LEGISLATIVE COUNCIL

Tuesday 24 October 1995

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

QUESTIONS ON NOTICE

The PRESIDENT: I direct that written answers to the following questions on notice be distributed and printed in *Hansard*: Nos. 10, 16, 17, 23, 29, 30, 36, 38, 39, 42 and 43 of this session and No. 190 of the last session.

HAWKER AREA SCHOOL

190. **The Hon. CAROLYN PICKLES:**

1. At a public meeting held at Hawker on 6 April 1994, did Mr David Mellen of the Department for Education and Children's Services assure those present that Hawker Area School would remain Reception-Year 12 until the school council asked for, or agreed to, a change in that respect?

2. To what extent was the Hawker Area school council consulted after the meeting of 6 April 1994 but prior to the decision being taken, to change the status of the Hawker Area School from Reception-Year 12 to Reception-Year 10?

The Hon. R.I. LUCAS: I am advised Mr David Mellen, Assistant Director, Personnel (Policy), was invited to a public meeting at Hawker on 6 April 1994 to discuss the classification of Hawker Area School. His comments indicated that the classification of a school did not necessarily affect class organisation. For example, although Hawker Area School was reverting from a Class 2 Area School to a Class 3 Area School this would not have any bearing on the curriculum taught in the school. Any decision regarding reversion from R to 12 to a R to 10 school would be done in consultation with the school council. Mr Graham Davis, District Superintendent of Education, also attended this meeting and both officers confirmed that consultation would occur.

Mr Davis not only attended a School Council meeting but also invited school council members to present viable study options for Year 11 and 12 students. As these students will still be able to attend Hawker Area School and receive Open Access education, as is the case at present, in reality there has been no change to their access to a viable curriculum.

Consultation with the Acting Principal, Mr Colin Murdock, was ongoing during term 4, 1994. In a letter to Mr Murdock at the end of the year, Mr Davis pointed out his belief that distance education could continue to be an issue, and that it was crucial that communication with the whole school community occurred. In the same letter, Mr Murdock was reminded of the delicate nature of the subject and the difficulties that would exist in achieving an agreed resolution.

Mr Davis has had numerous telephone conversations and discussions on this issue with the Chairperson, and other school councillors, the current Principal, Ms Brenda Kuhr, and a cross section of the community. These are summarised below:

- Telephone conversations between Mr Davis and the Chairperson of the school council early this year.
- Discussions with Mr Brian Rowe, a school councillor on the committee addressing this matter at the school.
- Regular discussions on the matter, and the process of management, with the current school Principal, Ms Brenda Kuhr, both by telephone, and by Mr Davis' visits to Hawker Area School.
- Discussions of the issue with Mr Davis, Dr McPhail, previous Chief Executive, Department for Education and Children's Services, and the Chairperson of School Council during a visit on 17 August 1994.
- Discussion with the Executive of the School Council during a visit to the school on 23 March 1995. This discussion focused on the process of managing the issues.
- School council was advised/requested to provide information on how all Year 11/12 needs could be addressed when Mr Davis met with them on Monday, 19 June 1995.

There has been significant community support for the Department's decision, however there appears to have been some confusion about consultation and ultimate power over decisions.

GOVERNMENT OFFICES

10. **The Hon. R.R. ROBERTS:**

1. How many branch offices of Departments or Statutory Authorities which are the responsibility of the Minister for Employment, Training and Further Education and Minister for Youth Affairs are located outside of the Adelaide Statistical Division?

2. What is the location of each office?

3. What is the role of the office?

4. How many full time equivalent positions are employed in each office?

The Hon. R.I. LUCAS: As of 5 October 1995:

1.	2.	3.	4.
35		Each branch/campus supports the delivery of the Institutes' teaching programs	
	MURRAY INSTITUTE Barossa Valley Campus, Old Kapunda Road, Nuriootpa 5355		29.08
	Berri Campus, Kay Avenue Berri 5343		26.77
	Clare Campus, 155 Main North Road, Clare 5453		5.70
	Loxton Campus, East Terrace, Loxton 5333		2.39
	Renmark Campus, Thurk Street, Renmark 5341		10.90
	Waikerie Campus, Gaeta Road, Waikerie 5330		1.50
	ONKAPARINGA INSTITUTE Mt Barker Campus, Dumas Street, Mt Barker 5251		25.86
	Murray Bridge Campus, Swanport Road, Murray Bridge 5253		28.90
	Victor Harbor Campus, Adelaide Road, Victor Harbor 5211		9.20
	SOUTH EAST INSTITUTE Bordertown Office, Bordertown Learning Centre, Farquhar Street, Bordertown 5268		0.27
	Keith Office, Keith Learning Centre, c/- Keith Area School, Tolmer Tce, Keith 5267		0.27
	Kingston Office, Kingston Learning Centre, East Terrace, Kingston 5275		1.80

1.	2.	3.	4.
	Millicent Campus, Mt Burr Road, Millicent 5280		6.69
	Naracoorte Campus, 19 Gordon Street, Naracoorte 5271		10.60
	Penola Office, Penola Learning Centre, c/- Penola High School, 48 Cameron Street, Penola 5277		0.27
	Robe Office, Robe Learning Centre, Victoria Street, Robe 5276		0.20
	Wehl Street Campus, PO Box 2536, Mt Gambier 5290		62.26
	Wireless Road Campus, PO Box 1425, Mt Gambier 5290		25.50
	SPENCER INSTITUTE Ceduna Campus, PO Box 436, Ceduna 5690		11.60
	Cleve Campus, 27B Main Street, Cleve 5640		2.40
	Coober Pedy Campus, Hutchinson Road, Coober Pedy 5723		6.50
	Jamestown Branch, Cockburn Road, Jamestown 5491		0.50
	Kadina Campus, 31 Hallet Street, Kadina 5554		11.70
	Leigh Creek Campus, Black Oak Drive, Leigh Creek South 5731		0.40
	Narungga Branch, Point Pearce, via Maitland 5573		1.00
	Peterborough Branch, Queen Street, Peterborough 5422		4.00
	Port Augusta Campus, 9-39 Carlton Parade, Port Augusta 5700		56.96
	Port Lincoln Campus, 2 London Street, Pt Lincoln 5606		43.89
	Port Pirie Campus, Mary Elie Street, Pt Pirie 5540		49.93
	Roxby Downs Campus, Richardson Place, Roxby Downs 5725		3.00
	Spencer Institute, Mary Elie Street, Pt Pirie 5540		35.78
	Whyalla Campus, 141 Nicolson Avenue, Whyalla Norrie 5608		82.67
	Woomera Campus, PO Box 40, Woomera 5720		0.40
	Wudinna Campus, PO Box 12, Wudinna 5652		1.90
	Yorketown Campus, Stansbury Road, Yorketown 5576		2.80

*Some staff in Spencer Institute have roles across the institute.

16. **The Hon. R.R. ROBERTS:**

1. How many branch offices of Departments or Statutory Authorities which are the responsibility of the Minister for Housing, Urban Development and Local Government Relations and Minister for Recreation and Sport are located outside of the Adelaide Statistical Division?

2. What is the location of each office?

3. What is the role of the office?

4. How many full time equivalent positions are employed in each office?

The Hon. DIANA LAIDLAW:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

1. Eight offices.

2. Murray Bridge; Berri; Port Augusta; Port Pirie; Whyalla; Port Lincoln; Ceduna; Mount Gambier.

3. To provide a service to housing Trust customers that is prompt, reliable, fair and polite.

4.

Murray Bridge	16
Berri	8
Port Augusta	17
Port Pirie	13.5
Whyalla	20.5
Port Lincoln	10
Ceduna	2
Mount Gambier	16.5

OFFICE FOR RECREATION, SPORT AND RACING

1. With regard to branch offices of the Office for Recreation, Sport and Racing. Nil.

With regard to statutory authorities, TAB 9.

2.

Barmera	25 Barwell Avenue, Barmera 5345
Mount Gambier TAB Tavern	112 Commercial Street East Mount Gambier 5290
Mount Gambier West	167 Commercial Street, Mount Gambier 5290
Murray Bridge	6 Seventh Street Murray Bridge 5235
Port Augusta	35 Commercial Road, Port Augusta 5700
Port Lincoln	23 Tasman Terrace Port Lincoln 5606
Port Pirie	Shop 14, 76 Ellen Street, Port Pirie 5540
Whyalla Playford	458 Playford Avenue, Whyalla 5600
Whyalla Westlands	Westlands Hotel Motel Complex, McDouall Stuart Avenue, Whyalla Norrie 5608

3. TAB staffed agency—Off-course betting

4. Location	Address	As at week ending 4/10/95
Barmera	25 Barwell Avenue, Barmera 5345	2.21
Mount Gambier TAB Tavern	112 Commercial Street East, Mount Gambier 5290	2.70
Mount Gambier West	167 Commercial Street, Mount Gambier 5290	2.31
Murray Bridge	6 Seventh Street, Murray Bridge 5235	2.13
Port Augusta	35 Commercial Road, Port Augusta 5700	1.91
Port Lincoln	23 Tasman Terrace, Port Lincoln 5606	1.39
Port Pirie	Shop 14, 76 Ellen Street, port Pirie 5540	2.21
Whyalla Playford	458 Playford Avenue, Whyalla 5600	1.70
Whyalla Westlands	Westlands Hotel Motel Complex, McDouall Stuart Avenue, Whyalla Norrie 5608	2.35

17. **The Hon. R.R. ROBERTS:**

1. How many branch offices of Departments or Statutory Authorities which are the responsibility of the Minister for Environment and Natural Resources, Minister for Family and Community Services and Minister for the Ageing are located outside of the Adelaide Statistical Division?

2. What is the location of each office?

3. What is the role of the office?

4. How many full time equivalent positions are employed in each office?

The Hon. DIANA LAIDLAW:

ENVIRONMENT AND NATURAL RESOURCES

Note: These figures are accurate as at 29 September 1995 and include staff employed on a casual basis. The number of casual employees varies seasonally.

1.	2.	3.	4.
18	153 Main North Road Clare	Valuation Services	5
	56 Graves Street, Kadina	Valuation Services Property Services	8.6
	37 Dauncey Street, Kingscote	Parks and Wildlife Management	35.6
	15 Gawler Street, Nuriootpa	Property Services	6.6
	Yorke District Office, Stenhouse Bay	Parks and Wildlife Management	8
	57 Ocean Street, Victor Harbor	Parks and Wildlife Management Valuation Services	12.6
	11 McKenzie Street, Ceduna	Parks and Wildlife Management	3.5
	9 McKay Street, Port Augusta	Parks and Wildlife Management Valuation Services Property Services Water Resource Services	29.3
	60 Elder Terrace, Hawker	Parks and Wildlife Management	18.9
	75 Liverpool Street, Port Lincoln	Parks and Wildlife Management Valuation Services Property Services Water Resource Services	16.5
	11 Helen Street, Mount Gambier	Parks and Wildlife Management Valuation Services Property Services	28
	290 Commercial Street West, Mount Gambier	Water Resource Services	6
	Naracoorte Caves, Naracoorte	Parks and Wildlife Management	10.6
	Smillie Street, Robe	Parks and Wildlife Management	2
	32 Princess Highway, Meningie	Parks and Wildlife Management	6.5
	28 Vaughan Terrace, Berri	Parks and Wildlife Management Valuation Services Property Services Water Resource Services	33.5
	53 Becker Terrace, Tintinara	Parks and Wildlife Management	2
	Seventh Street, Murray Bridge	Valuation Services Property Services Water Resources	11.6
Total			244.8

FAMILY AND COMMUNITY SERVICES

1.	2.	3.	4.
9	Community Health and Welfare Centre, Eyre Highway, Ceduna 5690	All branches of the Department for Family and Community Services provide support and assistance to the community, especially those people going through tough times	13.2

	Hutchinson Street, Coober Pedy 5723	12.0
	9 Elizabeth Street, Mount Gambier 5290	22.2
	1-5 Seventh Street, Murray Bridge 5253	19.9
	5 El Alamein Road, Port Augusta 5700	25.5
	Corner Adelaide Place and Tasman Terrace, Port Lincoln 5606	13.4
	75 Gertrude Street, Port Pirie 5540	23.5
	14 Kay Avenue, Berri 5343	15.0
	163 Nicholson Avenue, Whyalla Norrie 5608	17.5
Total		162.2

AGEING

1.	2.	3.	4.
0	Not applicable	Not applicable	0

PUBLIC SECTOR EMPLOYMENT

23. **The Hon. R.R. ROBERTS:** How many full-time equivalent positions under the Government Management and Employment Act or other South Australian Acts which are the responsibility of the Minister for Employment, Training and Further Education and Minister for Youth Affairs and which are located outside of the Adelaide Statistical Division, have been lost in the period from 11 December 1993 until 31 January 1995?

The Hon. R.I. LUCAS: In December 1993 there were a total of 585.05 full-time equivalent staff located outside of the Adelaide Statistical Division. As of 31 January 1995 this figure was 561.67. Therefore a total of 23.38 full-time equivalent positions were lost in the period from 11 December 1993 until 31 January 1995 under the Government management and Employment Act or other South Australian Acts which are the responsibility of the Minister for Employment, Training and Further Education and Minister for Youth Affairs and which are located outside of the Adelaide Statistical Division.

29. **The Hon. R.R. ROBERTS:** How many full-time equivalent positions under the Government Management and Employment Act or other South Australian Acts which are the responsibility of the Minister for Housing, Urban Development and Local Government Relations and Minister for Recreation and Sport and which are located outside of the Adelaide Statistical Division, have been lost in the period from 11 December 1993 until 31 January 1995?

The Hon. DIANA LAIDLAW: Department of Housing and Urban Development, 17.59 FTEs; Office for Recreation, Sport and Racing, nil; South Australian Totalizator Agency Board, 14.26 FTEs.

30. **The Hon. R.R. ROBERTS:** How many full-time equivalent positions under the Government Management and Employment Act or other South Australian Acts which are the responsibility of the Minister for Environment and Natural Resources, Minister for Family and Community Services and Minister for the Ageing and which are located outside of the Adelaide Statistical Division, have been lost in the period from 11 December 1993 until 31 January 1995?

The Hon. DIANA LAIDLAW: The number of positions lost within departments and agencies within the portfolio for the period mentioned is as follows: Environment and Natural Resources, 12; Family and Community Services, 8.2; Ageing, 0.

36. **The Hon. R.R. ROBERTS:** How many full-time equivalent positions under the Government Management and Employment Act or other South Australian Acts which are the responsibility of the Minister for Employment, Training and Further Education and Minister for Youth Affairs are located outside of the Adelaide Statistical Division?

The Hon. R.I. LUCAS: As of 5 October 1995 there are 563.59 full-time equivalent positions under the Government Management and Employment Act or other South Australian Acts which are the responsibility of the Minister for Employment, Training and Further Education and Minister for Youth Affairs and located outside of the Adelaide Statistical Division.

38. **The Hon. R.R. ROBERTS:** How many full-time equivalent positions under the Government Management and Employment Act or other South Australian Acts which are the responsibility of the Minister for Tourism and Minister for Industrial Affairs are located outside of the Adelaide Statistical Division?

The Hon. K.T. GRIFFIN:

Agency	FTE Positions
South Australian Tourism Commission	4.0
Department for Industrial Affairs	39.9
Department for Building Management	24.5

39. **The Hon. R.R. ROBERTS:** How many full-time equivalent positions under the Government Management and Employment Act or other South Australian Acts which are the responsibility of the Minister for Mines and Energy and Minister for Primary Industries are located outside of the Adelaide Statistical Division?

The Hon. K.T. GRIFFIN:

Primary Industries South Australia (PISA)

As at 1 October 1995 there were 533 FTE positions located outside of the Adelaide Statistical Division for the Department of Primary Industries (SA). This figure includes both PSM Act and weekly paid employees.

Mines and Energy South Australia

There are 18.4 full-time equivalent positions located outside of the Adelaide Statistical Division.

South Australian Research and Development Institute (SARDI)

The South Australian Research and Development Institute has 58.4 salaried full-time equivalent positions located outside of the Adelaide Statistical Area.

42. **The Hon. R.R. ROBERTS:** How many full-time equivalent positions under the Government Management and Employment Act or other South Australian Acts which are the responsibility of the Minister for Housing, Urban Development and Local Government Relations and Minister for Recreation and Sport are located outside of the Adelaide Statistical Division?

The Hon. DIANA LAIDLAW: Department of Housing and Urban Development, 103.5 FTEs; Office for Recreation, Sport and Racing, nil; South Australian Totalizator Agency Board, 18.91 FTEs.

43. **The Hon. R.R. ROBERTS:** How many full-time equivalent positions under the Government Management and Employment Act or other South Australian Acts which are the responsibility of the Minister for Environment and Natural Resources, Minister for Family and Community Services and Minister for the Ageing are located outside of the Adelaide Statistical Division?

The Hon. DIANA LAIDLAW: The number of FTEs for departments and agencies within the portfolio is as follows: Environment and Natural Resources, 244.8 (this figure includes staff employed on a casual basis. The number of casual employees varies seasonally); Family and Community Services, 162.2; Ageing, nil.

