mr Roberts, if has not already done so, for officers of his department or SA Water to spend some of their time trying to ensure that any future contribution by the Hon. Mr Roberts is somewhat closer to the truth than this most recent one.

AUDITOR-GENERAL'S REPORT

The Hon. G. WEATHERILL: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services, representing the Premier, a question about the Auditor-General's Report.

Leave granted.

The Hon. G. WEATHERILL: I refer to the Premier's statement to the House of Assembly on 27 September following the release of the Auditor-General's Report in which he announced that a committee of public servants had been formed to prepare advice on issues raised by the report within a fortnight of that date. My questions are:

1. Will a copy of the report of this group be tabled in Parliament? If so, when; if not, why not?

2. Will the Premier assure the Parliament that the Auditor-General will be given an opportunity to comment on the adequacy of the report before decisions are taken by the Government—and there is no opinion contained in my question.

An honourable member interjecting:

The Hon. R.I. LUCAS: That's right: there wasn't an opinion until he gave it at the end. I would be delighted to refer the honourable member's question to the Premier and bring back a reply.

ENTERPRISE BARGAINING

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Leader of the Government in this place, representing the Premier, a question about enterprise bargaining.

Leave granted.

The Hon. A.J. REDFORD: Yesterday, the first annual report of the Employee Ombudsman, Mr Gary Collis, was tabled in Parliament. As many members would be aware, Mr Collis is the first Employee Ombudsman, and he has a proud record in the union movement. Immediately prior to his appointment, he was an employee of AWU/FIME, and he is a past President of the Metal Trades' Federation of Unions. I draw members' attention to a number of passages which appear in the Employee Ombudsman's report. First, in relation to enterprise bargaining, Mr Collis states:

> In many cases, the process of achieving an enterprise agreement has been seriously delayed by the decision of some unions to seek Federal award coverage for the workplaces in which they have members. Delays have been imposed on the negotiations while a decision on their application is being made. In at least some cases there are no signs of membership approval being sought for such steps and where agreements under the Federal jurisdiction have been obtained it is often hard to see how the members are better off than they would have been had the agreement been achieved under the State system.

Mr Collis also referred to 'template' agreements. Template agreements are sent out by the head office of the union to all State divisions requesting them to adopt them. In that regard, he said:

> Template agreements not only prevent or delay the negotiation of genuine enterprise agreements that are beneficial to both employees and employers but can also create serious divisions within the workplace between union members supporting the union policy and others, either union members who wish to pursue a real

enterprise agreement or employees who are in other unions or who are not union members at all.

Mr Collis was also uncomplimentary in relation to a number of issues which have been driven by trade unions in this State. He went on to say:

There has been some criticism of this office by some unions who have perceived it as part of a move to undermine the position of the trade union movement in this State . . . The reasons for the majority union not being able to represent the interests of the non-members or members of minority unions lie in the rules of the union concerned and the rigidities of the traditional approach to industrial relations in this country, not the activities of the Employee Ombudsman. There have also been cases in which union members have called in the Office of the Employee Ombudsman to assist with their agreement or other problem because of their dissatisfaction with the service provided by their union.

Right at the end of his report—and I think it is important that I draw members' attention to this—in relation to the interrelationship between the State and the Federal system, the Employee Ombudsman said:

The present Federal Opposition has expressed considerable interest in the establishment of the Federal Employee Ombudsman. If this should eventuate, consideration should now be taking place of the relationship that is to exist between the State Employee Ombudsman and the State office of the Federal Employee Ombudsman . . . The number of calls currently received by this office by employers and employees in the Federal system suggests that a 'one-stop shop' for industrial relations issues would be welcomed by industry.

In the light of these enlightened comments by the Employee Ombudsman, I ask the following questions:

1. Will the Premier contact the Federal Opposition and take up with it a policy of having a 'one-stop shop' in order to extend the benefits which have been given to South Australian employees under the State system available through the auspices of the Employee Ombudsman?

2. Will the Premier take up with the Federal Minister for Industrial Relations the problems associated with unions seeking Federal award coverage, thereby prejudicing or delaying the benefits that can accrue to that union's membership through the State industrial system and, in particular, the enterprise regime which exists?

3. Will the Premier take up with the Federal Minister for Industrial Relations the problems which have arisen through the use of template agreements and inform him of the fact that the practice is leading to a position which is indistinguishable from an industry award and a complete contradiction of what enterprise bargaining is meant to be?

The Hon. R.I. LUCAS: I congratulate the honourable member on his questions. Having had the opportunity yesterday to read part of the Employee Ombudsman's report, I must say that it ought to be read by all members because, indeed, it is an important report and has much to commend it for Governments—both State and Commonwealth. Certainly, I will take up the honourable member's questions with the Premier and bring back a reply. I would add one further comment to the quotations to which the honourable member referred from the Employee Ombudsman's report about unions seeking to obtain Federal award coverage and therefore delaying benefits flowing through to workers under the State system. Certainly, as Minister for Education and Children's Services I can relate to that because the Government has been keen to reach an accommodation with its employees—teachers and staff—for a cost of some $36 million to the taxpayers of South Australia for a significant pay rise that has been delayed interminably for some months, and I understand—

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: No, we are not fighting it. What we are fighting is the union's seeking to take it into the Federal award for $137 million, which is supported obviously by the Labor Party and the Leader of the Opposition.