PAPERS TABLED

The following papers were laid on the table:

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

Engineering and Water Supply Department Report, 1994-95

Tertiary Education Act 1986—Report on the Operation of the Tertiary Education Act, 1994-95

Regulation under the following Act—

Education Act 1972—Teacher Registration Fees

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

Reports, 1994-95
Construction Industry Long Service Leave Board
Forwood Products.
Mines and Energy South Australia
Construction Industry Long Service Leave Board—
Actuarial Report, 1995
Construction Industry Long Service Leave Board—
Estimates of Liabilities, 1995

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

Reports, 1995—
Local Government Finance Authority of South Australia
Local Government Superannuation Board
Reports, 1994-95—
Nurses Board of South Australia
South Australian Urban Land Trust
TransAdelaide
Regulation under the following Act—
Racing Act 1976—Betting—Rugby Union
District Council By-laws—
Barossa—No. 8—Moveable Signs on Streets and Roads
Light—No. 8—Moveable Signs on Streets and Roads

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

Art Gallery of South Australia Report, 1994-95.

HUS EPIDEMIC DOCUMENTS

The Hon. DIANA LAIDLAW (Minister for Transport): I seek leave to table a ministerial statement issued in the other place today by the Minister for Health relating to HUS.

Leave granted.

BUS SERVICES

The Hon. DIANA LAIDLAW (Minister for Transport): I seek leave to make a ministerial statement on the subject of bus contracts.

Leave granted.

The Hon. DIANA LAIDLAW: It is apparent from public statements made by both the Opposition and the Australian Democrats in recent days that there is a basic lack of appreciation about the process in place for the evaluation of tenders and the awarding of contracts for the operation of regular bus services in the Adelaide metropolitan area. Under the provisions of the Passenger Transport Act, the Passenger Transport Board (PTB) alone is the body responsible for awarding such contracts. The Act (section 7) states specifically:

> No ministerial statement direction can be given in relation to the grant or refusal of a service contract by the board.

This provision was proposed by the Government in the original Bill last year to ensure that no political interference would be tolerated in the contract process, and I have honoured this provision to the letter of the law. As the PTB was conscious of the public interest and scrutiny which the competitive tendering process would generate, the board established a tender evaluation committee chaired by Mr Tom Sheridan, former South Australia Auditor-General. In addition to Mr Sheridan, the committee comprised two other independent private consultants and three officers of the PTB, thus providing the committee with financial, planning, supply and ticketing experience.

It is impossible to contemplate that Mr Sheridan, as former Auditor-General of South Australia, would condone the committee's entertaining considerations of the marginal or safe seat status of various electorates in the metropolitan area when recommending to the PTB which tender should win the respective bus contracts in the outer south or the outer north. The tender evaluation committee was provided with the following key tasks by the PTB:

1. To evaluate the tenders for the first two service contract areas with regard to tender price, non-price characteristics, or service matters, and the whole of Government implications;

2. To provide to the PTB a recommendation for preferred tenders and the ranking for the first two service contracts.

The committee then adopted the following plan as the basis for reaching its recommendations:

Phase 1: an evaluation of the non-price elements including service quality, management practices and previous experience;

Phase 2: an evaluation of value for money considerations;

Phase 3: an assessment of the whole of Government cost implications in association with Treasury.

The Passenger Transport Board accepted the tender evaluation committee's recommendations regarding the preferred tenders, and then established a negotiation team to resolve issues arising from the evaluation process. From the outset, the evaluation of tenders was designed to be transparent and free from outside influence, and this was the outcome. All tenders were treated on a fair and consistent basis and all were awarded on merit. Accusations of political interference in the tendering process demean the commitment and courage of TransAdelaide's work force at both the Lonsdale and Elizabeth depots in competing for the tenders. At both depots the work force prepared its own bids following an in-depth assessment of work practices and conditions of employment. These bids differed in terms of price, service improvements and whole of Government cost implications, and it was these factors alone that influenced the outcome of the tender evaluation process.

QUESTION TIME

SCHOOL FIRES

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 school fires.

Leave granted.

The Hon. CAROLYN PICKLES: Arson in our schools traumatises students, parents and teachers, disrupts programs and destroys irreplaceable materials in addition to the buildings. In 1992 the Minister, when he was shadow Minister for Education, proposed rewards of $25 000 for apprehension of arsonists, and spotters fees of up to $500 plus increased security. On 9 March this year the Minister informed the Council that the damage bill for the first eight months of 1994-95 was $1.2 million compared with $4.5 million the previous year. The Minister stated:

> Two-thirds of the way through this financial year the range of measures that the Government and others have introduced has reduced that figure to $1.2 million.

In the spring edition of *School Post* the Minister said that the new security measures were working and that the apprehension of culprits was up by 9 per cent. In spite of these reassurances by the Minister there have now been 12 major school fires reported this year. My questions to the Minister are:

1. What is the total cost of damage from arson since January of this year?

2. How many people have been convicted in relation to arson attacks on schools this year?

3. Has anyone been apprehended in relation to the most recent fires at the Craigmore and Parafield Gardens High Schools?

4. Will the Minister's proposals for $25 000 rewards and $500 spotter fees be implemented?

5. What extra security has been ordered for high risk locations since these latest fires?

6. Has the Government taken any fire precaution measures in schools such as those suggested by the firefighters' union?

The Hon. R.I. LUCAS: Certainly, the first answer that the honourable member referred to in terms of a question asked in the Council did indicate that in the early part of the 1994-95 financial year there had been significant process made in reducing the extent of arson in schools. Sadly, as we have seen, the latter part of the 1995-95 financial year saw that figure increase significantly, although—and I will get the final figures for the honourable member—my recollection is that the final figures for 1994-95 still showed a significant improvement when compared to 1993-94. I think the figures showed an improvement of about $500 000 as a reduction on the level of arson damage in 1993-94. So, whilst the end of the financial year did not show the same degree of significant improvement that we saw in the first six months, my recollection of the figures is that there was still an improvement of about $500 000 in 1994-95 compared to 1993-94. Certainly, I will check that and give the precise figures to the honourable member.

As I have indicated over the past few days, it is concerning that in the space of three or four months since July this financial year we have already seen almost $3 million worth of damage. Admittedly, one big fire involving $1.2 million involved a large bulk of the $3 million; nevertheless, it is obviously a matter of great concern to everyone, the Government included, that the measures that we have taken, the extra money we have spent and the extra provisions that we have implemented have obviously not resulted in a successful turning around in 1995-96 or a continuation into 1995-96 of the turnaround that we saw in 1994-95 in terms of the reduction in the dollar cost of arson in schools.

As I indicated last year, for the first time the Government has implemented closed circuit TV surveillance in a small number of high risk schools. After the first 12 months' evaluation the judgment was made to continue and slightly expand that, and we have done that. We will now look to see—even though the financial circumstances are very difficult—whether we can squeeze some extra money out of the total education budget to again further improve closed circuit TV surveillance of a small number of high risk schools and also increase the coverage of permanent alarm systems and security alarm systems within our high risk areas. I will check the figures and bring back a more detailed reply, but I think the Government actually increased its security budget to more than $2 million a year in terms of the amount we are spending on patrols, security alarms, closed circuit TV and other standard provisions such as the ETSA night light scheme and a range of other provisions.

The department's expenditure in this area has increased significantly. I recollect that the most recent figure is about $2 million, and a year ago it was $1.5 million. So, the Government is putting additional funding into this area of security in schools to try to prevent some the problems that we are seeing. Clearly, it has not been sufficient and, as I indicated on the weekend, we are now reviewing our budget to see whether we can further increase expenditure in this area, hopefully to have some effect in reducing the effect of arson within schools.

As to the issue of spotters' fees or rewards, it is important to point out, as the Leader of the Opposition indicated, that they have not been commitments made by the Government: they were suggestions made by me as shadow Minister for Education and—

The Hon. Carolyn Pickles: On many occasions.

The Hon. R.I. LUCAS: Yes, and rejected by the previous Government on many occasions. I am happy to say that, as a result of the most recent turnaround in the extent of arson damage, I have now asked the department to look not at the rewards issues but at spotters' fees or incentive fees. The figure that we mentioned was only $50—

The Hon. Carolyn Pickles: It was $500.

The Hon. R.I. LUCAS: It was $500, was it? We are now asking the department to look at that and to have consultations with other agencies to see whether that might be a useful additional to the extent of security measures that we must implement. I suppose it is fair to say that in the early figures that we saw—

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: No; the early figures that we saw for 1994-95 appeared to indicate that the measures we were taking were having some success and that we did not therefore need to move to a further range of measures such as spotters' fees, etc. We will now have a further look at that, given the most recent indications in this financial year that the measures we have taken have not been able to achieve the degree of success that we would wish.

In relation to penalties and apprehension, I will obviously need to take advice about penalties from the courts, the police and a variety of other agencies. It is fair to say that the number of people apprehended for vandalism and arson within schools has tended to be small over the years. These people, whoever they are, strike in the death of night and are inevitably gone before anyone can catch up with them. Clearly, there have been some convictions, and I am exploring with the Attorney-General and the police Minister the level of penalty imposed by our court system on those offenders who have been caught.

I would be concerned, given the level of trauma indicated by the Leader of the Opposition—and I can only agree with that—if significant penalties were not being implemented by the courts in serious cases of arson, in particular, in school buildings.

The final point is that I have had some initial discussions with the Attorney-General, and I intend to pursue those discussions in the coming week. I understand that there is provision for young offenders, of the ages of 16 or 17, who commit serious crimes of arson to be tried as an adult. New provisions—which were introduced by the previous Government and supported by the then Opposition—allow for young offenders committing serious offences to be tried as adults rather than under the juvenile system.

As I have said, I have had some initial discussions with the Attorney in relation to this matter, but it certainly would be my view, subject to final advice, that if young offenders of the ages of 16 or 17 are caught committing quite serious arson attacks, such as the most reason incident which cost the taxpayers of South Australia $1.2 million, if the law allows,

they should be taken to trial as an adult in an adult court with all the implications and ramifications that that brings about. As I said, I will pursue that issue with the Attorney-General. That is all the information I have at this stage. I do not have the answers to some of the detailed questions raised by the honourable member, so I will bring back a reply as soon as I can.

BUS SERVICES

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Transport a question about bus contracts.

Leave granted.

The Hon. A.J. Redford: Is this a virgin shadow question?

The Hon. T.G. CAMERON: Something like that.

The Hon. Anne Levy interjecting:

The Hon. T.G. CAMERON: Last week?

The PRESIDENT: Order!

The Hon. T.G. CAMERON: The Minister, in his media release, stated that there would be a saving of $3 million per year on current operating costs, that is, $7.5 million over the term of the 2½ year contract. I also understand that a payment of $10 000 per TransAdelaide employee will be paid by the Government, and that Serco will take approximately 150 of these employees. The media release further stated that Serco will offer permanent employment for the initial 2½ year contract, with career opportunities elsewhere in Serco's diverse organisation. My questions to the Minister are:

1. Has the payment of this bonus been deducted from the forecast savings of $7.5 million?

2. Has the Minister deducted the costs that have accrued to the Government in conducting its feasibility and due diligence studies in relation to this contract?

3. Will the Minister detail the total savings to the taxpayers over the 2½ year term by accepting Serco's bid over the tender submitted by TransAdelaide?

4. What happens to the TransAdelaide employees who sign up with Serco if, at the end of the 2½ year contract, Serco is not the successful bidder?

The Hon. DIANA LAIDLAW: As the honourable member noted, employees at the Elizabeth depot have a number of options: to transfer to Serco with the benefit of a one-off incentive payment, accepting a targeted separation package or redeployment within TransAdelaide or the private sector, if necessary, although TransAdelaide would probably be the preference in such instances, and that would be on the same terms and conditions as apply now. Regarding those three options, no employees will be forced to do anything that they do not wish to do; they will be able to make those choices. I am aware that representatives of the Public Transport Union, the Passenger Transport Board, TransAdelaide and the Department of Industrial Affairs will be meeting to discuss the terms and conditions to be attached to the incentive payment. I suspect they will not be any different from the terms and conditions which essentially applied when the Hills Transit structure was set up earlier this year and employees transferred from TransAdelaide to the new company.

Serco has indicated that, in accepting the decision of the Passenger Transport Board to grant the bus contract in the outer north, it is keen to ensure that, at the time of rebidding for that contract in two and a half years, it will win the right for a five-year contract. In the event that it does not, Serco has said that it will regard the employees whom it took on as permanent employees and that they would be given opportunities within the diverse Serco employment network. Serco does not envisage not winning the contract, although I suspect that some in TransAdelaide are looking at the opportunity in two and a half years to win the right to run those services again. There will be competition and there will be jobs because we will always want to operate not only the level of services that we operate now but more and better services in future which will ultimately require more employment.

I am not able to provide the total savings figures. As the honourable member will be aware, in any tendering contract situation, whether it be a contract offered by the Supply Board or by the Department of Transport for road works, the tenders are made in good faith in the sense that it is not anticipated that the details will be disclosed. There is no difference between the competitive tender contracts that the Passenger Transport Board has let. However, the savings in broad areas relate to productivity and a smaller work force. The reduction in the work force will be a maximum of eight bus operators, and it will also be looking at maintenance, administrative staff and other arrangements. In terms of productivity gains, it will look at the operation of the fleet. I understand, from working with TransAdelaide over two years as Minister, that TransAdelaide at Elizabeth has always had different peak hour rostering arrangements for buses from those which apply at other depots, with the exception of Morphettville. Utilisation of the buses is also an important consideration.

There will be changes in wages and conditions. As the honourable member will be aware, the work force in the outer north put in a bid which changed the wages and conditions which currently apply. Serco put in a bid that also changed the nature of the wages and conditions that currently apply. Unlike TransAdelaide, which negotiated a workplace agreement with the work force and management and which was registered as part of the award, Serco has not yet done so. It will be entering into negotiations with the Public Transport Union late this week or early next week regarding those wages and conditions.

One aspect of this contract that I thought was important—in fact, the whole contract was important—was that Serco was prepared to work with whatever union the work force sought to represent it. There had been quite a bit of speculation that Serco would want a union-free workplace. There had also been speculation that the TWU award conditions might prevail. All honourable members who take an interest in this matter would know that the TWU award had not been serviced for years. Therefore, the work force would not have been comfortable with that union. So it was pleasing to me to think that, notwithstanding all the speculation about Serco and arrangements with unions, and awards, they would wish to work with whatever union the work force wanted.

Those members of the work force who have chosen to keep their membership with the PTU have done so. On Friday, the work force resolved that the PTU would enter negotiations with Serco late this week/early next week in terms of wages and conditions. Those matters are to be resolved between the union and Serco. The work force is comfortable with that arrangement. Having asked the PTU to enter those negotiations on its behalf, the PTU is pleased to accept that responsibility. I have no doubt that there will be some lively discussion between the parties in the next few weeks. Certainly, we will all be keen to learn the outcome.

In terms of whole of Government costs, I can assure the honourable member that these matters were taken into

account in considerable detail in the independent assessment of all tenders by the Treasury in addition to the financial expertise that was available to the tender evaluation committees. The issue of incentive payments was taken into account in terms of the whole of Government costs.

COMMUNITY SERVICE ORDERS

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Correctional Services, a question about community services orders.

Leave granted.

The Hon. T.G. ROBERTS: It has recently been brought to my attention by an organisation in the community that has regularly used community service work gangs that in future the community organisations using community work gangs will be obliged to pay the wages of the gang's supervisor and supply any equipment required. I am informed that, initially, the community organisation will pay half the supervisor's salary, and eventually the whole of the supervisor's salary of $140 per day. I am advised that the department's equipment is often unreliable and breaks down. In that case, it presents safety problems. It becomes unusable and, according to this source, it will not be replaced. The community organisation would have to then supply its own equipment. If this is true, it raises a number of issues, including occupational health and safety issues, and issues regarding a community organisation's ability to raise money to engage the work gangs. My questions are:

1. Is it the Minister's intention to compel community organisations to pay the wages of supervisors of community service order gangs and, if so, why?

2. Is it the Minister's intention to compel the community service organisation to provide equipment required by community service gangs?

3. Will occupational health and safety standards be applied if this is the case?

4. If a member of the community service work gang is injured while using the community service group's equipment, who is responsible for that injury? Will it be the Department of Correctional Services? Will it go through the courts as a normal workers' compensation case or will there be other arrangements?

5. Is the injured work gang member eligible to apply for WorkCover?

6. What are the Minister's intentions regarding community service order schemes in the future?

The Hon. K.T. GRIFFIN: I will refer those questions to the Minister for Correctional Services and bring back a reply.

ROYAL DISTRICT NURSING SERVICE

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister representing the Minister for Health a question about the Royal District Nursing Service (RDNS).

Leave granted.

The Hon. SANDRA KANCK: During a national conference held in Adelaide late last year to discuss home care nursing services, participants agreed that South Australia's Royal District Nursing Service was a world leader in its field. However, this world standard home nursing service is now under threat. Historically, RDNS clients were predominantly the frail and disabled. However, with the introduction of casemix funding and day surgery, the demand for home care services has increased. Hospitals have begun setting up their own home based nursing services for their casemix clients. However, their services only operate from Monday to Friday, 9 a.m. to 5 p.m.; therefore, the RDNS takes over at night and on the weekends.

The bulk of RDNS funds comes from the Federal Government through the Home and Community Care (HACC) program. However, the HACC program has specific funding criteria, as per its 1985 legislation, which do not include post-acute care and palliative care services. As from July next year, the current funding arrangements to the RDNS will cease. It will no longer be allocated direct funding to undertake its services but will have to compete for clients by tender. The Federal Government believes that the States should be using general hospital grant funding to pay for home care nursing services for those patients who have been discharged from hospital under casemix. Both RDNS staff and other bureaucrats working with the Council of Australian Governments are very concerned that this new system of funding will result in a widening of the service gap. Currently the RDNS takes up work on the basis of need but once it moves to competitive tendering some clients will be locked out of the system. My questions are:

1. Does the Minister agree with the concerns of RDNS professionals and some COAG members that there is likely to be a widening of the service gap under the new tender based system; if not, on what basis does the Minister disagree with them; if so, how does the Minister intend to overcome the problem of the widening service gap that will occur under the new tender based arrangements?

2. Will the Minister explain how a hospital based home nursing service will be more adequate and cost-effective given that, in the case of the Flinders Medical Centre and the Royal Adelaide Hospital, many clients will come from all over the State?

3. Will the Minister confirm that the standards being applied by the Royal District Nursing Service are very strict and that the new tender based system will have these same high standards?

4. Will the Minister advise why the Julia Farr Centre disbanded its home nursing experiment some years ago?

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

CRIME

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Attorney-General a question about crime statistics.

Leave granted.

The Hon. L.H. DAVIS: Yesterday, the Office of Crime Statistics released a report entitled 'Crime and justice in South Australia 1994' which presented detailed statistics on a range of offences. Offences involving property were significantly lower in many cases. For example, the number of motor vehicle thefts recorded in the last year was the lowest since 1985; home breaking and entering numbers were the lowest since 1986; and the offence of shop breaking and entering was at its lowest level since 1980. Offences against the person were also lower in some categories; for example, robbery with a firearm was down 19 per cent; there was a fall of 6 per cent in the number of rapes; and there was also a reduction in the number of murder and manslaughter cases.

However, there was a 17.6 per cent increase in the number of unlawful possessions and a particularly significant increase in the number of pornography and censorship offences, which almost doubled from 53 to 99. My questions are: first, does the Attorney-General have any comments on these figures which, in many respects, were encouraging?

Members interjecting:

The PRESIDENT: Order!

The Hon. L.H. DAVIS: It is pleasing to see the Opposition finally exhibiting some enthusiasm. Secondly, in particular, does the Attorney-General have an explanation for the sharp increase in the number of pornography and censorship offences?

The Hon. K.T. GRIFFIN: These are very good questions.

An honourable member: Just table your written answer—that'll be fine.

The Hon. K.T. GRIFFIN: I haven't got a written answer.

An honourable member interjecting:

The Hon. K.T. GRIFFIN: I thought you might ask me some questions about crime statistics.

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: I have always been taught to be rather cautious about crime statistics because, whilst one can confidently take comfort from statistics when they go down, they may come back to haunt you during the next year in a higher frame. However, generally speaking, one has to be quietly confident about the crime statistics showing some significant improvement. The figure for motor vehicle theft, which is very accurate, I think to a very substantial extent reflects some of the initiatives that are being taken within the motor vehicle industry. The RAA, the Motor Trade Association, the Office of Crime Statistics, the Insurance Council and the Government are all involved with the motor vehicle theft reduction committee, which is specifically targeting initiatives to prevent motor vehicle theft. Those programs have been running now for several years and, in themselves, they have made a contribution to the reduction in the level of motor vehicle theft. I think, too, that motor vehicle manufacturers have learnt from the 1980s that they have an obligation to make their vehicles more thief proof. For example, with respect to Commodores, which used to be particularly prone to theft or illegal use, the number of offences regarding the most recent models has dropped quite dramatically. However, more work is being done in relation to motor vehicle theft reduction, and this is a good area to reflect upon.

In relation to pornography, there is only a very small number of offences. So, when you get an increase of one or two offences, the percentage increase can be quite substantial. In 1992, 52 offences were reported; in 1993, there were 53; and in 1994, there were actually 99 offences. To some extent that has come about because last year the DPP raised with me some issues about the point at which prosecutions would be laid for, in particular, the possession of child pornography but also other pornography in breach of section 33 of the Summary Offences Act. The Attorney-General must consent to any prosecution, and sometimes when search warrants are validly executed by police for other purposes they come upon, say, child pornography, which is an offence, and they want to know what my attitude is to prosecution.

I indicated that, if that material did come to notice on the execution of a warrant, I would be prepared—depending on the circumstances of the case—to give my approval to the initiation of proceedings for a breach of section 33 of the Summary Offences Act. Obviously, that will have an impact on the number of offences which come to the notice of police and which ultimately find their way into court statistics. In other respects, whilst numbers of offences reported have gone down—and in some instances are the lowest in 15 years—the fact is that there are other offences where the numbers have gone up. For example, robbery with a weapon has gone down; sexual offences have gone down; but crimes against the person in total have gone up by several per cent. Whilst one would like to think that that trend will continue, one can never guarantee it.

Generally, within the community there has been a great level of appreciation of the need to be pro-active in preventing crime. There has been a much higher level of community involvement in crime prevention. I would like to think, although it is not objectively established at this point, that crime prevention programs throughout the community and in conjunction with business and professional organisations have in some way contributed to the reduction. But that will only be determined absolutely when we see some long term trends occurring. Nevertheless, it is reassuring, and I am pleased that, within the context of these statistics and without trying to make too much of them, they are dropping.

The only other point I wish to make—and I seek an opportunity on every occasion that I speak about crime statistics to make the point—is that Governments alone cannot make a significant impact upon the reduction in criminal behaviour. It comes back to culture, community standards and community involvement. No matter how many police you put on the beat there will always be criminal behaviour. For example, members will recognise that with sexual assault a substantial majority of those cases—I think more than 50 per cent—are offences which are committed against a victim by persons who are known to the victim rather than strangers. In those circumstances the offences which might occur against a person do have a substantial ingredient of familiarity between victim and offender which might then indicate quite clearly that, no matter how many police one has on the beat, one will never be able to stop all those offences unless there is a much more significant program to prevent, say, domestic violence—and there are a number of those now in place in the community across South Australia. Strategies to change culture and attitudes will contribute significantly to that sort of reduction.

The Hon. Anne Levy: Seven minutes.

The Hon. K.T. Griffin: We'll time you when you ask your question.

The Hon. Anne Levy: It should have been a ministerial statement.

The Hon. K.T. Griffin: It was a serious question.

The PRESIDENT: Order!

GARIBALDI SMALLGOODS

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

Members interjecting:

The PRESIDENT: Order!

Leave granted.

The Hon. R.R. ROBERTS: The Premier has stated publicly that Garibaldi directors approached Mr Stefani on 3 February, the same day as the Victorian Minister for Health announced that tests showed that the Victorian suppliers to

the Garibaldi smallgoods company were not the source of contamination which led to the HUS outbreak at the beginning of this year. According to the Premier, it was Mr Stefani himself who brought the Garibaldi representatives to this crucial meeting with the Premier at the State Administration Centre on 4 February. Obviously, Mr Stefani was a witness to, if not a participant in, the discussions which took place at that meeting. Was the issue of the Victorian meat as a possible source of contamination discussed at that meeting and, if so, what was said in respect of this matter?

The Hon. J.F. STEFANI: It appears that the Opposition is very slow in learning things. Members of the Opposition are on a fishing expedition which is politically motivated. I have been told that it is a pay back for Barbara Wiese. This is what it is all about. It is a pay back—a slur—on my good name and character. It is something which the Italian community will damn this Opposition for and something for which the Opposition will pay dearly at the next election. All the questions that have been referred to me have been asked purely for political motivation. The questions have nothing to do with the public interest, the tragic death of a family member, the sufferings of many young people, the tragic consequences for 100 people who lost their jobs, or the company that went into liquidation. I am sick to death of this Opposition, because it hides behind the privilege of this Chamber. Members of the Opposition are not prepared to make outside the Chamber the allegations which have been made within and under the protection of this Chamber. They have said that, if I do not reply to the questions asked of me, I will live to regret it. They are the bovver boy, bully boy tactics of members of the Opposition who claim to be honourable members in terms of their conduct.

Members of the Opposition have tried to smear me by connecting me with a company that has gone into liquidation in the following way: first, they say that I had a financial interest in the company. Let me say to the honourable member—and I call him 'honourable'—that he could have ascertained that information by going to the register of pecuniary interests—a declaration which I made in due time and deposited with the Chamber—and finding out whether I had any financial interest in the company. That is the proper way to conduct business, instead of, by smear and innuendo, asking me, under the protection of this Chamber, whether I had a financial interest in the company. Let me go one step further: this is the Opposition that by smear and innuendo tries to connect me, the Premier and the Minister with some wrong doing that did not occur.

I am not guilty of any wrongdoing. I will stand before this Council and the people and hold my head high, because I have not committed any wrongdoing. As I said, the honourable member is a very slow learner. Last week, the honourable member said, 'I asked the Premier to produce any of those documents.' He then went on and asked that I answer the question. I know that I am an apprentice in this place but I think it is about time that the honourable member opposite learnt that I am not obliged to answer any of his questions, because I am a Parliamentary Secretary to the Premier. I am not responsible in any way, shape or form to answer any of the questions that the honourable member asked me. I challenge the honourable member once and for all to repeat the allegations that he has made in this Chamber outside, because he will see what will happen. He will go straight to the courts and he will answer for the allegations by paying dearly. I am not obliged to answer any of the questions, because I am not a Minister. It is about time that members of the Opposition learnt that those questions should be asked of the Minister. If members of the Opposition have not learnt that yet I suggest that they learn now.

RABBITS

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Primary Industries, a question about the rabbit calicivirus disease.

Leave granted.

The Hon. M.J. ELLIOTT: On 11 October 1995 the Minister for Primary Industries released a ministerial statement in another place about the spread of the rabbit calicivirus disease beyond the quarantine test sites on Wardang Island in South Australia's Spencer Gulf. I have been approached by people who have raised concerns about inconsistencies between the public information distributed by the project's spokespeople and detailed scientific research on the issue. Scientific information about the rabbit calicivirus was published in the book *Rabbit Haemorrhagic Disease: Issues in Assessment for Biological Control*, edited by R. K. Munro and R. T. Williams, published by the Bureau of Resource Sciences (BRS) in 1994, as a result of a workshop organised by the bureau, the CSIRO and the New Zealand Ministry of Agriculture and Fisheries. I ask members to note that the CSIRO was involved in the preparation of this publication.

The calicivirus is the family of viruses of which rabbit haemorrhagic disease is a rabbit specific member—at least we hope that it is only rabbit specific—and this is the disease involved in the Wardang Island escape. The publication includes information about the role of insects in the spread of rabbit calicivirus disease (RHD). It reveals that the RHD can be transmitted through European rabbit fleas, Spanish rabbit fleas and mosquitos. Page 116 of the document states:

> The importance of mosquitos and fleas in the transmission of myxomatosis begged the question as to whether arthropods might not play a role in the transmission of RHD virus. . . Groups of about 100 female Culex annulirostris mosquitos were allowed a brief interrupted feed from the ear or shaven flank of an RHD virus infected rabbit at about 16 hours and 22 hours post inoculation. The mosquitos were maintained in a small jar and fed avidly by thrusting their proboscises through the gauze covered top applied to the skin of the rabbit. The mosquitos were then transferred to two susceptible rabbits maintained in separate, clean rooms, and allowed to complete their feeding. Both acceptor rabbits died of typical RHD, at 42 and 52 hours after exposure to the infected mosquitos. The rabbit exposed to the mosquitos that fed at about 22 hours succumbed more quickly. RHD virus was detected in the rabbits and mosquitos by PCR assay.

This reveals that experts knew there were definitely insect carriers for the virus prior to the trials on Wardang Island and that mosquitos were capable of transmitting that virus. In the *Advertiser* of Saturday 21 October (page 4) Nicholas Newland, project coordinator, was quoted as follows:

> Mr Newland told the *Advertiser* that entomologists had been engaged to suppress insect life in the quarantine area as it was suspected that insects just might carry the disease which would spread when they bit other rabbits.

This appears misleading, given that they already had research which was completely factual that insects were carriers of this virus, and this tends to show that they were aware of this probability. This raises the question that the scientists do not appear to be as competent as they should be. The fact that they used as the test site Wardang Island, which was within easy travelling distance of mosquitos to the mainland, and

knowing that mosquitos were potential carriers (vectors), made a farce of having a fenced trial, unless it was a very fine gauze which kept out the mosquitos. They should not have been surprised by this, given the existing research. There is some evidence that the team was spraying for mosquitos on the test site, but there are several possibilities about how the virus could be transmitted through flies or even scavenging birds.

An honourable member interjecting:

The Hon. M.J. ELLIOTT: It is not hindsight: the research was done years ago showing that mosquitos could carry the virus. Therefore, my questions to the Minister are:

1. Will the Minister call on all appropriate authorities to redouble their efforts to contain the virus and not bow to industry pressure for a premature release?

2. As the RSPCA is calling for an immediate stop to all research work and re-evaluation of the status, will the Minister support this call?

3. Will the Minister investigate:
   (a) why this experiment went ahead with the prior knowledge that insects could carry the disease?
   (b) why was further work with other insect carriers not carried out before the field trials?
   (c) why misleading statements—

Members interjecting:

The Hon. M.J. ELLIOTT: I am talking about misleading statements made by employees of the State Public Service directly under the Minister—were made about the knowledge of the existence of insect carriers before the Wardang Island field trials were carried out?

The PRESIDENT: Order! Before the Attorney-General answers the questions, I remind the honourable member that he sought leave to make a brief explanation prior to asking his question. When he reads *Hansard* he will see that it was a relatively long question and that, in fact, he debated the subject. I suggest that the honourable member couches his brief explanations in a brief manner.

The Hon. K.T. GRIFFIN: I am not in a position to respond immediately to that question. I will refer it to the Minister for Primary Industries and bring back a reply. Whilst the honourable member has made assertions about misleading statements, certainly there has been no basis upon which one can acknowledge that that is the case. I am sure that when the Minister provides me with a reply it will then all become much clearer and we will see whether or not the assertions in that explanation have any substance.

VETLAB

In reply to **Hon. M.J. ELLIOTT** (27 September).

The Hon. K.T. GRIFFIN: The Minister for Primary Industries has provided the following response:

The Government is aware of the concerns expressed by the Dairy Farmers Association of South Australia about possible losses in veterinary services if changes are made to VETLAB. However, the Government is acutely aware that while there is an imperative to maintain essential services there is also a need to ensure that those services are delivered cost effectively.

Primary Industries, South Australia like many other Government agencies is required to make budget savings and this requires that all activities are closely examined to ensure that services are delivered as efficiently as possible. The Government's major concern is to improve, where possible, the operational efficiencies of its departments and not to cut back services which are essential to the South Australian community. VETLAB cannot be excluded from this process.

If any changes to VETLAB are considered the change process will take place in consultation with interested groups including the Dairy Farmers Association of South Australia.

PRISONS, OUTSOURCING

In reply to **Hon. T.G. ROBERTS** (27 September).

The Hon. K.T. GRIFFIN: The Minister for Correctional Services has provided the following response:

The tendering process for the new Mount Gambier Prison was conducted in a sound and proper manner, a fact reinforced by the Auditor-General in his recent report to Parliament. As the Honourable Member rightly points out, the matters that he has raised are the subject of a Select Committee Inquiry of the Legislative Council, a Committee of which, I note, he is a member. It would be more appropriate that these matters are dealt with by that Committee.

In respect to remarks made by the Auditor-General relating to the accountability, scrutiny and release of tendering and contractual documentation associated with the contracting out of government services through competitive tendering, I advise that the Premier in his Ministerial Statement on 27 September 1995 appointed a group of senior executives to look at these issues as a matter of urgency.

As you will appreciate, it would be improper for the Minister for Correctional Services to release any information on current and future outsourcing initiatives until the advice and recommendations are received from this group and subsequently considered by the Government.

CRIMINAL INJURIES COMPENSATION

In reply to **Hon. R.D. LAWSON** (27 September).

The Hon. K.T. GRIFFIN: Although criminal injuries payments are reported on a computer program, that program does not have the capacity to single out claims by prisoners. The Assistant Crown Solicitor has instructed his staff to keep a manual check but, unfortunately, that check will need to be maintained for several months for the information to have any statistical validity. The honourable member may wish to raise the matter again in approximately six months' time.

CAE ELECTRONICS

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to table a copy of a ministerial statement made today in another place by the Minister for Industry, Manufacturing, Small Business and Regional Development on the subject of the international defence company CAE Electronics Australia Pty Ltd.

Leave granted.

DOMESTIC VIOLENCE

The Hon. DIANA LAIDLAW: I seek leave to give a reply to a question provided by the Minister for Housing, Urban Development and Local Government Relations in respect of a question about domestic violence asked by the Hon. Carolyn Pickles on 27 September, at which time the honourable member suggested that I and the Government generally had no regard for victims of domestic violence. In terms of the press statement that the honourable member put out and the other statements made leading up to the question, it is important that this answer be read.

Leave granted.

The Hon. DIANA LAIDLAW: A March 1994 review of Housing Trust private rental assistance programs identified supplementary programs (furniture, removals and utility bonds) as not being Housing Trust core business. Negotiations between the Housing Trust and the Department for Family and Community Services resulted in agreement that these programs were not inconsistent with the provision of services under the Family and Community Services anti-poverty program, and the trust discontinued the services from 1 July 1995.

This Government maintains a commitment to assist women fleeing domestic violence situations, and the Minister for Housing, Urban Development and Local Government

Relations is pleased to confirm that further negotiations have resulted in agreement that the Housing Trust will make a transfer of funds to the Family and Community Services program this financial year to enable the program to continue.

This will enable the Housing Trust to focus on the provision of housing services whilst at the same time assist Family and Community Services in the provision of a broad range of services to the survivors of domestic violence, including advocacy, financial counselling and financial support.