The Hon. Carolyn Pickles: How much is that costing?

The Hon. R.I. LUCAS: The State offer is costing $36 million. Certainly, I can relate to the Employee Ombudsman's comments about that, because many teachers are expressing great frustration about the attitude of the union movement and leadership that their pay rise, which could have been arrived at relatively speedily in the State arena through an enterprise agreement, is being delayed because the union persists in seeking a $137 million salary and conditions award in the Federal arena. I can relate to and understand the comments by the Employee Ombudsman in that area. It is fair to say that the Employee Ombudsman's comments in many respects serve as a stinging criticism of union leadership in some respects and I hope that union leaders seeking to serve the interests of their employees and members will also read the report and perhaps change their attitude towards wages and conditions negotiations with the Government.

MULTICULTURAL AND ETHNIC AFFAIRS COMMISSION

The Hon. P. NOCELLA: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services, representing the Minister for Multicultural and Ethnic Affairs, a question about the South Australian Multicultural and Ethnic Affairs Commission.

Leave granted.

The Hon. P. NOCELLA: The South Australian Multicultural and Ethnic Affairs Commission Act 1990 as amended provides for up to 15 members to be appointed to the commission, which has had its ranks depleted during the course of 1995 through the resignation of three members and the expiry of the term of another five members. In other words, eight members have completed their term or resigned. During the course of the year, one member resigned in February, one in May and one in August and five terminated in June. We are now in the second half of October, and the ranks of the commission comprise 10 members, that is, one-third down on its full complement. I have been approached by members of ethnic communities as well as some members of the commission itself who feel that perhaps the non-appointment of members to replace those who have gone represents a low priority for the Minister who, understandably in discharging his duties as Premier, may not have enough time or be able to give the attention to this matter that some people feel this body requires. Will the Minister inform the Council if and when he will make the potential five appointments—one-third of the commission—who are missing from the commission? If he will not do so, why not?

The Hon. R.I. LUCAS: Certainly, I will refer the honourable member's question to the Minister and bring back a reply. I understand that the requirement in the Act is that there be up to 15 members of the commission, although I do not have the Act with me and its precise sections but, if it is like most legislation, it does not necessarily require that all the positions have to be appointed by the Government. I will take up that matter with the Minister. On behalf of the Premier as the responsible Minister, I want to reject any implication in the question that the Premier is giving multicultural and ethnic affairs a low priority because of his

other duties. As I am sure most members will attest, the Premier gives this area the greatest priority that he can and I am sure appointments will be made as soon as possible in relation to any vacancies that the Premier and the Government in the end decide that they will fill. I will refer the honourable member's question to the Minister for Multicultural and Ethnic Affairs and bring back a reply.

RAPE

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Attorney-General a question about sexual assault.

Leave granted.

The Hon. BERNICE PFITZNER: I refer to the most unsatisfactory outcome of the case of a 14 year old girl and the acquittal of the man involved on the advice of Judge Hume, who ruled that there was insufficient evidence of rape and that there was no case to answer. This has sparked outrage in some parts of the community, and the Women's Electoral Lobby (WEL) has taken up the issue to address this problem. We must congratulate WEL for its initiative, intelligence and hard work on this issue. Meetings have been put in train and a subcommittee has been formed to look at and study this issue. Also, in May this year the book *Sexual Assault Law Reform—A National Perspective* was released, which will help promote further understanding the legalistic nature of this problem of providing proof of sexual assault. Some of the concerns raised are: first, if a judge rules and directs a jury, can a jury disagree with him; indeed, would it dare? Secondly, the Attorney-General has proposed a change to allow appeal on an acquittal from a 'judge only' case. Should this proposed change be extended to allow appeals on judge directed acquittals?

Thirdly, apparently South Australia lags behind the other States in the definition of 'consent'. Should we look at a change in definition of lack of consent? Perhaps the requirement in the law should be that consent has to be made verbally, as in Victoria's legislation. Fourthly, is judicial education on gender up to scratch? Fifthly, are experienced prosecutors always used by the Director of Public Prosecutions for rape cases? All these concerns will be addressed by the Women's Electoral Lobby's subcommittee. My questions to the Attorney-General are:

1. Will the Attorney-General make some comment on some of these issues?

2. Will the Attorney-General look at the WEL subcommittee's proposals when they are to hand so that, if reforms are needed, he might be able to implement some of the suggested reforms?

The Hon. K.T. GRIFFIN: It is a difficult issue. The supposition in the honourable member's explanation—unless I misinterpreted it—is that maybe if the matter had gone to a jury the outcome of the case may have been different. I have never at any stage tried to predict what the outcome may have been if the matter had been left to a jury. What I did say was that, on the advice which I had, the decision of the judge was wrong in two respects, and I have identified those on the public record. In terms of what would have happened if the matter had been left to the jury, I do not think anyone is in a position to say what the outcome would have been.