BUS SERVICES

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Minister for Transport a question about the outer north bus contract.

Leave granted.

The Hon. P. HOLLOWAY: The Minister said in her answer earlier to my colleague, the Hon. Terry Cameron, that TransAdelaide would be trying to win back the contract for the outer north bus service in three years' time. My questions to the Minister are:

1. What conditions will apply to the re-employment of staff by TransAdelaide once they have left TransAdelaide and received their $10 000 payment in the process?

2. If TransAdelaide wins back the contract and then loses it again at some time in the future, will it pay another $10 000 to staff who transfer?

3. Was the lowest-priced tender accepted in relation to both the outer north and outer south bus contracts?

4. Does the contract provide that the Auditor-General will have full access to Serco's operations in relation to its public transport service contract?

The Hon. DIANA LAIDLAW: I have no idea whether TransAdelaide will bid again in 2½ years' time, and not three years, as the honourable member mentioned in his question. That decision will be made by the management of TransAdelaide. I indicated that, following discussions within TransAdelaide, it would be keen to do just that. As I say, whether it decides to do so is up to TransAdelaide and, while there may be speculation within TransAdelaide, it is not for me to speculate.

In terms of the lowest priced tenders being accepted, the honourable member would be aware from all the conditions of the contract and from the statement I made earlier today that various factors are taken into account by the Tender Evaluation Committee when considering all the tenders, and those factors include price, quality of service and whole of Government factors.

I said earlier today in my ministerial statement that the Tender Evaluation Committee was asked by the PTB, first, to evaluate the tenders for the first two service contracts with regard to tender price, non-price characteristics and whole of Government implications; and, secondly, to provide PTB with a recommendation for preferred tenders and ranking for the first two service contracts. Price has never been the only factor taken into account.

In terms of the Auditor-General and any relationship with Serco and the award of a contract by the Passenger Transport Board, I am certainly aware that the Auditor-General audits the accounts of the Passenger Transport Board. I know that the board has a series of arrangements in place in terms of monitoring such contracts. The best monitor of such a contract will be passenger response. The contract provides incentive arrangements for the contractor to generate further passenger business. The contractor will soon learn whether passengers want to use the service and what passengers think of the service that is being provided on the basis of who is using the service. Also, an immediate response in terms of the company would relate to the employees and their response to any offer of work.

CRIMINAL LAW CONSOLIDATION (MENTAL IMPAIRMENT) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 27 September. Page 46.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The Opposition supports the second reading of this Bill. We have no difficulty at all with the concept of modernising the procedures according to which mentally impaired people will be dealt with by the criminal courts. My predecessor, as Leader of the Opposition in this place, the Hon. Chris Sumner, pointed this out when he spoke at the second reading of the first version of this Bill on 6 September 1994. Since then the Bill has been significantly restructured following constructive criticism from a number of members of the legal profession, including some of the judiciary, as I understand it.

The Opposition would agree with the Government to the extent that the procedures set out in the Bill before us are a significant improvement on the version of the Bill which appeared in this place last year. Most importantly, there is a real flexibility in relation to when and how questions of mental competence will be resolved as compared with trials of the so-called 'objective' elements of each offence. Most importantly, the law is changed in relation to when a person will be considered mentally incompetent to commit an offence. The common law rules, which date back to the first half of the nineteenth century, have clearly become outdated, causing numerous injustices in individual cases.

It is impossible completely to resolve the practical problems faced by defence lawyers when they find that their client may be mentally impaired or at least mentally impaired at the time of committing the alleged offence. It is probably beyond the realm of legislation to resolve all these problems in terms of taking instructions and getting a clear story from a mentally impaired accused person and making decisions about tactical opinions in the course of the criminal law procedure, but at least this Bill allows mentally impaired accused people to be dealt with more realistically in the court system.

There is one important area where I foreshadow I will be moving amendments. The Opposition has been specifically concerned with the rights of victims and those associated with victims. Despite the excellent work carried on by the Victims of Crime Service and various police officers, prosecutors, social workers and volunteers, many people dramatically and severely affected by crimes still feel that they are left out of the court system, which focuses on the offender. The three relevant proposed new sections which will be the subject of our amendments are 269R, 269T and 269Z.

The Opposition is still negotiating with Parliamentary Counsel about how these amendments should be worded, but I can give members an approximate idea of what we have in

mind in order to try to expedite the process. Proposed section 269R provides for something like a victim impact statement, whereby the Crown must arrange for a report setting out the views of the next of kin of the defendant and the victims of the defendant's conduct. This is akin to the sentencing process—in other words, where the courts decide whether to release the defendant or to make a supervision order and, if so, for how long and upon what conditions.

Proposed section 269T provides, among other things, that the court cannot release a defendant from supervision or significantly reduce the degree of supervision to which the defendant is subject unless the court is satisfied that the defendant's next of kin and the victims of the offence of which the defendant was charged have been given reasonable notice of the proceedings. In other words, it is a kind of right to be notified of impending release or reduction in supervision.

Proposed section 269Z gives a right of counselling to the defendant's next of kin and the victims in respect of an application for release being made on behalf of the defendant. In different ways these proposed sections provide certain people with rights: the right to have some input into the court's decision-making process about the fate of the particular offender; the right to be notified in the event of release; and the right to have counselling provided through Government health services where a defendant has applied for release.

The question is how broad the categories should be in respect of the recipients of these rights. The Opposition is concerned that the present restricted references to the defendant's and victim's next of kin are too narrow. In this context—and this is probably more of a drafting point—I note that section 269R refers to the 'next of kin of the defendant and the victims (if any) of the defendant's conduct.' The wording of sections 269T and 269Z are different. They refer to 'the defendant's next of kin and the victims (if any) of the offence of which the defendant was charged.' In other words, no right is given to sections 269T or 269Z in respect of the next of kin of the victims. However, because of the different wording presumably in section 269R, 'the next of kin of the defendant and the victims' refers to the next of kin of the victims as well as the next of kin of the defendants. There is perhaps some ambiguity about that, and we hope that our amendments will resolve it.

In any case, the Opposition's view is that in respect of each of these rights, the rights should be extended somewhat to the next of kin of the victim. The Opposition particularly wants to include the immediate family of people who have been murdered. In most cases of homicide, one of the legacies is a traumatised and disrupted family. This Bill provides an opportunity more properly to take account of the trauma involved in that scenario.

If it is suggested that the family of the victims who suffer homicide at the hands of a mentally impaired offender have greater rights than those who are killed by a legally sane individual, I suggest that the answer is to expand these rights to family members elsewhere rather than to give up the opportunity to amend this Bill in a positive and helpful way.

The Opposition is also concerned that in many cases there will be people who are not technically victims but who will justifiably be in great fear of the release of a mentally impaired offender. There are all sorts of examples. The first is where there is a case of attempted murder with a gun that does not go off or misses its target. If one was the target of a mentally impaired attempted murderer, one would feel a degree more comfortable if one knew that there was a legal mechanism in place which would alert one to the release of that offender from legal detention. There is a difficulty in drafting an appropriate provision so as not to make it too broad. It may be that the right to be notified of release should be given to a broader class of people than in respect of counselling or a victim impact statement. We are still working on the wording with Parliamentary Counsel. We have raised these issues, but the Opposition is pleased to support the second reading.

The Hon. R.D. LAWSON secured the adjournment of the debate.

CRIMINAL LAW CONSOLIDATION (APPEALS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 28 September. Page 70.)

The Hon. A.J. REDFORD: I support the second reading of this Bill. Essentially, the Bill seeks to amend the appeal provisions in the Criminal Law Consolidation Act. There are three important ways in which the legislation will amend the appellate practice of the criminal law. The first relates to a stay of proceedings on the basis that legal proceedings constitute an abuse of process. To the uninitiated, an abuse of process is a wide term. Effectively, in layman's terms, it means that the court rules that a trial should not proceed because of unfairness. I will not bore members with all the examples that might constitute an abuse of process, but they are wide and varied. They include situations where evidence is lost and general unfairness to the accused of such a type that to allow the trial to proceed would be unfair. It has involved cases where there has been inordinate delay in bringing an accused to trial and the prejudice associated with that. Most recently, under that broad category, the High Court, in the *Queen v. Dietrich*, decided that there was an abuse of process—I will go into why in a moment—and ordered that there be a stay of the prosecution.

In the Dietrich case the High Court held that where an indigent accused person charged with a serious offence who, through no fault of his own, is unable to obtain legal representation, the court may stay a criminal prosecution. The High Court came to that conclusion on two bases. First, it looked at whether or not there was some implied right in the constitution or, indeed, a common law right that had not been excluded by legislation for legal representation. On my recollection, the court was divided on that issue; but it agreed on the concept that the Australian Constitution had an implied guarantee to a fair trial in criminal cases and that, without legal representation in a serious criminal case, an accused would not be able to have a fair trial.

With the increasing cost pressures on legal aid bodies in Australia, applications for stays of proceedings pursuant to the Dietrich principles have become commonplace. In most cases they are refused. I know that the criminal legal profession in South Australia has been particularly active in bringing such applications before both the District and the Supreme Court, although I understand that the rate at which the applications have been granted has not been dissimilar to that which has prevailed in other jurisdictions. However, in cases where stays are granted, there may be doubt as to whether or not such stay orders can be appealed against. This legislation, quite rightly, puts that issue beyond doubt. The

public has a stake in ensuring that criminal prosecutions are conducted expeditiously and with all due fairness. In my view, it is undesirable that a criminal case can be stayed at the instance of one judge without the possibility of review.

The second issue to which this legislation relates is the clarification of the right of a court to reserve a question of law before or during a trial for determination by the Court of Criminal Appeal. Often in a criminal trial the result may depend on a particular minor or discrete point. However, notwithstanding that, it is not uncommon for such a trial to last for days, if not weeks, and for both parties to know that the result will be determined ultimately by the decision of a court on that particular discrete issue.

I will explain how that can arise. First, we have a rule at common law known as *stare decisis*, which means let the decision stand. Often there are occasions when a decision made by a superior court, such as the Court of Criminal Appeal, on a particular issue may need to be challenged by the lawyer for the defendant, or on occasions by the lawyer for the Director of Public Prosecutions. This is a device whereby that challenge can be made and carried out at the discretion of the court prior to having to waste significant amounts of time in the taking of evidence that may be irrelevant to that issue at a later stage.

In practical terms, there might well be an issue that takes half a day of a court's time. The court, the Director of Public Prosecutions and defence counsel may be well aware of that. That issue may be argued, and the judge and the court may make a decision. In the absence of this clause, what will happen in that case is that inevitably the rest of the trial must take place, then the matter will go on appeal and, at the end of that process, it may well lead to the possibility of the matter being sent back to the original trial judge for a repeat of that evidence. On any examination, that is a waste of resources.

By far and away the most important aspect of this legislation relates to appeals. The first issue relates to appeals against a decision of a judge on an antecedent issue. An antecedent issue is an issue that may be decided by a judge prior to the actual hearing of the matter, and it includes Deitrich-type applications and stays for abuse of process. The legislation provides that there can be an appeal, as of right, by the Director of Public Prosecutions against the decision of a judge, whereas if a defendant wants to appeal on such an issue, then that defendant must obtain leave of the court.

I understand the reasons for the difference as stated by the Attorney in his second reading contribution. However, we are running the risk of being accused of having one rule for the prosecution and one rule for the defence. I invite the Attorney to consider whether or not the appeal against a decision of a judge on an antecedent issue be a matter that ought to be subject to leave, whether the appeal be made by the Director of Public Prosecutions or the defendant. For those who are uninitiated in the area, I might say that leave either can be granted by the judge who makes the initial decision or, alternatively, can be sought from one of the judges or another judge or, indeed, ultimately by the Court of Criminal Appeal. In my experience, leave is not something that is difficult to gain where there is a real and substantive issue to be determined by a court. It is very rare—in fact, exceedingly rare—that leave is refused by a court where there is something important to be decided by the Court of Criminal Appeal.

I invite the Attorney-General to consider whether or not there needs to be a difference in rules between that which applies for the defendant or accused person and that which applies for the Director of Public Prosecutions. If the Attorney is of a mind to amend, I would prefer that both the Director of Public Prosecutions and the defendant have to obtain leave. If that right is given automatically to defendants, it may be open to abuse and, perhaps to a lesser extent, there is a risk—although certainly unlikely in this State with the current Director of Public Prosecutions—that it could be abused by a director of public prosecutions. It may well even be abused by the Commonwealth Director of Public Prosecutions, over whom the Attorney has absolutely no control.

The next point in relation to appeals is the issue of referring a case stated before or during a trial to the Court of Criminal Appeal. I would imagine that that would be very rarely used, but I can imagine a situation where that might be done. In that regard, the courts ought to be given the power to do that. It takes a brave judge, at first instance, to refer matters such as this to the Full Court or the Court of Criminal Appeal. The Court of Criminal Appeal in other matters has generally said that this should only be done in rare cases. I am sure that that would be the case.

The other issue, which is not of great significance but again which I support, is that, where there be an appeal against a sentence and leave is granted, then the appeal proper should take place only on the grounds in which leave is given. Currently, the practice is—and it is supported by a Full Court decision—that a defendant may appeal on seven grounds. He may be given leave to appeal on three. If he is given leave to appeal on three, he can argue all seven grounds before the Court of Criminal Appeal, which is the court comprising three judges. That is a nonsense, and it ought to be dealt with so that we can have these matters dealt with expeditiously and get to the point quickly.

The most controversial aspect of this legislation is whether the Director of Public Prosecutions should have the right to appeal against an acquittal where the trial is taking place or has taken place before a judge sitting alone. I must say that this clause and the rationale behind it has given me a great deal to consider and has caused me great concern. Indeed, I have received correspondence from the Bar Association, and I am sure that members opposite and those on this side of the Chamber have received a similar submission. I think there is a great deal of force in that submission.

There are many occasions where we in this place are confronted with two conflicting principles. In this case, as a member of the Government, I am confronted with the principle that we went to the last election promising that we would give the Director of Public Prosecutions a right to appeal in this situation. On the other hand, I am confronted personally with the position of whether a prosecuting authority should be granted the right of appeal in any circumstance. This legislation ought to be considered in the context of a number of changes that have occurred in the practice of the criminal law in the past few years. Of course, the first of these is the issue of trial by judge alone. I will return to that matter, because I have some fairly strong views as to what trial by judge alone is and what it ought to be, and the difficulties I have with that concept.

The second of the changes that have occurred recently has been the reclassification of offences from indictable to summary offences. Members opposite may recall that in the previous Parliament the former Attorney-General (Mr Chris Sumner) introduced legislation, which was ultimately passed, that enabled the reclassification of a quite substantial number of offences. Two offences that are important relate to the offence of assault, and the second is the offence of larceny.

I know that over the years we have perhaps become immune to criminal conduct in this State. On occasions, we may think that the criminal conduct which we were told as children was serious is perhaps not as serious as we may have thought. In my view, a charge of assault or a charge of larceny—it does not matter what the position is—is a serious charge. I give an example to support that. If anyone in this Chamber, or a judge, magistrate or a business leader, was charged with larceny or shoplifting, that person would take that charge as being a very serious offence.

The reclassification of that offence as a summary offence has, to some extent, taken away some of the protections that are available to prominent people and, indeed, the broader general community in such offences. I think it was a mistake to reclassify some of those serious offences. I think it was wrong but, needless to say, I have to deal with the law as it stands, and the classification of offences is not the subject of debate in this legislation. However, if under the previous classification I was charged with larceny or assault, as an accused person I had the right to a jury trial. I no longer have that right. So in that sense the reclassification of offences has diminished substantially the range and extent of offences that currently are dealt with by juries.

The third issue that gives me some cause for concern is that this measure might be said to be a precedent for appeals against jury decisions. There are jurisdictions, not in Australia but in other countries, which allow for the prosecution to appeal against a jury decision to acquit. I have some real misgivings about a legal regime which allows that, and I would have enormous misgivings if that ever came to be the case in the context of the enormous imbalance in terms of resources that prosecution authorities have as opposed to accused persons. I digress for a moment to draw the attention of members to a program on channel 9 on Sunday mornings called *Sunday*. Last Sunday, that program dealt with a number of issues relating to legal aid. Some of the examples given during that program about the enormous inequality between prosecution and defence resources, one would have to say, on any view, would cause concern, but to then include the possibility of an appeal against a jury decision to acquit an accused, in my view, would place an inordinate and extraordinary onus on an accused person who generally is in a very difficult situation. It is very rare for a person who does not get legal aid not to be left almost penniless following a jury trial.

I have a particular view about the role of the jury and its importance in the current criminal justice system, and I draw the attention of members to some historical aspects. In 1768, William Blackstone, who is sometimes described as the father of the English Common Law system, enshrined the jury in the ordinary Englishman's heart as the bulwark, the cornerstone of his liberty. Indeed, it has been said by many legal commentators over the years that the jury is an absolute cornerstone of our system of democracy and justice. In 1956, the well known judge Lord Devlin, concluded in his Hamlyn lectures on the subject of juries:

> The first object of any tyrant in Whitehall would be to make Parliament utterly subservient to his will; and the next to overthrow or diminish trial by jury, for no tyrant could afford to leave a subject's freedom in the hands of 12 of his countrymen. So that trial by jury is more than an instrument of justice and more than one wheel of the constitution; it is the lamp that shows that freedom lives.

Over the years, the jury has developed, in the eyes of lawyers in particular, a respect which is difficult to attack and which is almost universally acclaimed. A publication entitled *The Bulwark of Liberty* describes a number of the important ideas that underlie the concept and the role of a jury in our criminal justice system and in our democracy. At page 126 it states:

> We may usefully isolate and examine four of the ideas: the jury prevents the State from manipulating the strings of justice to its own ends in cases having direct political significance, the jury prevents judges from imposing the views of the class of society from which they are drawn, the jury prevents liaison between judges and the police, and the jury prevents private citizens from exerting improper influence over judges. The first two propositions can easily be made to appear much more significant than historical evidence justifies.

When one looks at the chequered history of the jury, it falls into almost two categories. When the jury was first promulgated it became almost the prosecuting authority, and in a sense—and I will not go into the history of that in any detail—the jury of very early English legal history is not what I would describe as the precursor, other than in a factual sense, of the jury as we understand its role today.

However, there was a significant change in the United Kingdom and Europe which was sparked by the revolution in France. Throughout Europe there was a great deal of pressure and cajoling for radical parliamentary reform. At the time, the British Prime Minister, Mr Pitt, became increasingly nervous and sought to silence a number of leading dissidents by prosecuting them for various charges, including sedition. Some judges showed keen sympathy with the policy of the Government in their instructions to juries. In 1793, the heavy charge of high treason was laid against a number of leading members of the London Corresponding Society, which was a leader in propagating and setting out radical ideas amongst the working class in terms of the change to the parliamentary system.

I might add that that alarmed the then Prime Minister. The Government sent a number of agents or spies to the meetings, and they gave evidence that the accused people had not only spoken of revolution but had started actively preparing for an insurrection. However, the prosecuting authorities in that case underestimated or did not take into account the well reported advocacy skills of one Thomas Erskine who acted for the defence. It has been reported that with brilliant and forceful oratory he left the juries in no doubt about the flimsiness of the prosecution case and their duty as the champions of the liberty of the subject. In the principal cases, the jurors acquitted, and following that the Crown offered no evidence against the other defendants.

Apparently, each verdict was greeted with great public acclamation. What I draw from that is that the role of the jury in the criminal justice system as we would understand it in this State and in this country is to bring the community into the criminal courts. The judicial system and the justice system have been under severe attack and criticism for a number of years. The criticism of the criminal justice system, if one looks at that discretely with one or two notable exceptions, has not been the subject of the same degree of criticism. It is my view that there has been a great deal of public support for the way that the criminal justice system operates. One of the principal reasons why that is the case is that we have the jury system in place.

The jury is not there because of what some people, including the former Attorney-General, have described as 'the right of the accused'. It is my view that we have a jury because of the right of the community to be involved in the criminal justice system. That right of the community, when upheld, enhances public confidence in the way that the judicial system and the criminal justice system operate, and

brings the community in a very real sense into contact with how the criminal justice system operates. I know this is anecdotal, but my experience in talking to jurors always after the case has been decided is that they have found that a positive and rewarding experience. In that context, it is my view that it is wrong or misleading to say that the jury's role is to protect the rights of the accused. More correctly, it should be said that it is the role of the jury to represent the community in or within the criminal justice system. My view has received some support from an English historian, Mr E.P. Thompson, who is quoted in the *Australian and New Zealand Journal of Criminology*, published in September 1985, at page 130 as stating:

> When the jurors enter the box, they also enter upon a role which has certain inherited expectations; and these expectations are inherited as much from our culture and our history as from books of law. . . The English common law rests upon a bargain between the law and the people.

What follows is the important part:

> The jury box is where the people come into the court: the judge watches them and the jury watches back. A jury is the place where the bargain is struck. The jury attends in judgment, not only upon the accused, but also upon the justice and humanity of the law. . . Justice is not a set of rules to be 'administered' to a people. Verdicts are not 'administered': they are found. And the findings in matters of 'public importance' cannot yet be done by microchip. Men and women must consult their reason and their consciences, their precedents and their sense of who we are and who we have been.

I am not alone in thinking that the right to a jury trial is not that of the accused but that of the community. That is why I am openly critical of the decision of the previous Government—I am not sure whether it had the support of the then Opposition—and the previous Attorney-General for allowing the concept of trial by judge alone to take place. I know that members have probably heard all the arguments before about demands for specialist judges or about juries not being in a position to properly judge the evidence, but it is my view that, with properly trained and experienced judges and defence and prosecution counsel there is no concept that is too complex or of such a nature that cannot be brought into simple terms by the relative advocates to enable a jury to properly and simply understand what issues of fact they must decide.

It is my view that, when confronted with arguments to the effect that there ought to be abolition of a jury, or that there ought to be special mechanisms put into effect so that a jury can understand, or where it is said that a jury did not properly understand, if that is the case—and there is no evidence to suggest that it is—then the failing has not been on the part of the jury: the failing has been on the part of either the counsel to properly explain what the issues are in a simple way or on the judge for failing to explain in a simple and meaningful way what the law is.

In that sense, I come to this Bill with a view that a trial by judge alone is an anathema. Some may say that what I am about to say is intellectual gymnastics or perhaps even not intellectually honest, but the principal reason why I support this Bill is that it will have the effect in practical terms of almost eliminating a trial by judge alone. I say this not only based upon my personal experience prior to being elected to this place but also on what has been said to me by a number of criminal counsel over the years and, more particularly, in recent weeks. No accused will elect to be tried by judge alone knowing that he or she runs the risk of having what might be an acquittal appealed against by the Director of Public Prosecutions. No lawyer properly advising a client is likely to say, 'I think that we ought to go for a trial by judge alone on this one,' simply because there is a greater risk of that result being turned over by the appellate court. Indeed, one would be interested to know the attitude of the Legal Services Commission in the sense that after this legislation the commission would prefer that a case funded by it—I doubt whether it would give any direction—be heard in front of a jury because, in the event that there were an acquittal, it would bring an end to the matter and would be most likely to minimise the costs in such a case.

I will briefly deal with the submission of the South Australian Bar Association. I thank Michael Abbott QC, who is the current President of the Bar Association, for the notes that he sent to me and, I am sure, to other members in this place. He states:

> Verdicts of acquittal have from time immemorial been inviolate and to allow an appeal against a verdict of acquittal strikes at the very heart of South Australia's system of criminal justice.

I agree entirely with what he says on that point. I digress slightly. It is somewhat disconcerting to see that, in an increasing number of cases where a defendant is acquitted and where the burden of proof is beyond a reasonable doubt, there is a trend for that sort of litigation to be followed by civil litigation where the plaintiffs assert that because of a lower standard of proof they can secure the ignominy of the offence onto the accused person in a criminal context through the process of a civil trial.

In fact, we are seeing that very process occurring in the O.J. Simpson situation at the moment. I am not sure that I have any answer to that, but it is something on which we need to keep a watchful eye. In his submission, Michael Abbott QC also says that there should be no appeal against acquittal and, on balance, I agree with him, but I think as a matter of principle my duty to the electorate, based on the promise by the Attorney-General, probably outweighs what my views are personally about the trial by judge alone and ultimately the practical effect of allowing an appeal which would almost eliminate that. However, I invite the Attorney, when responding, to comment on this observation by Michael Abbott QC:

> Neither the Bill nor the second reading speech reveals any reason why verdicts of acquittal by a judge sitting as judge and jury should be singled out for appeal.

I do not agree with Michael Abbott on that point, but he goes on to say this:

> Presumably the answer is that in such a case a constitutional challenge to an attempt by Parliament to legislate to allow verdicts of a jury to be appealed by the Director of Public Prosecutions would probably succeed but the Government feels that, Parliament having created a trial by judge alone, Parliament can, if it chooses, subject such a trial to the appeal process even in cases of acquittal, and successfully resist any challenge to the legislation in the courts.

The Attorney can take my question on notice if he cannot answer it now because I am willing to wait for his response. Can he foresee a basis upon which such a constitutional challenge would be made? I am familiar with the Cheatle case, which involved the question of unanimity. The High Court decided that we could not have majority verdicts in Commonwealth cases simply on the basis that majority verdicts were not around when the Constitution was first promulgated. When the Constitution was first promulgated only unanimous verdicts were in place. That was the intention of our founding fathers and, as a consequence, that was an inviolate principle that could be changed only by way of referendum and, therefore, majority verdicts were not within the contemplation of the Australian Constitution. I am not sure upon what basis a constitutional challenge could be

made to this principle but, if the Attorney is aware of one, I would be interested to hear about it.

In closing, I commend the Attorney for the Bill, because he has addressed these issues quickly and consulted widely. At the end of the day he has made decisions. Certainly, I have come to the same conclusion at the Attorney, perhaps for entirely different reasons, and I am sure that in some respects he would disagree with me. But what is important is that I support the legislation.

The Hon. R.D. LAWSON: I, too, support the second reading of the Bill. The policy of the Liberal Party at the last election on the subject of trial by jury alone included the following:

> The Labor Government has given an accused person the right to elect to be tried for criminal offences by a judge alone. However, it would not support an important check on the judge's decision, namely, a right for the Crown to appeal against an acquittal. The accused can appeal against a conviction and, as the prosecutor in summary matters can appeal, so should the prosecution have a right to appeal against an acquittal by a judge sitting alone.

This measure largely supports that policy on which the Liberal Party went to the election. It was elected by a substantial majority at that election, and it is my view that it is appropriate that this measure be introduced and the policy be brought into effect. However, I should say that unlike the Hon. Angus Redford I support the right of an accused person to have a trial by judge alone. I believe that measure has had a beneficial effect upon our criminal justice system, notwithstanding the fact that there are not many trials by judge alone. However, there are some categories of cases in which it is quite appropriate for an accused person to elect trial by judge alone, and if a consequence of this measure is that trial by judge alone will cease to be used by the criminal bar, who obviously recommend to their clients such a trial, the amendment will have had an unintended effect from my point of view and certainly I would be urging in that event that this measure be reconsidered in the fullness of time. It seems to me that it is in a sense an experimental measure. If the experiment fails—and I would regard it as having been a failure if it meant that there were no trials by judge alone—we can remedy the situation.

The Hon. Mr Redford referred to the statement of the South Australian Bar Association, which was signed by its President, Michael Abbott QC, but which in fact represented the views of the membership. As he mentioned, the measure to allow the Director of Public Prosecutions a right of appeal against an acquittal met with strenuous opposition from that quarter and, as was also mentioned, it was predicted that this measure would have the effect of dispensing with trials by judge alone. Indeed, I emphasise what I have just stated in that regard.

The honourable member referred at some length to the jury system and I, too, am a supporter of it, although perhaps I do not see the jury in quite the same light as he does. The honourable member mentioned Blackstone, the eighteenth century jurist, in relation to the jury. Of course, the history of the jury goes way back in our system of law to the Doomsday Book, in the eleventh century, the Constitution of Clarendon, 1164, and the Grand Assizes, which were instituted by Henry II in 1179. Notwithstanding that very ancient history, in the nineteenth and twentieth centuries the jury has been somewhat on the wane. There was a time when both civil and criminal trials were heard by juries. It is now not common in Australia for juries to hear civil trials. In South Australia, we have not had civil juries since, I think, the 1930s, when a royal commission of this Parliament recommended their abolition here.

In the United Kingdom as well civil trials by jury alone have been reducing in number, and such trials continue in only a couple of Australian States. In the United States, however, trial by jury is still flourishing. In the 1960s the Supreme Court of the United States held that there was a constitutional guarantee of trial by jury for any offence in which an accused person was liable to imprisonment for six months or more. Notwithstanding that fact, trials by jury in criminal matters in Australia have been steadily declining in number, and the number and type of offences for which a jury trial is mandatory have been reduced. That is also the case in the United Kingdom. However, I strongly support the retention of the jury system for more serious crimes.

The result of the O.J. Simpson trial in the United States only recently has again tended to undermine confidence in the jury system, and this is to be regretted. One cannot say, as did the Hon. Angus Redford, that the jury is there not for the protection of the rights of the accused but rather to represent the community in the criminal process. In fact, the function of the jury serves both those purposes, and they are equally important principles. Although I support the measure that gives to the Director of Public Prosecutions the right of appeal against an acquittal of a trial by judge alone, speaking for myself I would be anxious to review that situation if the experiment proved not to be a success.

The Hon. A.J. Redford: How would you define that? How will you measure that?

The Hon. R.D. LAWSON: The honourable member asks how I would define success. I would certainly define the system as having failed if there were no trials by judge alone in the ensuing year, or if there were only a couple. If that happens this measure will have not been a success by any measure.

The only other matter on which I wish to speak is one that was also touched on by the Hon. Angus Redford and about which we have had some discussions with the Attorney-General. It arises from the new provisions of section 352, dealing with the right of appeal in criminal cases. As was mentioned, the Director of Public Prosecutions does not require leave to appeal against a decision that is adverse to the prosecution, except where a question of law alone is not involved. In other words, the Director may appeal as of right on any ground that involves a question of law alone.

However, an accused person requires the leave of the court in all cases. It seems to me that that is unfair and that the right of appeal ought to be the same for both entities. The Attorney, in his second reading explanation, mentioned that there was a difference, and he outlined the difference at page 69 of the *Hansard* of 28 September. However, although I accept that there is a difference between the two, it seems to me that that difference is not a distinction of principle and, during Committee, I will be urging the Attorney to consider seriously an amendment which would confer identical rights of appeal on both the prosecution and accused persons. I commend the second reading to the Council.

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

STATUTES REPEAL AND AMENDMENT (COMMERCIAL TRIBUNAL) BILL

Adjourned debate on second reading.
(Continued from 11 October. Page 141.)

The Hon. ANNE LEVY: The Opposition supports the second reading of this Bill, which is to abolish finally the Commercial Tribunal, its having been degutted with removal of all its remaining functions. The Government announced its intention to abolish the Commercial Tribunal many months ago, and we have in this Council succeeded, after conferences, in establishing both the Administrative and Disciplinary Division of the District Court and the Civil, Commercial and Business Division of the Magistrates Court, to which various matters previously treated by the Commercial Tribunal have been referred.

The Bill before us is again moving some of the matters remaining with the Commercial Tribunal to the Administrative and Disciplinary Division of the District Court and to the Civil, Consumer and Business Division of the Magistrates Court, as appropriate in each case. This is being done for the Fair Trading Act, the Goods Securities Act, the Survey Act, the Trade Measurement Act and the Trade Measurement Administration Act. When this Bill is passed, it will not completely leave the Commercial Tribunal as an empty shell as it will still have jurisdiction relating to the Travel Agents Act, the Builders Licensing Act, the Commercial and Private Agents Act and the Consumer Transactions Act.

An honourable member interjecting:

The Hon. ANNE LEVY: The Attorney has indicated that the Bills dealing with those four Acts are to be presented to Parliament, one of which is already before us, namely, the Security and Investigation Agents Bill; and he gave notice today that the builders licensing matters will be introduced to the Council tomorrow. This still leaves the Consumer Transactions Act and the Travel Agents Act. When the four Acts have been dealt with by this Parliament, the Commercial Tribunal will be utterly gutted and cease to exist.

It is interesting to look back at the history of the Commercial Tribunal. In fact, it was a Bill introduced by the Hon. Mr Burdett, the then Minister of Consumer Affairs in the Tonkin Government, which established the Commercial Tribunal, building on work that had been done by the Labor Government under Don Dunstan and Des Corcoran before the 1979 election.

The Commercial Tribunal brought together a whole range of disparate boards and tribunals which existed at the time, each one separate and each dealing with its own particular industry or profession. There was a separate board or tribunal for second-hand motor vehicle dealers, a quite different one for land agents, a totally different one again for surveyors, yet another one for builders, and so on. The establishment of the Commercial Tribunal meant that eight separate boards and tribunals could be abolished and their functions given to the Commercial Tribunal. In the time since then, other functions have been given to the Commercial Tribunal, such as the travel agents board, which did not have its own legislation in 1982. Therefore, the jurisdiction of the Commercial Tribunal was extensive and covered a wide range of activities.

For some reason the Government has decided that the Commercial Tribunal should be abolished and all the matters before it transferred to the courts. I am sure that the Attorney-General will say that this is more efficient and will speed things up. However, it is a shame that the decision was made to abolish the Commercial Tribunal. It had proved its worth. It was a tribunal with great experience, which it built up from dealing with the multitude of different matters that came before it, but all dealing with commercial or professional qualifications and disciplinary matters. It was very highly regarded not only in this State, but in other States as well. I understand that some States have followed our example in setting up the Commercial Tribunal and, indeed, others still feel that they should follow our example and set up a similar body. Yet, having led the way, we are now abolishing the Commercial Tribunal. It may be that putting all these matters into the District Court or the Magistrates Court will result in greater efficiencies of time and coordination of cases as they will all be in one or other of those courts.

I remain to be convinced that the Commercial Tribunal was an expensive solution, and I ask the Attorney-General whether any cost benefit analysis has been done of its abolition and replacement by matters going to the District Court or the Magistrates Court. Of course, any such cost benefit analysis may be from a Government point of view only, but I think it should take account of the extra costs which may occur to litigants who previously went to the Commercial Tribunal when problems arose and who will now be forced to go to the District Court or the Magistrates Court where costs can be extremely high. While it may save money for the Government, I doubt whether it will do so for the litigants who will have to use those courts.

However, the process has begun and is continuing, and the Bill is a logical step in the progression to the abolition of the Commercial Tribunal. I shall regret its passing. As I said, it has served South Australia well, and its officers have given very noble service to the people of this State. I hope that the Attorney-General will acknowledge the very good work that the tribunal and its members have done in the 13½ years of its existence. The procedures are continuing, Bills before us are gutting the Commercial Tribunal even further, and it is obvious that when it has no functions left it will need to be abolished. I hope that there will be some fanfare and recognition of its value when it ceases to exist and that it will not be allowed to fade away without proper appreciation of its past great role and function. I support the second reading.