The whole area of the law in relation to sexual assault is difficult. Members will remember that I have introduced two Bills dealing with aspects of sexual assault: one relates to persistent child sexual abuse; the other relates to the difficulty of proving a date in relation to a number of allegations. So there is a framework in place which at least reduces the burden upon the prosecution in certain cases. Constantly this area of the law is kept under review. I am not convinced that South Australia lags behind other States in relation to the definition of consent or what is a lack of consent. My understanding is that the law in this State is as clear as it is in every other State, and that very largely the determination of that issue is a matter of fact which takes into account all the circumstances of a particular incident. Some suggestion has been made that consent ought to become part of a codification of this area of the law. Again, I have made public comments, both in Opposition and in Government, that codification, whilst it is attractive to some, also presents difficulties, because once we codify definitions and concepts we then open up the definition or the description of the concept to a critical analysis, and language can be interpreted in different ways so that we end up fighting the issues of legal technicality.

In terms of the propositions which the honourable member raises, I am certainly prepared to look at any proposal for changes in the law, whether it be related to sexual assault or otherwise, and, if the Women's Electoral Lobby wishes to make a submission, certainly, I am prepared to look at that, as I am in relation to any other proposals for change. Quite obviously they have to be properly reasoned and presented. Some people have proposals for reform of the law—and I am not suggesting that this will be one of those—which are more of an emotional reaction than a clear, analytical and objective assessment of what changes could be made and ought to be considered.

In this context I am happy to look at these issues. With respect to judicial education in relation to gender, members might have heard the Chief Justice make some observations about the need for continuing education. That is not specifically targeted completely on this issue, but this would be one of those issues which is part of a program that he would like to see developed for the judiciary.

I was talking to the Director of Public Prosecutions today about issues of support for those who might be victims of sexual assault. He said that in one case prosecutors from the Committal Unit met with the mother of a victim and, having been through the process, the person was very concerned about the matter but was very sympathetic and supportive of the way in which the DPP handled the case. The DPP uses very experienced counsel from within his office, generally speaking, and support is provided throughout the case. They are a few of the immediate responses, but I will bring back a more detailed response for the honourable member in answer to those questions.

STATUTES AMENDMENT (COURTS) BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the District Court Act 1991, the Environment, Resources and Development Court Act 1993, the Industrial and Employee Relations Act 1994, the Magistrates Act 1983, the Magistrates Court Act 1991 and the Supreme Court Act 1935. Read a first time.

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

That this Bill be now read a second time.

This Bill makes miscellaneous amendments to the courts' legislation. In the main the amendments are minor but will improve the operation of the courts. First, the District Court Act 1991 is amended. A new section 18(3) is inserted. This provision is similar to section 15(4) of the Magistrates Court Act 1991. It provides that the registrar may exercise any procedural or non-judicial powers of the court assigned by the Chief Judge or the rules. The new subsection is included so that there can be no questions about whether the omission of the provision in the District Court Act has any significance. A similar provision is also inserted in the Supreme Court Act 1935 by clause 20. That amendment also provides that the registrar is the court's principal administrative officer. This is similar to the provisions in the District Court Act and the Magistrates Court Act.

The second amendment to the District Court Act is to section 50. Section 50 provides that process can be issued or executed on a Sunday. It does not provide, as does section 48 of the Magistrates Court Act, that any process of the court may be served on a Sunday as well as any other day. A new section is also inserted in the Supreme Court Act, by clause 21, to provide for the issue, service and execution of court processes on Sundays. There are no provisions in the Supreme Court Act providing for this. The Supreme Court Act amendment also provides, as do the Magistrates Court Act and the District Court Act provisions, that the validity of process is not affected by the fact that the person who issued it dies or ceases to hold office.

Section 50A of the District Court Act and section 48A of the Magistrates Court Act provide that if it is not practicable to serve any process, notice or other document in the manner prescribed the court may make an order providing for service in some other way. These provisions were intended to apply to both civil and criminal processes. However, they are being interpreted to apply to civil processes only. The sections are amended to make it clear that they apply to both civil and criminal processes. Provision for alternative forms of service is inserted in the Supreme Court Act—the Supreme Court Rules provide for alternative forms of service but those rules only apply to civil processes.

Section 54 of the District Court Act provides for public access to material on court files. The section, and the corresponding provisions in the Magistrates Court Act, the Supreme Court Act and the Environment, Resources and Development Court Act were intended to allow public access to court files so that a person who did not sit through court proceedings would have access to the same information as a person who had sat in the court. The sections are, however, cast too widely.

Photographs of victims of crime taken for evidentiary purposes have been obtained under the section and published in the media. Classes of documents produced to the court, which should not be available for public consideration, such as victim impact statements, pre-sentence reports and bail assessment reports are available for inspecting and copying under the section. Evidence which is produced for the purpose of enabling the court to determine whether or not it has evidentiary value is available for public inspection and copying as is material admitted for the purpose of a preliminary hearing, even though its admissibility has not been finally determined.

In the District Court, judges have had to make available for public inspection and copying the transcript of evidence, submissions of counsel, transcript of the judge's summing up, transcript of sentencing remarks and the formal order of the court even though suppression orders have been made and the court closed. The sections are amended to provide that some material will only be available for inspection and copying by leave of the court. This material is material that was not taken or received in open court, material suppressed from publication, material placed before the court during the sentencing process, material admitted at a committal hearing pursuant to section 107(1)(b) of the Summary Procedure Act, a transcript of any oral evidence taken at a preliminary examination, photographs and films and video and audiotapes. Out of an abundance of caution provision is also made for material prescribed by regulation only to be available for inspection and copying with the leave of the court.