The Hon. G. WEATHERILL secured the adjournment of the debate.

ADMINISTRATIVE DECISIONS (EFFECT OF INTERNATIONAL INSTRUMENTS) BILL

Adjourned debate on second reading.
(Continued from 12 October. Page 167.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The Opposition supports the second reading of this Bill. The Opposition notes that this Bill is preceded by a Commonwealth Bill with an identical purpose. Superficially, it sounds attractive to have public servants acting in accordance with treaties which have been signed by Australia as a nation even though domestic law has not yet been enacted to put those treaties into effect in our country. The simplistic argument is: if a treaty has been signed by Australia, should not Australian citizens immediately have the benefit of administrative decisions within Australia being made in accordance with such treaty? The problem is that if *Teoh*, the High Court case referred to by the Attorney-General in his second reading explanation, is allowed to

stand, Australia will undoubtedly change the way in which it enters into international obligations.

At present, after the appropriate policy and research work, Australia might enter into a treaty in relation to some social or environmental issues. This is best seen as an act of leadership by the Executive, encouraging the Federal Parliament to follow with suitable domestic legislation which will put the exhortations and constraints of the treaty into effect locally. The fact that a treaty has been signed and is the subject of widespread international approval helps the Government of the day to persuade Opposition and minority Parties in Federal Parliament to approve domestic law in line with that particular treaty.

The alternative process would be to wait for Federal Parliament to work out its position on whichever social or environmental topic is the subject of a proposed international treaty. If it turns out that the Australian Parliament can agree with the same principles as are agreed in the relevant international forum, Australia could sign a particular treaty after appropriate legislation has passed through the Australian Parliament. The problem is that if the matters are being debated in the Australian Parliament without there being a treaty in place and during the time that many other countries are still deliberating on what exactly the terms of an international treaty should be, it may be that Australia's position is set in concrete in a way which may vary from the final terms of the proposed international treaties. In turn, this may prevent Australia from being a signatory.

The point is that, in terms of rights for our citizens, that more cautious process which will inevitably follow from allowing Teoh to stand might result in Australia being party to less progressive treaties than was previously the case. It is from this perspective that the Opposition supports the Government Bill. It may not be necessary to have State legislation that echoes the Commonwealth Act. The Opposition views this Government Bill as being enacted in the spirit of caution. Be that as it may, for the reasons outlined the Opposition will be supporting the second reading and allowing the Bill to go through expeditiously.

The Hon. R.D. LAWSON: I, too, support the second reading of this Bill. On 7 April this year, the High Court brought down its decision in the case of the *Minister for Immigration and Ethnic Affairs v. Ah Hin Teoh* (the Teoh case). In that case, the High Court held that the ratification of a treaty by Australia created a legitimate expectation that the Executive Government and its agencies will act in accordance with the treaty provisions, even if they have not been legislated into Australian law. If it is proposed to make a decision inconsistent with that legitimate expectation, it was held by the court that procedural fairness required that the person affected be given notice and an adequate opportunity to reply.

The court held that the legitimate expectation will not arise if there is either a statutory or Executive act amounting to a contrary indication. In the Federal Parliament the Federal Attorney-General and in this Parliament the South Australian Attorney-General made statements shortly after that decision to the effect that there could be no legitimate expectation arising—in the case of the Federal Attorney, in the Commonwealth, and in the case of our Attorney, in this State—that the agencies of Government would act in accordance with any particular treaty provisions.

As the Leader of the Opposition has mentioned, this matter is the subject of a measure presently before the Federal Parliament, and the measure here is in substantially the same terms. In the Commonwealth, the Legal and Constitutional Legislation Committee of the Senate has taken substantial evidence on the Commonwealth Bill, and it must be said that there has been substantial opposition from the Australian Law Reform Commission and from various human rights groups, and also from other organisations such as the Law Council of Australia.

The opposition of those parties to that measure in the Commonwealth—and presumably to this measure here—is based largely upon their view of the appropriate treatment of refugees. As the Teoh case itself was concerned with immigration it is not surprising that that is the case. However, it is unsatisfactory that Teoh should have left the position up in the air by laying down a rule that applies unless there is some contrary intention. It seems to me that this law will introduce a measure of certainty into our administrative procedures, and it is to be commended for that. I wish to place a number of questions before the Attorney which may be relevant to considering the fate of this measure in Committee. My questions are:

1. Is the Government aware of any administrative decisions that have been made in this State, apparently on the basis of the effect of some international treaty, which treaty is not reflected in the law of this State?

2. Is there any case of which the Government is aware in which any citizen has claimed that he or she has a legitimate expectation that some administrative decision will conform with the terms of an international treaty which is not part of our law?

3. Are there any reported decisions in this State in which any decision maker has taken account of an international instrument which is not part of Australian law?

4. Since the Teoh case has there been any case in which a South Australian decision maker has, in effect, applied the Teoh case or, indeed, in which a South Australian court has applied the principle in the Teoh case?

Finally, I invite the Attorney to address this issue, being one of inconsistency between Commonwealth and State laws: on reading the Commonwealth Bill, it does appear to apply to decisions on behalf of the Commonwealth or a State or Territory. So, on its face the Commonwealth Bill would appear to have application to South Australian decisions. I have not thought through the constitutional implications of that provision, nor have I really directed my mind to the question whether or not the Commonwealth has power to pass a law affecting South Australian administrative decisions in the way in which the Commonwealth Administrative Decisions (Effective International Instruments) Bill would have if that Bill is enacted in its current form. I commend the second reading.

The Hon. A.J. REDFORD secured the adjournment of the debate.

STATUTES AMENDMENT (COURTS) BILL

Adjourned debate on second reading.

(Continued from 19 October. Page 275.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The Opposition supports the second reading. The Bill improves the legislation pertaining to various courts in various ways. In amendments to the District Court Act and the Supreme Court Act registrars will potentially have

expanded powers to enable them to be utilised more efficiently at the direction of the Chief Judge and the Chief Justice, respectively. The District Court Act and the Supreme Court Act are also amended to permit the service of court processes such as summonses on Sundays. The law which allows some flexibility as to service of court processes by alternative means is also extended to ensure that it applies to criminal as well as civil proceedings.

In the Supreme, District, Magistrates and ERD Courts, public access to some of the more sensitive or sensational types of evidence is restricted by this Bill. The Opposition does not, however, consider that the restrictions are unduly restrictive, and the requirement for the leave of the court will generally lead to improvements in the administration of the justice system for the reasons given by the Attorney. The Opposition also sees the force of the Attorney's arguments in relation to their being no right of appeal from a judicial decision to refuse access to sensitive material. The Opposition is satisfied with the need for amendment of the provisions regarding the appointment of magistrates with respect to both industrial magistrates and magistrates appointed to other positions for fixed terms.

The amendment which allows transfer of proceedings from the District Court to the Magistrates Court by masters of the District Court rather than judges in every case is sensible. These requests for transfer became very common for a while following the 1991 changes to jurisdictional limits, combined with the cost penalties faced by even successful litigants if they found themselves in the wrong court at the end of the day, by which I mean if the award of damages to the successful litigant failed to meet the acceptable District Court minimum. As the Attorney says, the issue of transfer to the Magistrates Court is not in dispute in many cases.

The Opposition also endorses the right of interested parties to apply to the court for an order prohibiting vexatious litigants from initiating further proceedings without leave of the court. There is no justice in being pursued by a vexatious litigant with a spurious claim, and this amendment does not unduly restrict the right of citizens to sue for their rights in court. In practice, I suspect that leave will generally be granted where there is a shadow of a reasonable basis for litigation. In other words, the court will tend to give the benefit of the doubt to the litigant who earnestly brings his or her claim. With respect to all these matters, and a couple of minor amendments to which I have referred, the Opposition approves of the amendments. Accordingly, the Opposition supports the second reading of the Bill.

The Hon. K.T. GRIFFIN (Attorney-General): I thank the Leader of the Opposition for her indication of support for this Bill. It brings together a range of amendments dealing with difficulties that have been experienced over a period of time. It was felt to be important that we try to correct those at the earliest opportunity, so I appreciate the Leader's indication of support for this Bill.

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

AUDITOR-GENERAL'S REPORT

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

That the report of the Auditor-General and the Treasurer's financial statement 1994-95 be noted.

(Continued from 17 October. Page 232.)

The Hon. K.T. GRIFFIN (Attorney-General): The Leader of the Opposition raised several questions with respect to my portfolio when she spoke on this motion. Rather than have the answers inserted in *Hansard* or respond by letter, I thought I would take this opportunity to provide some information. In relation to the matter concerning the number and use of corporate credit cards in the Attorney-General's Department, it is correct that I have personally intervened to ensure that the concerns raised by the Auditor-General are rectified. I directed the Chief Executive Officer to reduce the number of credit cards in use to the minimum level. The agency has also taken the following action to ensure the efficient use of credit cards within Treasury guidelines. As a result of audit concerns, the Chief Executive Officer has issued two circulars (September 1994 and March 1995) reminding card holders of their responsibilities under both Treasurer's instruction 336 and internal departmental procedures.

The agency initiated a review of credit card distribution and usage in June-July 1995 with a view to reducing the number of credit cards in use and detecting inappropriate usage. It was clear that in some areas far too many cards had been issued and in a minor number of cases inappropriate use was detected. Disciplinary action has been undertaken in relation to one employee. In July 1995, the department took action to reduce the number of credit cards in the Office of Consumer and Business Affairs from 47 to six. Liquor Licensing Commission cards were also reviewed, and they have been reduced from 26 to 19 at this stage.

It is important to note that, as far as I am aware, the number of credit cards issued was much the same for the old Department of Public and Consumer Affairs as for the Office of Consumer and Business Affairs, but quite obviously the number of cards issued seemed to me to be in excess of what might generally be regarded as reasonable.

A monthly report based on credit card statements is now forwarded to the Chief Executive to monitor frequency and relevance of use. In September 1995, approval was given to reissue six cards to staff in the Office of Consumer and Business Affairs in view of significant work load transfers and the need to ensure efficiency and effectiveness in the procurement process. Credit card usage is scrutinised on an ongoing basis by the Manager, Finance, and abnormal entries are investigated. Requests for additional cards now require vigorous justification and approval by the Chief Executive Officer.

In relation to the Leader of the Opposition's question regarding the increase in criminal injury compensation payouts, it is true that compensation payments continued to increase during 1994-95. Payments totalled $13.6 million compared with $13.2 million during 1993-94. Several factors have contributed to this increase. These are as follows: in most cases it takes a lengthy period of time after the commission of the offence before compensation is awarded—18 months to two years. Consequently, the full effect of the amendment which sought to increase the level to $50 000 maximum is only just starting to be felt. Greater public awareness has led in recent years to an increase in the number of claims and payments made. Brochures are now handed to victims of crime at the police investigation stage. The impact of amendments to the Criminal Injuries Compensation Act, which required awards to be determined on a scale similar to the Wrongs Act, has not reduced payments as much as originally anticipated and asserted by members of the legal profession.

The amendments to the legislation only affected pain and suffering; however, it seems many claims now involve claims for economic loss, which were not covered by the amendments. The Crown Solicitor began cross-charging the criminal injuries compensation fund for legal service provided from 1993. This has resulted in a further draw on the consolidated account to meet fund expenditure.

The honourable member's third question related to the transfer of the Justice Information System (JIS) to the Department for Correctional Services. The information in respect of that is as follows: the Office of Information Technology is entrusted with the responsibility for implementing information technology reform within the South Australian public sector. The responsibility for the management of the business of criminal and welfare administration does not fall within its charter. In essence, JIS is managed by the Office of Information Technology for administrative matters and for business matters by the JIS board of directors. The JIS activity consists of the operation of infrastructure and the development and maintenance of applications which are critical to the mission of the criminal and welfare agencies.

This latter function is therefore better aligned with the criminal justice and welfare administration agencies, especially after the outsourcing of infrastructure and processing if that should occur. The activities of JIS would therefore be more suited to be managed by a member agency which has a fundamental dependency and understanding of the business of criminal justice and welfare administration. The strategic management of JIS has been the responsibility of a board of directors for in excess of 10 years, and this is currently still the case. This arrangement has proved to be effective with JIS successfully achieving the objectives set by Government. If JIS is to main its collaborative and independent nature, it is essential that the responsibility for strategic management remain with a body that represents each participating agency on an equal basis. Historically, the chairperson of the JIS board of directors has been the CEO of a member agency.

The overall view of the JIS board is that the Department for Correctional Services is the preferred and most suitable administrative unit for JIS. It does provide a suitable environment to ensure the ongoing collaborative and cooperative nature of JIS whilst taking into account the need for an understanding of the business of criminal justice and welfare administration. I think that satisfies the questions raised by the Leader of the Opposition in relation to the Auditor-General's Report insofar as it relates to my agencies.

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I will respond just to a number of the issues raised by some members. Clearly, it is not possible for me at this stage to answer all questions asked by members. At the outset of this debate I have given an assurance to members that Ministers in this Chamber will expeditiously endeavour to get responses to the individual questions that have been asked by members. We will correspond with individual members, and if an individual member wishes to have particular answers incorporated in *Hansard* we would be pleased to come to an arrangement in the future to have those answers incorporated in *Hansard*. As I said, it will not be possible to provide the detailed responses to a number of those questions that have been asked. In closing the debate I thank all members for their contribution. It is unusual for the Upper House in terms of analysis of the Auditor-General's Report—

The Hon. A.J. Redford: It hasn't been done before.

The Hon. R.I. LUCAS: Exactly. I know that some members (not many) have been a bit critical of the timing of the Auditor-General's Report and how it lessens, in their judgment, scrutiny of the actions of the executive arm of Government. However, when one looks at the opportunities that the Legislative Council and its members have to scrutinise, with the assistance of the Auditor-General's Report, I would have thought that there is probably an argument almost the other way now that we have provided this opportunity for scrutiny.

The Hon. A.J. Redford: It has never been better.

The Hon. R.I. LUCAS: Well, it has almost never been better. I can almost agree with my colleague, who has a very positive attitude to the debate with which I agree. The Auditor-General's Report has been traditionally provided in August-September, and it is used by members of the House of Assembly to question Ministers and senior officers during Estimates Committees. When the Appropriation Bill is debated in the Legislative Council there have been occasions when members have questioned a Minister or a senior officer on a particular issue but, in going back through those debates, they have rarely drawn extensively on the material in the Auditor-General's Report. There have been occasions where members have listed questions in the Appropriation Bill debate based on information that they have gathered from a number of sources, including the Auditor-General's Report, but there has not been a specific debate on the nature and the general comments of the audit report.

As a member in Opposition I know that I frequently asked questions on notice during the Appropriation Bill debate in relation to the overall administration of a portfolio. Occasionally, that would draw on information in the education section of the audit report, but on this occasion this debate allowed members—and a number from the Opposition and the Government took up the opportunity—to, in effect, comment on the general provisions of the Auditor-General's Report about the significant issues of the day, whether that was contracting out, outsourcing, credit card controls, financial controls within departments or debt management strategies. There were a number of general comments which the Auditor-General made and to which members have had the opportunity during this debate to respond in a general way.

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: Is that right? I remember responding to some of the Hon. Mr Cameron's contribution during the Address in Reply debate. As I said, it has given members an opportunity, which they have taken up. That is an important innovation in terms of our Legislative Council processes and procedures. I give an indication of my personal view—but we would obviously have to address this each year—that it has been a sensible innovation. Through the Address in Reply debate members now have the opportunity to speak at length on any issue. We also have the Appropriation Bill debate where members can speak on any issue as it relates to appropriation.

We have Supply Bill debates, which allow great flexibility as well, and we have now introduced the weekly half hour matters of importance debate, which again has been an important development. We have now introduced the Auditor-General's debate, which has gone on for many hours over almost two weeks of debate and discussion. Certainly, there can be no criticism from anyone that in the Legislative Council we have sought to hamstring or restrict in any way members' contributions on the report. We have complied with the wishes of members who were not ready on a

particular day and wanted to hang it over to the next day. They have been able to speak at length and put any questions on notice and, as Leader of the Government, I have undertaken on behalf of the Ministers expeditiously to get back to them with replies.

This is an indication of a Government that is in accord with what the Auditor-General has been saying in general. In relation to the Legislative Council, we have very much opened up the procedures for individual members of the Opposition, the Government and the Australian Democrats to enable them to comment freely on all these issues, particularly the important issues from the Auditor-General's Report.

I must say, as a representative of the Government, that I believe that any Government must listen to the message of its Auditor-General, who is seen by the community as the independent financial umpire of Government expenditure. Like any umpire, the various participants in the contest—if that is what we call politics or the administration of government—may on occasion be unhappy with the individual interpretation made by the umpire. In my judgment it does not mean, whether one is in Government or Opposition, that one must agree 100 per cent all the time with everything that the independent financial umpire says. However, as I indicated at the outset, it would be a foolish Government that did not listen closely to the words of caution and messages that the independent financial umpire issues in his annual report to the Government and the Parliament. It is fair to say that this report is much more comprehensive than any Auditor-General's Report before.

The Hon. T.G. Roberts: There are certainly more criticisms.

The Hon. R.I. LUCAS: No, that is not true. The Hon. Mr Roberts will not lead me down that path. But I will say that it is much more comprehensive because, as an avid collector of reports by Auditors-General over my 12 years in Parliament (I have them all in two separate collections), inevitably they have comprised one volume but now they comprise three volumes—

The Hon. M.J. Elliott: Point made.