A further category of material has been included in the material that the court must make available for inspection or copying: processes related to proceedings. This includes the information and complaint in criminal proceedings. These were available for inspection under section 72 of the Summary Procedure Act, which has been repealed.

Amendments are made to the Magistrates Court Act—provision which is not made to those of the other courts. Section 51(1)(c) and (d) are deleted. They refer to transcripts of submission by counsel and transcripts of the judge's summing up or directions to the jury in a jury trial. Neither of these are applicable in trials in the Magistrates Court.

The question of whether there is an appeal from a decision of a court to refuse access to material is clarified by making it clear that there is no review of the decision. This question was considered, but not decided, by the Supreme Court in *South Australian Telecasters Limited v Director of Public Prosecutions and Alavija* (judgment No. S5004). Unless the matter is put to rest in the legislation there will no doubt be further litigation on the matter. Generally, administrative decisions are not appealable and the better view is that decisions made on the access to court material are administrative decisions. If something in the nature of an appeal were allowed, it would have to be on the basis that those who might be affected by the decision should be joined as parties. This might include witnesses or other persons referred to in the material to which access was refused. The interest of such people could not adequately be represented by joining the Director of Public Prosecutions or a defendant as respondents to an appeal either by a journalist or other member of the public. A witness may be placed in the position of having to find the resources to oppose the media having access to material. This would not be fair.

Two amendments are made to the Industrial and Employee Relations Act 1994. The provisions for the appointment of industrial magistrates to the Industrial Relations Court are deficient. There are no provisions for the appointment of industrial magistrates in the future and the issue of the principal and auxiliary judiciary of the court is unclear. There is no provision, similar to section 9(7) of the Youth Court Act, which provides that a proclamation designating a person as a member of the court's judiciary must classify the person either as a member of the court's principal judiciary or ancillary judiciary. These matters are addressed in new section 19A and new section 20(1a).

Section 17(2) of the Industrial and Employees Relations Act provides that the senior judge is responsible for the administration of the court. This leaves the effect of certain provisions in the Magistrates Act unclear. Part 5 of the Magistrates Act provides for leave for magistrates and for the Chief Magistrate to approve leave and direct magistrates to take leave. Section 8 of the Act provides that a magistrate is

subject to direction by the Chief Magistrate as to the duties to be performed and the times and places at which those duties are to be performed. When a magistrate has been assigned as a member of the principal judiciary of the Industrial Relations Court, it is not appropriate for the Chief Magistrate to be responsible for deciding when the magistrate should take leave or to be giving other directions to the magistrate. New section 20(2a) makes it clear that the senior judge has these responsibilities.

One amendment is made to the Magistrates Act 1983. A new section, section 18A, will enable the remuneration, duties and other conditions applying to a stipendiary magistrate to be suspended while the magistrate holds a concurrent, fixed appointment. This will be of assistance where a term appointment is considered desirable, but there is concern that such an appointment would have implications for the independence of the judiciary. The amendment will mean that a person appointed as, for example, Coroner, for a term can also hold office as a stipendiary magistrate. Once the term appointment has expired, the person would revert to being a stipendiary magistrate.

Some of the amendments made to the Magistrates Court Act have already been mentioned. The only remaining amendment to that Act of substance is to section 19. Section 19 makes provision for the transfer of civil actions between the District Court and the Magistrates Court and *vice versa*. In general terms, the provisions work effectively, and actions can be transferred at minimal cost to the parties. There is one aspect of the provisions which can be improved. The section requires a judge of the District Court to make the order of transfer. In many instances, the need to transfer is not in dispute, and the question arises in association with an interlocutory application or a pre-trial conference conducted by a master. At present a judge has to be sought to make the order. Time and expense to litigants can be saved if a master could make the order.

A minor amendment is made to section 38 of the Magistrates Court Act. Section 38 deals with minor civil actions. Section 38(3)(a) requires the court to advise judgment debtors of their right to apply for a review of the proceedings by the District Court, and section 38(3)(b) requires the court to give the judgment creditor any advice or assistance as to the enforcement of the judgment that the court considers appropriate in the circumstances.

Minor civil actions encompass not only monetary claims but also claims for relief in relation to a neighbourhood dispute and applications under the Fences Act 1975. Section 38(3)(a) and (b) are amended to require the court to advise and assist litigants in these matters in the same way as it is required to advise and assist judgment debtors and creditors.

The amendments to the Supreme Court Act, which have not already been referred to, are amendments to sections 5 and 39 of the Act. Section 35 of the Supreme Court Act provides that the court can issue a subpoena requiring a person to appear before the court to produce 'evidentiary material'. 'Evidentiary material' is not defined in the Act. The amendment to section 5 inserts a definition of evidentiary material, which is the same as the definitions in the Magistrates Court Act and the District Court Act.

Section 39 of the Supreme Court Act allows the court to prohibit persons who persistently instituted vexatious proceedings from instituting further proceedings without leave of the court and to stay proceedings that have already been instituted. An application under the section can only be made by the Attorney-General. The section is amended to allow any interested party to made an application. The State obviously has an interest in ensuring that the courts' time is not taken up with vexatious proceedings but, equally, persons who are subject to vexatious proceedings have an interest in bringing the proceedings to an end and ensuring that further proceedings are not instituted. This amendment will allow persons who are subject to vexatious proceedings to apply to the Supreme Court for protection from vexatious litigants. I seek leave to have the detailed explanations of clauses incorporated in *Hansard* without my reading it.

Leave granted.

PART 1
PRELIMINARY

Clause 1: Short title
Clause 2: Commencement
Clause 3: Interpretation
These clauses are formal.

PART 2
AMENDMENT OF DISTRICT COURT ACT 1991

Clause 4: Amendment of s. 18—The Registrar
This clause amends section 18 of the principal Act by inserting a new subsection making it clear that the Registrar may exercise procedural or non-judicial powers of the Court assigned by the Chief Judge or the rules. This is equivalent to provisions currently in the *Magistrates Court Act 1991*.

Clause 5: Amendment of s. 50—Miscellaneous provisions relating to legal process
This clause amends section 50 of the principal Act to match the provisions relating to legal process contained in the *Magistrates Court Act 1991*.

Clause 6: Amendment of s. 50A—Service
This clause amends section 50A of the principal Act to make it clear that the section refers to documents whether in civil or criminal proceedings.

Clause 7: Amendment of s. 54—Accessibility of evidence, etc.
This clause amends section 54 of the principal Act in the following respects:

- Currently, if the Court is required to allow a person to inspect evidence it must also allow copying of the evidence. Thus, if it is inappropriate to allow copying the court must determine that the evidence is not to be available under the section even thought mere inspection of the evidence would not cause a problem. Under the proposed amendment the Court would be able to grant an applicant the right to inspect or obtain a copy of evidence (or both).
- It is proposed that subsections (2), (3), (4) and (5) be replaced. Proposed new subsection (2) provides that certain specified classes of material will only be available for inspection or copying with the permission of the Court. The specified classes essentially cover materials that are potentially prejudicial or may be sensitive in some other respect. The regulations can also identify further kinds of material that should require permission. The Court may allow inspection or copying of material referred to in new subsection (2) subject to any condition it considers appropriate, including a condition limiting the publication or use of the material. Proposed subsection (4) makes it clear that a decision by the Court under the section is administrative and is not subject to review. Proposed subsection (5) provides for the payment of fees for access to material under the section.

PART 3
AMENDMENT OF ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT ACT 1993

Clause 8: Amendment of s. 41—Miscellaneous provisions relating to legal process
This clause amends section 41 of the principal Act to match the provisions relating to legal process contained in the *Magistrates Court Act 1991*.

Clause 9: Amendment of s. 47—Accessibility of evidence
This clause amends section 47 of the principal Act in the same way that clause 7 amends the corresponding provision of the *District Court Act 1991* (but leaving out those paragraphs of subsection (2) that relate to preliminary examinations, which are not relevant in the Environment, Resources and Development Court).

PART 4
AMENDMENT OF INDUSTRIAL AND EMPLOYEE RELATIONS ACT 1994

Clause 10: Insertion of s. 19A

This clause inserts a new section 19A in the principal Act, providing for the assignment of magistrates to act as industrial magistrates. The proposed section parallels the provision currently in the Act relating to the assignment of judges to the Industrial Relations Court (section 19).

Clause 11: Amendment of s. 20—General provisions about assignment to the Court's judiciary

This clause amends section 20 of the principal Act to correct a drafting error and clarify its operation and also to make it clear that magistrates assigned to the Court's principal judiciary are subject to the direction of the Senior Judge of the Court and not the Chief Magistrate.

PART 5
AMENDMENT OF MAGISTRATES ACT 1983

Clause 12: Insertion of s. 18A

This clause inserts a new section 18A in the principal Act to provide for suspension of a stipendiary magistrate's remuneration, duties and other conditions of employment where the stipendiary magistrate holds a concurrent appointment for a fixed term. The section also makes it clear that the Chief Magistrate's power to give directions is suspended in such a case.

PART 6
AMENDMENT OF MAGISTRATES COURT ACT 1991

Clause 13: Amendment of s. 3—Interpretation

This clause removes an obsolete reference in the definition of 'Magistrate'.

Clause 14: Amendment of s. 15—Exercise of procedural and administrative powers of Court

This clause makes a minor amendment to section 15 of the principal Act to clarify the intent of the section.

Clause 15: Amendment of s. 19—Transfer of proceedings between courts

This clause amends section 19 of the principal Act to allow a Master to make an order for transfer of civil proceedings.

Clause 16: Amendment of s. 38—Minor civil actions

Section 38(3) of the principal Act currently requires the Magistrates Court, after giving judgement in a matter, to advise the judgement debtor and judgement creditor of certain rights. The subsection is amended to apply to any litigant in a minor civil action, whether or not the action involved a monetary claim.

Clause 17: Amendment of s. 48A—Service

This clause amends section 48A of the principal Act (which corresponds to section 50A of the *District Court Act 1991*, referred to above) to make it clear that the section refers to documents whether in civil or criminal proceedings.

Clause 18: Amendment of s. 51—Accessibility of evidence, etc.

This clause amends section 51 of the principal Act in the same way that clause 7 amends the corresponding provision of the *District Court Act 1991*.

PART 7
AMENDMENT OF SUPREME COURT ACT 1935

Clause 19: Amendment of s. 5—Interpretation

This clause inserts a definition of 'evidentiary material' in the principal Act, corresponding to the definition of that term contained in the *Magistrates Court Act 1991* and *District Court Act 1991*.