The Hon. R.I. LUCAS: Well, that is if one assumes that everything in the three volumes is a criticism. Someone with a negative or carping and critical view of the world, as I sometimes attribute to the Opposition and the Democrats, may jump to that conclusion, but someone with a more realistic attitude to life in general, such as a member of the Government, would not just assume that three volumes of the Auditor-General's Report were full of criticism. This is an attitudinal question and, too often, some people may put their heads in the sand and seek not to listen to the words of caution that someone in the independent position of the Auditor-General utters. As I have said, that is not a position that the Government intends to adopt. We must listen to what the Auditor-General says. We have to make rational judgments and decisions about his recommendations. As I said, it does not mean that Governments should accept 100 per cent of the Auditor-General's recommendations, and it may be that on mature reflection, for a whole variety of reasons, the Government listens to and considers what he has said and then says, 'For these reasons we do not accept that proposition,' or 'We do not accept the process that has been outlined.'

Obviously, while I cannot speak for the Auditor-General, as long as a Government responds in that way the Auditor-General will at least accept that his points have been made. He may well come back the following year and say, 'I do not agree with that proposition or process that the Government has outlined. Nevertheless, it has been open and considered my recommendations, and for these reasons it has implemented that portion of them and for other reasons it has decided not to proceed down that path.' I do not think it ought to be seen as a contest between the Auditor-General and the Government of the day in terms of whether or not a Government agrees or does not agree with all the recommendations of an Auditor-General's report.

I now want to turn to some aspects of the report and the various interpretations that we have seen of it. I must admit that I marvelled at the hypocrisy of the Leader of the Opposition's contribution, at least in one part, when she roundly condemned the Government and used the report in the following way. She criticised the Government, in effect, for not reducing expenditure—in her claims, anyway—to the extent that the Government had claimed. She said that the Government claimed it had reduced expenditure and that the Auditor-General was querying that and saying that the Government had actually increased expenditure slightly by about 1 or 2 per cent. The Leader of the Opposition then used that judgment by the Auditor-General to attack the Government for misleading the people of South Australia because we had not been cutting expenditure and had increased expenditure because the Auditor-General had said so. This is one of the problems we get when members grab a report and seek to use it to justify their ends without having thought of the position they had actually adopted only the previous week or month.

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: No; we cannot blame the Hon. Mr Holloway on this occasion because he was smart and made sure the Leader spoke first.

The Hon. A.J. Redford: It's all her own work.

The Hon. R.I. LUCAS: It is all her own fault. I am told that the Hon. Mr Holloway has now refused to speak before the Leader of the Opposition ever again because of her Helen Demidenko impersonation. The Hon. Mr Holloway has said, 'That's it. As Leader of the Opposition, you go first, because whenever I give a good speech in the Council or make some contribution I am not having you coming along and plagiarising word for word what I have already said.' The Hon. Mr Holloway was smart this time and as a new member of this Chamber learnt that he was not going to be pushed up front so that parts of his contribution would be used by his Leader.

On this occasion the debate was led by the Hon. Ms Pickles, and it is all her own work or all her own fault. As I said, the Leader of the Opposition has been running around the community and schools claiming—and the Lord only knows where she gets these figures, because certainly the Auditor-General will not agree, and I cannot find anyone who agrees—that in the 1995-96 education budget the Government has reduced expenditure by $47 million. The Leader of the Opposition has been trumpeting that claim in school communities, press releases, the Parliament and the community generally that the Government has reduced expenditure by $47 million.

An honourable member interjecting:

The Hon. R.I. LUCAS: They are not my figures, no. The leader—I believe she is still the leader, although she leaves very soon—of the Institute of Teachers, Clare McCarty, has been making similar claims, and I can only guess that whilst on this occasion the Hon. Ms Pickles has not been able to copy the work of the Hon. Mr Holloway she has seen this

statement from Clare McCarty and thought, 'There is someone claiming something; I will grab that claim and use it.' That is about the only other supportive statement in terms of the Government's reducing its education budget in 1995-96. The facts of life are that, as the Auditor-General has reported, the Government spent $1 098 million in 1994-95 on education and children's services.

This year the budget papers indicate an appropriation of $1 138 million. I know that the Leader of the Opposition is opposing basic skills testing for years 3 and 5 students and, having looked at her mathematics, I am not surprised why she has been opposing it. However, a simple subtraction will indicate that the Government has allocated $40 million more to education and children's services this year than was spent last year.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Holloway can use that argument to some effect as he did with health, which was then plagiarised by his Leader but, as yet, he has not been able to offer that analysis in relation to education. I will be interested to see his research. In the future, I am sure the honourable member will be smart enough to put his remarks on the record after his Leader has spoken. We are saying that, contrary to the honourable member's arguments in relation to health, the education budget for this year is $40 million more than was spent, as recorded by the Auditor-General, in 1994-95.

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: No. As I said, the Leader of the Opposition is all over the place in relation to her claims on expenditure generally. I am really not sure how one can convert a $40 million increase into a $47 million reduction. I guess that only the Leader of the Opposition will be able to explain how one is able to achieve that sleight of hand. The Leader of the Opposition, and then a number of other members from the Labor Party, referred to aspects of the Auditor-General's Report in relation to debt management strategies. The Leader of the Opposition said:

> Unfortunately for South Australians, the Government was too clever by half.

The Leader of the Opposition and other members of the Labor Party were critical of the Government, the Treasurer and Treasury officers in relation to their debt management strategies and used the comments made by the Auditor-General to support their argument. The Auditor-General reported that when the new Government was elected three broad options faced the debt managers within Government: to stay short (to use the market parlance), which was the strategy of the previous Labor Government; to go long quickly; or to go long slowly. The new Government's approach was to go long slowly, that is, extend its debt portfolio in a measured fashion over a period of time, and not seek to convert that whole portfolio in a very short period.

The Opposition has not quoted all the comments made by the Auditor-General, because the Auditor-General said something to the effect—and I do not have his report with me—that he was looking at hypothetical circumstances; that it was not intended to be a criticism of Government but an illustration of what might have occurred if different strategies had been adopted. That cautionary note is important because, as has been indicated, the Government took the decision to go long slowly because of the overwhelming advice at the time that the existing strategy adopted by the Labor Government placed the new Government at considerable risk.

In fact, we were supported—again I do not have the quote with me but members have seen it—by comments made by the Auditor-General in his 1993 report, when he indicated to the Parliament that the short-term nature of the Government's debt portfolio had problems and that it ought to be lengthened. That was the advice from the Auditor-General to the then Government and to the new Government, obviously, in terms of not staying with the strategy that had been adopted by the Labor Government.

It was the advice not only of the Auditor-General but also of the Audit Commission, when it reported similarly in April or May 1994 that the short-term nature of the debt portfolio needed to be lengthened and changed.

Similarly, a rating agency has corresponded with the Treasurer in the past few months, indicating again the appropriateness of the decision that had been taken at that time by the debt managers and the Government in terms of the particular strategy. It is easy in hindsight to say, 'If this strategy had been adopted you would be $160 million better off,' or 'If this strategy had been adopted you would be $400 million better off.' That analysis does not indicate that if the Government had stayed with the existing short-term strategy and if interest rates had gone the other way, as was projected in the early 1994 period, the cost to taxpayers in South Australia would have been $800 million extra.

That was the extent of the exposure to taxpayers in 1994 if interest rates had gone the other way, as was being predicted by some interest rate experts and economic commentators. That figure of $800 million assumes that interest rates rose to that post-war record high, under the Labor Government some three or four years ago, when interest rates went to 17 or 18 per cent. If interest rates had gone to only 15 or 16 per cent, then perhaps the exposure might have been only $600 million, or whatever. That was the extent of the exposure confronted by the taxpayers of South Australia when decisions were taken in early 1994.

That is why I take a pretty strong view that it is easy in hindsight to say, 'This might have happened,' or 'That might have happened.' But we should look at what the exposure to taxpayers might have been if interest rates had gone in that other direction, as some were predicting, and, as I said, that might have been up to $800 million—or almost a 100 per cent increase in the level of interest—because, in terms of all-up interest costs, we are paying somewhere between $700 million or $800 million interest at the moment. We are paying almost $2.5 million every day on the level of the State Bank debt and other accumulated debts of the previous Government. That is what taxpayers are paying. In effect, that might have been doubled, and we might have had a potential interest Bill of $1 500 or $1 600 million a year.

The Hon. T.G. Roberts: That is like saying to a one-legged man, 'You're lucky you have one leg; you might have none.'

The Hon. R.I. LUCAS: The Hon. Mr Roberts makes a very interesting analogy, but I say to the Hon. Mr Roberts that, for any analysis, when one gets into the arena of what might have occurred if certain strategies had been adopted, one should also look at the other side of the hypothetical argument.

The Hon. T.G. Roberts: I suppose we should be grateful: you could have lost another couple of hundred million.

The Hon. R.I. LUCAS: The fund managers will argue that, over the three-year period from late 1992 to 1995, in essence it balanced out. They made money in the first part with their strategy, they did not make money in the second

part, but in the end it balanced out. The fund managers will certainly argue, if anyone wants to sit down with them and have a couple of hours of riveting debate on the whys and wherefores of debt management strategies, that over those three years they lost in part of the period, gained in another part of the period, but the overall result was that the sums balanced out. The Hon. Mr Roberts said that if different strategies had been adopted, if the Government had stayed with previous strategies and if interest rates had gone in another direction, as was being predicted by many people, we might have fitted the analogy drawn by him.

The Leader of the Opposition commented, 'The EDS deal has been shown to be a political gamble, not grounded in reality.' Again, many people in South Australia are very quick to be critical of what has been a bold initiative by the Premier and Government in bulking up information technology in this State. It has taken longer than the Premier and Government anticipated, but in the end the proof of the pudding will be in the eating. I remain confident that the words of the Leader of the Opposition—'The EDS deal has been shown to be a political gamble, not grounded in reality'—will soon come back to haunt her and the whole of the Labor Opposition from the Leader of the Opposition down. I believe that the Premier's vision in relation to the EDS deal and information technology for South Australia will demonstrate that this Government is prepared to look ahead, to plan for the future and to try realistically to move the economy of this State into new areas. The Labor Opposition and the Australian Democrats have, from day one, been critical and negative, carped all the time and sought to oppose and frustrate the resolution of the EDS deal, together with anything else that the Government has attempted to do. The words of the Leader of the Opposition in this place and in another will, I believe, come back to haunt them when the deal is finally resolved.

The Hon. P. Holloway: If it is resolved.

The Hon. R.I. LUCAS: The Hon. Mr Holloway says, 'If it is resolved.' I would not mind having a few dollars with the Hon. Mr Holloway if he is prepared to front up.

The Hon. P. Holloway: It will not be $800 million.

The Hon. R.I. LUCAS: No, I will not be betting $800 million. Again, that is one of the furphies that has been run around by the Labor Opposition. The Hon. Mr Holloway in his previous life used to write speeches for the Leader of the Opposition in another place. I guess he was paid to do that on that occasion, rather than in this Chamber. I am not sure. Perhaps the Leader of the Opposition here did pay him. I do not know whether the Hon. Mr Holloway would like to answer the question: did the Leader of the Opposition pay him for her unattributed use of his speech? There is no comment from the Hon. Mr Holloway. I would be interested to explore that later. At least, if she had paid for the use of the speech, it may be some small comfort for having pinched it. As I said, that has been one of the other furphies circulated by the Opposition: that in some way the deal has been halved in size. The view put around is that the Premier had claimed that this was to be a $1.2 billion deal, and the Opposition has been running around town saying that it has dropped to $500 million and it is less than half the original size. Again, the proof of the pudding will be in the eating. When I saw those claims about $1.2 billion—

The Hon T.G. Roberts: It is only half of the pudding now.

The Hon. R.I. LUCAS: We will see. I took the trouble to go back through the *Advertiser* and some of the Warburton media monitoring and the *Sunday Mail* to see the statements made by the Premier. I must say that on my research I have not been able to find a statement by the Premier referring to $1.2 billion as being the size of the EDS contract. I have seen figures of $700 million or so. I do not know that I have seen $800 million, but I have seen $700 million mentioned. However, I have not been able to find statements attributed to the Premier to the effect that the size of the contract was $1.2 billion.

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: I intend to do more research on that anyway, and perhaps I could comment on it at another stage. Finally, I turn to some specific questions about the Education and Children's Services portfolio. I will provide a more detailed response to the shadow Minister later. Broadly, the shadow Minister asked whether, in relation to credit card use, any disciplinary action has been taken against officers who failed to carry out proper procedures. I have already indicated publicly that there is one case in which the Fraud Squad has been involved in considering whether a case could be made out against a particular officer. Other than that officer, I am not aware of any other cases where the breaches have been severe or significant enough to warrant disciplinary action. It is possible when reading a report to overstate the relative importance or significance of some of the issues that the Auditor-General has raised relating to credit card usage.

The Hon. T.G. Roberts: It got the biggest headline in the *Advertiser*.

The Hon. R.I. LUCAS: That is true. Some of the criticisms were that the current procedures for credit card usage mean that when an officer travels interstate or overseas he or she can only make telephone calls up to a certain dollar amount without seeking prior authorisation of the Chief Executive Officer. I know of one or two cases where officers of the Department for Education and Children's Services were attending world conferences or congresses and particular issues of administrative control of their section of the department were raised which necessitated their having to ring from their overseas destination to Adelaide to sort out the problems. The Hon. Mr Nocella, as a former senior officer who has done some travelling, will be aware of the sorts of potential circumstances about which I am talking. Evidently, before a senior officer does that, permission has to be obtained from the Chief Executive Officer to spend more than a certain dollar amount. I stand to be corrected, because I have not been able to check, but someone told me that the figure was as low as $4. I am sure that it cannot be as low as that. If it is, it further indicates the problem that I am raising.

One of the issues related to substantial telephone expenditure which was unauthorised. That is the sort of example that we are talking about. We are not talking about people ringing their local SP bookie and placing bets from Geneva or ringing their girlfriend, or whoever else, to discuss what is coming up at the weekend. Those officers were ringing the department in order to sort out possibly ministerial inquiries or issues which had blown up in the section, of which they were the head, and which they had to sort out.

Another example referred to limits on expenditure for accommodation. In some cases officers have spent $156 instead of $147 a day on accommodation. The argument is that the conference was at that particular venue or that it was the most convenient one to where they were and they did not have to catch cabs backwards and forwards. This is particularly the case if officers go to Sydney or Melbourne—not that

one can get accommodation for $147 in Sydney, but one might for $247 or $200. However, officers judged that if they had accommodation next to a conference or something like that, that would save money on gaining access by the use of taxis and other costs like that.

Again, the procedures state that you can only spend up to a certain amount and that, if you want to spend more than a certain amount, you have to get authorisation. In some cases, officers did not get that authorisation. In terms of the audit controls that is wrong, and officers have been advised of that. It is important to put the matter into perspective. In some of these cases, though, any reasonable person would not argue that the people ought to be disciplined, reprimanded or drummed out of the Public Service because of it; but they need to be reminded of the audit procedures and required to follow them in the future. If they continue not to abide by those guidelines, that can be followed up with disciplinary action or a reprimand.

In some examples, particularly in relation to telephones, we as Ministers or as Public Service administrators need to look at the reasonableness of some of the guidelines and see whether or not we can make them more reasonable and allow public servants to get on with their job of service in their department without being unnecessarily hamstrung or restricted by procedures. That is not a criticism of the Auditor-General, because the Auditor-General can only look at the guidelines we have issued and see whether or not they have been followed, and he, as the umpire, has to say whether they have or have not. However, it is a responsibility of government and Public Service administrators to look at the reasonableness of some of these restrictions and guidelines and come up with a happy balance. You must have audit controls but, equally, they should not be so restrictive as to, in effect, hamstring proper servicing and Public Service administration within our Government departments.

Broadly, I am happy with the response of my department to this area. I acknowledge that there are problems that we as a department and our officers need to attend to, and we have done so. We have appointed—I am not sure whether there has ever been one before—an audit committee within the department. We either have advertised or are about to advertise for a senior audit officer to oversee our internal audit procedures. We have invited the Auditor-General's representative to sit on that audit committee and to assist us in our audit controls. It would be fair to say that we are bending over backwards trying to comply with the proper audit controls that ought to be required of a modern Public Service administration. We are a very big one, with some 20 000 to 30 000 officers in our department. We are big enough to acknowledge that there will be problems on occasions, no matter how good our internal or external audit controls, and we must face up to those problems if and when they arise. We will do so, and the Auditor-General has had an undertaking from me, via the Chief Executive Officer, that we will listen—and have listened—to his points of view. We will seek to do whatever we can to resolve those audit issues, acknowledging, as I said, that, as a Government and as administrators, we must look at some of those procedures to see whether or not they are unduly restrictive on sensible Public Service administration.

The Leader of the Opposition has raised questions about land sales in the Education Department. The Leader of the Opposition has asked, 'What is the new policy of tying funds for the construction of new schools to the sale of existing schools?' and 'Why were projects cancelled or delayed because sales have not met targets?' I am not sure about that: I need further confirmation from the Leader of the Opposition as to what she is referring when she refers to a new policy of tying funds with the construction of new schools to the sale of existing schools. The policy within the Education Department, which existed for many years under the Labor Government and which now exists under the Liberal Government, is that the department has the added advantage that many other departments do not have in that, automatically, the sale of buildings or property come as a revenue stream to the department to be used for new schools or redevelopment of old schools within our education sector. I am not sure what the honourable member is referring to when she asks about the new policy of tying funds because, as I said, this is an existing policy, and we have had that advantage for many years. I can only invite the Leader of the Opposition perhaps to further clarify her question with me—if it is something different from the way that I interpreted it. If so, she will need to explain that further, and I will respond to that as soon as I can.