Clause 20: Amendment of s. 39—Vexatious proceedings

This clause amends section 39 of the principal Act to allow any person to apply to the Court for an order relating to a vexatious litigant. Currently only the Attorney-General has the power to apply for orders under this section.

Clause 21: Amendment of s. 82—The registrar

This clause amends section 82 of the principal Act to more closely resemble the provisions relating to the Registrar contained in the *Magistrates Court Act 1991* and in the *District Court Act 1991* as amended by clause 4 of this Bill.

Clause 22: Insertion of ss. 118 and 118A

This clause inserts provisions on legal process and service equivalent to the provisions contained in the *Magistrates Court Act 1991* and *District Court Act 1991*.

Clause 23: Amendment of s. 131—Accessibility of evidence, etc.

This clause amends section 51 of the principal Act in the same way that clause 7 amends the corresponding provision of the *District Court Act 1991* and clause 18 amends the corresponding provision of the *Magistrates Court Act 1991*.

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

STAMP DUTIES (MISCELLANEOUS) AMENDMENT BILL

Second reading.

The Hon. R.I. LUCAS (Minister for Education and Children's Services): 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 seeks to amend the Stamp Duties Act in respect of six separate issues.

The package of amendments either propose exemption from taxation in certain circumstances, or propose provisions that will ensure fairer and more equitable treatment under the Act.

The first matter dealt with by this Bill concerns the application of stamp duty on the transfer of registration of a motor vehicle between persons other than spouses.

Currently an exemption applies for the transfer of a specific interest in a motor vehicle between spouses (including de facto spouses), or former spouses.

All other persons however pay duty under the existing legislation. The duty is based on the full value of a motor vehicle at the time of registration, irrespective of whether the vehicle is transferred to sole or joint ownership, or whether a person is added to or deleted from a registration with multiple ownership.

This has resulted in an inconsistency between motor vehicle registration transfers and property transfers. In respect of property transfers, duty is based on the actual value of the interest passing. For example, if an additional person acquires an interest in property, duty is payable on the share of the property passing to the new owner.

This Bill therefore seeks to amend the Stamp Duties Act so that in the future duty will only apply to a share of the vehicle ownership where a person is being added to or deleted from the registration of ownership. A formula, for the purpose of determining proportional ownership, is proposed as part of the amendment.

A minor amendment is also made to section 42C of the Stamp Duties Act to correct a drafting error.

The second matter deals with the stamp duty treatment of lease instruments where the rental payable cannot be ascertained or estimated, or is considered to be less than the current market rent for the property.

In some instances lease rentals are structured to be based on a percentage of business turnover. In other cases the leasing agreement centres around incentives offered to the lessee, such as periods of no rent, free fit outs or cash payments to take up the lease.

In these instances the ability to assess duty on market rental or on the value of the incentives is not clearly provided for in the existing legislation.

It is therefore proposed to amend the Act to provide the Commissioner of Stamps with the legislative authority to seek a determination of the market rental value where there is doubt as to the bona fide nature or value of the rent.

This power is consistent with existing powers for all other classes of property.

The third matter deals with the transfer of registration of heavy vehicles under the Federal Registration Scheme to the South Australian Registration Scheme. Heavy vehicles are classed as vehicles with a gross mass of 4.5 tonnes or more.

For a number of years Federal and State Governments have been working towards a set of more uniform National Road Transport laws.

A major concern however has been the impact upon stamp duty consequent upon the transfer of a heavy vehicle back onto the home State's registration system. Exempting the transfer of registration from duty will enable the abolition of the current Federal registration scheme to proceed.

A stamp duty impost on these transfers would have attracted widespread criticism and would have been unfair in a situation where the change in registration will not be at the owners' instigation.

Most other jurisdictions have indicated they will provide an exemption in these situations. South Australian already provides an exemption for vehicles transferring to this State where the vehicle has been registered in the name of the applicant in another State or Territory. However, the legislation does not recognise vehicles registered under the Federal scheme.

Accordingly, the Bill proposes to amend the Act to provide an exemption for heavy vehicles registered under the Federal registration scheme, on their transfer to the State registration scheme.

The fourth matter dealt with in the Bill relates to the treatment of leases, and in particular where there is an extension of a lease for one day.

On occasions the parties to a lease agreement wish to vary the covenants of the lease, for reasons other than the term of the lease, and registration of the variation can only be achieved by an extension of the lease.

Such extensions are generally for a term of one day. However, under the current stamp duty provisions, the variation to the leasing arrangement is considered to be a new lease and therefore assessable at a rate of $1 for each $100 of rent payable.

The result is that the taxpayer may have to pay double duty in respect of the one lease. This is clearly inequitable and a disincentive to business.

The proposal under the Bill is therefore to amend the lease duty provisions to ensure an extension of lease drawn for a period not exceeding one day, and for the sole purpose of varying a covenant other than the rent payable, is chargeable with a nominal $10 duty. This will remove the possibility of double duty being charged.

The fifth matter under the Bill deals with charging orders imposed under the Enforcement of Judgments Act. The Enforcement of Judgments Act enables a creditor to be provided with a charge over the property of a debtor as imposed by an order of the Court.

The Government believes the incidence of stamp duty on charging orders is an unintended consequence of the Enforcement of Judgments Act. It is therefore proposed that the Stamp Duties Act be amended to provide an exemption from mortgage duty on charging orders imposed under the Enforcement of Judgments Act.

This approach is considered reasonable and equitable both from the Government's position and that of the taxpayer.

The final matter being dealt with in the Bill, deals with stamp duty on the transfer of shares under the Clearing House Electronic Subregister System (CHESS) of the Australian Stock Exchange where the transfer does not result in a change of beneficial ownership.

Certain classes of documents are chargeable with nominal duty under the Stamp Duties Act where no change of beneficial ownership occurs.

All other States have taken the position of exempting transfer where there is no change in beneficial ownership, rather than charging nominal duty. This leaves South Australia as the only State currently imposing duty.

In order to ensure uniformity across all jurisdictions, as was agreed with the development of CHESS, it is proposed that the Stamp Duties Act be amended to provide an exemption from stamp duty where there is no change in beneficial ownership from transfers through the CHESS system of the Australian Stock Exchange.

In preparation of this Bill, consultation has taken place with those industry groups with an interest in the proposals or likely to be affected in any way.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Insertion of s. 42BA

This clause inserts new section 42BA into the principal Act, providing a concessional rate of duty on certain applications to transfer registration of a motor vehicle. The new provision will provide that, for applications executed after its commencement where there is only a partial change in the list of registered owners of the vehicle (ie. where the application only involves adding or subtracting a name or names to or from the list), the duty will be a proportion of the duty that would otherwise be payable, calculated in accordance with the formula contained in the provision.

The new provision does not derogate from any other provision providing an exemption in the Act.

Clause 4: Amendment of s. 42C—Default assessments

This clause amends section 42C of the principal Act to correct a drafting error. Subsection (1)(a) currently refers to 'this Act' (ie. the Stamp Duties Act) when it should be referring to the Motor Vehicles Act 1959.

Clause 5: Insertion of s. 75

This clause inserts a new section 75 in the principal Act giving the Commissioner certain powers in relation to determining the duty payable on a lease of property. The provision provides additional powers in relation to two particular situations, as follows:

- where the consideration payable under a lease cannot be ascertained; and
- where the consideration payable under the lease is inadequate (ie. is less than the current market rent for the property).

In both cases the Commissioner will be able to assess the duty payable based on the current market rent for the property the subject of the lease. Subclause (1) defines 'current market rent' to be the consideration (whether in the form of rent or any other form) that a lessee might reasonably be expected to pay, expressed as a rate of rent per annum.

For the purposes of this provision, the Commissioner may cause a valuation to be made of any property to determine its current market rent and, having regard to the merits of the case, may recover the whole or part of the expenses of the valuation from the person liable to pay the duty.

Clause 6: Amendment of schedule 2

This clause makes a number of amendments to schedule 2 of the principal Act.

Firstly, it amends that part of the schedule that deals with duty on transfer of motor vehicle registration to provide an exemption from duty where the applicant provides evidence that immediately before the application the motor vehicle was registered under a law of the Commonwealth. This part of the schedule is also consequentially amended for consistency with proposed section 42BA.

Secondly, it amends that part of the schedule dealing with lease duty to provide that, in the case of a lease made by way of an extension of an existing lease, the duty is $10 if the term of the extension is a period not exceeding one day and the sole purpose of the extension is to vary a covenant (other than a covenant specifying the rent payable) contained in the existing lease. Although this is the only substantive change, the lease provision has been recast so that it is easier to read and is consistent with proposed new section 75.

Thirdly, the schedule is amended to exempt from stamp duty charging orders made under section 8(1) of the Enforcement of Judgments Act 1991.

Fourthly, the schedule is amended to exempt from stamp duty an SCH-regulated transfer of a marketable security that does not result in a change in beneficial ownership and is not chargeable with duty as a conveyance operating as a voluntary disposition *inter vivos*.

Finally, Form A, which is obsolete, is removed from the schedule.

The Hon. T. CROTHERS: The Opposition supports the Stamp Duties (Miscellaneous) Amendment Bill, recognising that it contains housekeeping amendments brought about and made necessary by some people being able to suborn and thwart the existing legislation by developing and finding loopholes to prevent the legislation as it exists being given effect. In the Committee stage I shall make some generic comments and pose questions which will require answers by the Minister. Those generic comments will be germane to the rationale that underpins the introduction of the Bill.

The Opposition, like members on the Government benches, realises that no matter how good the drafting, with respect to our parliamentary legal advisers, there is always that clever, cleverer or just as clever member of the legal fraternity who will devise or develop ways in which the legislation can be avoided. If law, particularly Anglo-Saxon law, was accurate and all-embracing, we would not have as many lawyers throughout Australia, and indeed South Australia, as currently exist.

The imperfections of Anglo-Saxon law are clearly shown when for major cases there really are but two verdicts, guilty or not guilty. Indeed, the Scots have a third verdict of which, in the English-speaking world, they sometimes make use, and that is the verdict of not proven. Whilst we continue to adopt and embrace in all its totality Anglo-Saxon law without addressing the more commonsense aspects of our own law as it has developed— that is, to be able to widen the types of verdicts that are possible rather than have them polarised and centred on the old verdicts of guilty or not guilty—we cannot get other verdicts in between. For instance, both parties might

be guilty of a crime or breach of the law that is before the court for interpretation, either by a jury or by the judiciary, and that could be interpreted wider by way of verdict. It may be that if we were to do that there would not be much necessity for this Parliament, and, if there were, it might have to meet for only long enough to give authorisation to the Government of the day with respect to the State's finances.

With those remarks, and given the time, I again remind members that the Opposition supports this measure. However, when we get to the Committee stage, I shall be asking a generic question which will apply, I believe, to three or four clauses in the Bill. I commend the Bill to the Parliament.

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

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

A quorum having been formed:

PAY-ROLL TAX (EXEMPTION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 18 October. Page 256.)

The Hon. M.J. ELLIOTT: The Democrats support this Bill, which seeks to exempt motion picture production companies from paying pay-roll tax where a film is wholly or substantially filmed within South Australia. The Democrats' policy is for abolition of all pay-roll tax so, as such, we have no difficulty in supporting this Bill.

The Hon. DIANA LAIDLAW (Minister for the Arts): I thank all members for their positive contributions to this Bill. The South Australian Film Corporation, which sponsored this idea initially, will be overjoyed in terms of its negotiations with various feature film producers. It will help them considerably in attracting feature films to this State.

Bill read a second time and taken through its remaining stages.

LAND TAX (HOME UNIT COMPANIES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 18 October. Page 257.)

The Hon. M.J. ELLIOTT: In supporting this Bill, I wish to raise a few issues that were brought to my attention when I circulated it to interested parties. The Bill seeks to amend the provisions of the Act by considering owners of shares in home unit companies as though they were owners of respective units for land tax purposes. This would bring it in line with strata title owners.

Many thousands of South Australians live in and own company-titled units. I am also told that those people have considerable problems. I have talked to people in the industry and found that problems include lack of title to property, poor capital value, banks often refusing to mortgage against shares, disputes being difficult to resolve as the property comes under company law, additional cost to owners for compliance with ASC regulations, every group having a different set of articles, some groups controlling who can purchase and other groups controlling to whom the units are rented. In general, it certainly seems that people with company titles are at a disadvantage compared to those who are on strata titles or will eventually be, under the new community titles that recently passed through this place.

These people often have real difficulty selling their units or shares for their purchase price—in fact, some people have had real difficulty selling them at all. I have been told that a number of people are essentially trapped in units they went into many years ago. Some of those people are aged and have found themselves unable to move. I know that to some extent this is a side issue, but it is raised in the context that the Government is addressing one problem in relation to these home unit companies.

Recognising that the Minister handling the Bill in this place has been involved in the other debates about community titles, I ask what consideration is being given to find mechanisms to assist people not only with regard to what this Bill is doing so far but also with the many other issues that I have raised in this brief contribution this afternoon. They are questions that do not need to be answered now and perhaps do not even need to be answered before the Bill passes. However, in the context of the debate of this Bill, they should be raised and need to be addressed.

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I undertake to speak to the Minister and provide some responses to the honourable member and the Hon. Ms Pickles, who asked some questions earlier. I also undertake to get some responses and correspond with the respective members in relation to their questions. I thank them for their support.

Bill read a second time.

ADDRESS IN REPLY

The PRESIDENT: Order! I remind members that Her Excellency the Governor will receive the President and members of the Council at 4 p.m. today for the presentation of the Address in Reply. I ask all members to accompany me to Government House.

[Sitting suspended from 3.52 to 4.33 p.m.]

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

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

LAND TAX (HOME UNIT COMPANIES) AMENDMENT BILL

In Committee.

Clauses 1 to 7 and title passed.

Bill read a third time and passed.

STAMP DUTIES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 277.)

The Hon. M.J. ELLIOTT: I rise to support the second reading of this Bill. I have circulated this Bill to parties who I felt might have an interest in it. As a consequence, two questions have been raised with me that I would now like to put to the Minister for a response. First, one of the respondents told me that they felt it was quite reasonable for the State Government to request a valuation to assess the current market rent where they felt that the lease terms allowed for the waiver of a payment of stamp duty. However, the only comment they made was: 'What if the cost of the valuation exceeds the duty that is to be paid?' I am not sure who actually bears the cost of the valuation itself, but I suggest that there will be times when the cost of the valuation will exceed that of the duty to be paid. So, I ask what will happen in those circumstances.

Secondly, the term 'current market rent' is used in this Bill (proposed section 75(1)). There is also a definition of 'current market rent' in section 23(1)(a) of the Retail Shop Leases Act. There are some similarities between the two definitions, but there are also a few minor differences. One of the people who made a submission to me suggested that perhaps a definition for the purposes of this Bill to gain greater consistency between the two Bills could be:

> 'Current market rent' for the property is that rent having regard to the terms and conditions of the lease and other relevant matters that would be reasonably expected if the property were unoccupied and offered for rent for the use to which the property is to be put under the lease.

It is suggested that this would create consistency between the two Acts, even though the application of 'current market rent' was for different purposes. In some cases, however, people may use the term 'current market rent' but find that it is applied in a slightly different manner. In the light of that, I ask the Minister whether we can get a slightly extra degree of consistency or whether there may be some reasons why we cannot do that.

The Hon. P. HOLLOWAY secured the adjournment of the debate.

ADJOURNMENT

At 4.48 p.m. the Council adjourned until Tuesday 24 October at 2.15 p.m.