In relation to the management of shared facilities, that is, where we have Government and non-government schools on the one site, the Auditor-General raised some very series questions about the administration of those procedures. The Leader of the Opposition has asked, 'How much has the department failed to collect from non-government agencies sharing facilities with his department?' First, some of the Auditor-General's criticisms actually date back to 1982 and, in effect, cover the whole 11 years of the Labor Government, from 1982 to 1993. I will give an example. The Auditor-General is saying that, in one of the joint sharing agreements entered into between the Government and non-government schools, certain percentages of the water bill were to be paid by the non-government agency and a certain percentage by the Government. Evidently, in one or two of those schools—as I said, one of them dating back to 1982—the non-government school's share of things like water bills, ground staff costs and so on have not been collected by the Government. That is an important issue that the Auditor-General has raised. In discussions with the non-government agencies, with SA Water (because in many cases we do not have the bills going back to 1982) we are seeing what we can do to recoup money that was meant to be paid to the Government by non-government agencies or schools.

As a new Minister, I have to say that joint use agreements have caused me some concern since about late 1994. It was during that period that I realised that a number of joint use agreements were still to be signed between Government schools and non-government schools, some of them having waited two, three and four years for resolution of issues between the Government and non-government schools. In one case, the non-government schools were saying, 'Well, we won't pay our money until we have signed an agreement, then we will pay you for the money covering that whole period.' The more I looked at the matter through 1994 the more questions were raised in my mind as to how as a department we ought to be handling this whole issue of joint use agreements. In late 1994 or early 1995—I cannot remember exactly when—I asked the department for the full list of joint use agreements, and for the first time we have now at least commenced a database of what in the end I suspect will be hundreds of joint use agreements—because they are not just between non-government and Government schools; they might be between governments and local councils, governments and other agencies or governments and

industry. A whole variety of these joint use agreements exist within the Education Department.

I have asked a number of officers to undertake an analysis, in effect, of the particular problems with some of these agreements and of what caused the delays in implementation. I wanted to know in which sections of our Department for Education and Children's Services the holdups had been. I wanted to know whether they were in our department or in other departments and agencies, in terms of our negotiations with Crown Law or other agencies like that. I wanted a thorough analysis of where the holdups had been, so that we could have a look at better managing the process. We have indicated that we have appointed a new officer to provide an oversight for this broad area of joint use agreements, and certainly the Government wants to try to clean up this backlog and, more importantly, as we move into new developments with non-government schools, to adopt a clear policy that joint use agreements ought to be resolved before the opening of any school or project. If that sort of time line is placed upon people, it gives them a great incentive to get these joint use agreements resolved before facilities can be opened and used. That is the Government's long term intention in this area.

The last area raised by the Leader of the Opposition is broad: she asks whether there are any deficiencies in internal financial controls and whether these are the direct result of cutting staff numbers. I am advised that the sorts of issues and concerns that have been raised by the Auditor-General, and indeed by me as Minister, are not being significantly affected by reductions in staff numbers in the Department for Education and Children's Services. It is true that we have reduced or are reducing by up to 10 per cent the number of our central and regional office staff, but we still have 900 to 1 000 central and regional office staff within the department. It is certainly a lean and trim organisation now compared with some years ago—a number of levels of middle management have been removed—and I am advised that there is nothing in our new structure that would prevent us from establishing appropriate internal and external audit controls to ensure the proper administration of public moneys within the department.

They are the specific questions which the Leader of the Opposition raised with me as Minister for Education and Children's Services. I again thank members for their contribution to this debate on the Auditor-General's Report. I think it has been a worthwhile addition to the parliamentary scene in the Legislative Council. I am sure that we will live to have many more such interesting debates over the coming years, and I look forward to responding to members' questions for a number of years to come, rather than asking them.

Motion carried.

CLASSIFICATIONS (PUBLICATIONS, FILMS AND COMPUTER GAMES) BILL

Adjourned debate on second reading.

(Continued from 10 October. Page 91.)

The Hon. M.J. ELLIOTT: I support the second reading. I want to make a few brief comments and pose a few questions which the Attorney-General may care to answer either at the end of the second reading debate or during the Committee stage. I take the general view that people (and when I say 'people' I mean 'adults') should be free to read or to watch what they like—that is my starting position—but there will be the need for some sorts of restriction. The first restriction is one which protects children so that they will not see material which the general community would perceive to be offensive. The second restriction relates to material which is produced in such a way that harm is done—for instance, child pornography. The third restriction relates to material, the viewing of which can clearly be demonstrated as having the ability to cause harm not necessarily to the person involved but elsewhere. However, having said that there are grounds for censorship, I take the view that we must be careful not to apply censorship so rigorously that we start to threaten civil liberties. There is a delicate balance, but I think that in general terms we are achieving that balance in our society at present.

It is important that people have the right not only to see what they want to in general terms but also not to have things foisted upon them. That brings me to one issue which we debated in this place only a few years ago when amendments were moved and supported by all Parties regarding material which was demeaning to women. Quite clearly, a couple of issues are involved. One is simply the fact that the material may be on public display. We had particular problems regarding posters which advertised magazines. I will not go through the whole debate that we had previously, but I think it was the consensus in this place that posters that were on display at the time had gone too far not necessarily in relation to nudity but quite often because they involved demeaning images, particularly of women. We took a position in this place that things had gone too far, and we amended the Act that is now being repealed to tackle that issue. Those are the first issues that I want to pose for the Attorney-General.

I have read through the Bill before us and the material that is to be used by the Commonwealth when it imposes classifications on various material. I must say that I am not convinced by what I have seen so far that the sorts of protection that we put in place a couple of years ago are guaranteed under the Federal legislation or under the guidelines which were promulgated subsequent to that Federal legislation. That is of concern to me. What we did in this place previously was important, and I would hate to think that we may be taking a step backward, not with intent but simply because the current legislation and guidelines do not appear to cover that issue. So that is one issue to which I would like the Attorney-General to respond.

The other matter relates to, I suppose, being convinced that issues of sexual violence in particular are being addressed. I am not one to promote censorship regarding sexual matters themselves except in terms of the issues that I covered previously where material should not be shown to minors and where clearly it is designed to be viewed by adults in the privacy of their own home but, when we overlay that with violence and coerced sex, I believe that Governments rightfully should intervene. In fact, I think violence in general is a much more serious issue than sexual matters, but the combination of the two is most abhorrent and sends out messages that are dangerous in our society. While sexual violence is mentioned within the guidelines, I am not sure whether it is viewed any more seriously than violence or sexual matters separately. I believe it should be, and I ask the Attorney-General to respond. Other than those two issues, I am relaxed about the legislation before us, and I will support it.

The Hon. BERNICE PFITZNER: I also support the second reading of this Bill. I would also like to raise the issue

of demeaning images because, as I recall, when I moved my private member's Bill in this place two years ago, that Bill, which has become law, was very effective. I could see the effect most clearly at the railway station where category 1 publications were in packages made of opaque material. Section 47 has them contained in opaque material, and I wonder why we have left out blinder racks? Is this because they have never been used? Blinder racks were one of the methods put forward to conceal demeaning images. I look again at the guidelines for classification category 1, and I note that in section 18 it has to be in accordance with the national classification code. The definition of national classification code states:

> National Classification Code means the National Classification Code as in force from time to time under the Commonwealth Act.

I am also worried that the term 'demeaning images' is not encompassed in this code. If it is not, what is our position?

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their contributions to the second reading of this Bill. I will endeavour to answer all of the matters which have been raised. I do not intend to deal with the Committee stage of the Bill today. In the event that I have not adequately addressed the issues raised by members there will be an opportunity to take them up again in the Committee consideration of the Bill. I can answer most of the questions, if not all of them. The Hon. Bernice Pfitzner referred to blinder racks. That is certainly in our State legislation, but when we came to draft the model Bill, and particularly deal with it in the context of South Australia, it was quite obvious that blinder racks are not at all popular with newsagents, delicatessens and others in relation to the display of category 1 publications. All of the national publishers have moved to accept that category 1 publications should be displayed in opaque envelopes. Because that is the way that it is being done nationally, it seemed to me that if there was no evidence that blinder racks were being used in this State there was no reason to include them in the legislation.

The objective of the South Australian legislation has been achieved in that the covers of category 1 publications are not publicly displayed. As the Hon. Mr Elliott said, there is a right to see but there is also a right not to have things foisted upon people. I am not sure that I would describe it as a right, but I think that in the common description of it people should not be confronted by what they regard as offensive material when they go into a delicatessen or a newsagent, particularly when they have children with them. The objective of the amendment which I think was passed in 1993 but which this Government brought into operation last year, as I recollect, has been achieved.

I now deal with the issues raised by the Hon. Mr Elliott. He talked about the issue of demeaning images, and it is quite a proper question in the context of the national classification code and national classification guidelines. I draw attention to what I said when I introduced the Bill. The Commonwealth Act establishes the Classification Board and the Classification Review Board, and provides that the classification decisions for publications, films and computer games are to be made in accordance with the national classification code and the guidelines. Both the code and the guidelines have been agreed between the Commonwealth, States and Territories, and any amendments to either must be similarly agreed. It is intended that the tabling of any amendments to the code and guidelines will occur in each of the Commonwealth, State and Territory Parliaments.

The national classification code is defined in our Bill in clause 4 as the national classification code as enforced from time to time under the Commonwealth Act. The national classification guidelines mean the classification guidelines as in force from time to time under the Commonwealth Act. The Commonwealth Act embodies the code and the guidelines agreed between the Commonwealth, the States and the Territories, and they can be reviewed from time to time. In fact, those in relation to films are currently the subject of public consultation and review to ensure that they are in touch and in line with contemporary community standards. It is intended that when that job is finished the attention will then turn to publications and the guidelines which should apply to them. I draw attention to the national classification code. The category 1 restricted classification provides:

> Publications (except RC publications and category 2 restricted publications) that:
>
> (a) explicitly depict nudity, or describe or impliedly depict sexual or sexually related activity between consenting adults, in a way that is likely to cause offence to a reasonable adult. . .

I pause there to say that the explicit depiction of nudity is not in any way related to sexual or sexually related activity between consenting adults. So, there are two areas which are separate and distinct:

> . . . explicit depiction of nudity. . . in a way that is likely to cause offence to a reasonable adult.

In the context of demeaning images, that poster would be well and truly caught by that code description. If that is not sufficient, one can turn to the guidelines which deal with poster and magazine covers and which provide:

> An adult should be able to frequent public places without unsolicited and unwanted exposure to offensive material. Parents, also, should be able to assume that their children will not be exposed to unsuitable material. Consequently, covers and posters classified as unrestricted or restricted category 1:
>
> (i) will be suitable for display in a public place; and
>
> (ii) should not be unsuitable for perusal by persons up to 18 years of age.

That will be in the context of the amendments which are contained in this State legislation. Offensive material is the description which I would suggest to members will cover the issue of demeaning images. I will refer that specifically to one of my officers, who is a member of the State board, and to my officer responsible for censorship matters. I will undertake to clarify that further if my interpretation is incorrect.

The Hon. Mr Elliott indicated that he also needs to be convinced that issues of sexual violence are being addressed. This is particularly in the context of films and videos. The guidelines relating to films and videotapes specifically refer to violence in films and videos and state:

> The attention given to acts of violence in modern society, especially sexual violence, has created concern within the community that the depiction of violence in popular entertainment encourages anti-social values and behaviour. Such concerns deserve respect and portrayals of violence in films and videos are given the closest attention before being classified. Excessively violent material is banned.

They are the guidelines under which the censorship decisions are made. If one goes to the actual categories and looks at the restricted category, that is, restricted to adults 18 years and over, one sees that it talks about violence as follows:

> Highly realistic and explicit depictions of violence may be shown, but not if unduly detailed, relished or cruel. Depictions of

sexual violence are acceptable only to extent that they are necessary to the narrative and not exploitative.

That is the most extreme classification, other than 'refuse classification'. If we read the classification guidelines in a progression from 'unrestricted' up to 'refuse reclassification' we will see that it is only in the 'R' category that depictions of sexual violence are acceptable, only to the extent that they are necessary to the narrative and not exploitative. In those circumstances it is my interpretation that they are not permitted in the other categories, although reference to violence, sex and language do have particular descriptions attributed to them in the context of those guidelines. So, the concerns raised by the Hon. Mr Elliott are adequately covered but, as I said earlier, I will endeavour to ensure that that is put beyond doubt when we move into Committee.

I now turn to the matters raised by the Hon. Carolyn Pickles. They are pertinent and many have been the subject of consideration in the drafting of the Bill. The honourable member first raised the matter of Information Bulletin No. 7 of the Commonwealth Office of Film and Literature Classification, which details the kind of material which may fall within any particular classification. An indication is given as to the level of explicit language, sex and violence which will be tolerated under each classification head. I have already made some reference to that in dealing with the matters raised by the Hon. Mr Elliott. The Hon. Carolyn Pickles is concerned that no account appears to be taken of the context in which these matters occur. I refer her to the preamble under the heading 'Importance of context' which highlights the consideration which should be given to the context in which a certain element of a film or videotape appears. However, there is a recognition by Ministers responsible for classification that the existing guidelines for films and videotapes, publications and computer games must be regularly updated to ensure that they reflect community standards.

Accordingly—and I mentioned this earlier—it has been agreed by Ministers that there be a sequential review of the film and videotape, publications and computer games classification guidelines, commencing with a review of the film and videotape guidelines in this year 1995. This review process will include expert advice as to the excessibility of language used and a period of public consultation. As I understand it, advertisements were placed in the national press on Saturday 7 October calling for comments about the new guidelines.

In response to the honourable member's comments about the depiction of women, and adding to what I have already commented upon, I draw attention to the National Classification Code, which will be used in the classifications of films, videos, publications and computer games. In recognition of the concern in the community about the portrayal of women in the media, a classification decision must take into account among other things the portrayal of persons in a demeaning manner. That really confirms what I was saying earlier. It is an important piece of legislation and I will have the issue confirmed before we finish with the Committee consideration.

The second point the honourable member raises is in relation to the State classification body. She refers to the fact that it has been renamed. It has been renamed simply to avoid confusion with the Commonwealth Classification Board. The South Australian Classification Council will operate as a board of review in the same manner as the existing Classification of Publications Board operates. Clause 17 of the Bill provides that the council or the Minister may classify a publication, film or computer game despite the fact that it is classified under the Commonwealth Classification (Publications, Films and Computer Games) Act 1995.

Under the scheme it is proposed that the Commonwealth Classification Board will perform the vast majority of the classification work on behalf of the State, but that the State will have a right to review the classification if considered necessary. As previously outlined under the present legislation the Minister has the right to review the classification of a film, and the board may review the classification of a video or a publication. The new Bill combines these two regimes and allows either the council or the Minister jurisdiction in any area covered by the legislation.

The intention of the scheme is that the Minister or the council may review a classification made by the Commonwealth Board. If it is the Minister who has elected to undertake the review, the Minister may request that the council provide advice as to the classification of a film, video, publication or computer game. If the Minister reviews a classification, then the council must not review the same classification. That is to avoid a possible system of double review.

The honourable member also raises concerns about the content of television programs, in particular, programs specifically targeted at children. This matter is presently under consideration by Ministers responsible for classification. As the Leader of the Opposition rightly points out, television broadcasts are regulated by the Commonwealth Department of Communications and the Australian Broadcasting Authority (ABA) pursuant to the Broadcasting Services Act 1992. At the next meeting of Ministers an up-to-date paper addressing issues of concern, including cartoons and the consistency of classifications with those for film and video, will be provided by the Australian Broadcasting Authority for the information of Ministers. We have expressed concern about the inconsistencies and, as a result of that, officers from the Department for Communications attended the last meeting of the Standing Committee of Attorneys-General and we are to have an updated paper from the ABA at the meeting in Adelaide next week.

Lastly, the matter of regulation of on-line services is raised. At present a paper seeking views from the industry and the community has been circulated on the Internet and in hard copy for comment. The paper proposes a system of industry self-regulation and a complaints mechanism for those wishing to report the availability of offensive material on an on-line information service. The paper also proposes a number of offence provisions directed at operators who knowingly make offensive material available to the public. At present, the responses to the paper are being collated, and I am told that they will be presented to the meeting of Ministers in Adelaide next week. The draft provisions have been referred to Parliamentary Counsels' Committee for refinement, and the Minister for Communications and the Arts has directed the ABA to investigate the development of a self-regulatory code of practice and a complaints handling procedure for report by 30 June 1996.

That now addresses the issues raised by members, and there will be another opportunity to follow up anything that I have not addressed when we deal with the Committee consideration of the Bill.

Bill read a second time.

WORKERS REHABILITATION AND COMPENSATION (DISPUTE RESOLUTION) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 18 October. Page 263.)

The Hon. M.J. ELLIOTT: I rise to support the second reading of this Bill, which has been some time in coming and which has arisen as a consequence of debates in this place in late April and early May this year, when the Government was amending the WorkCover Act more generally, and sought to change the review process. It was quite clear to me, talking to people representing both employers and employees, that the review process was not working very well; in fact, it was working very poorly. Interestingly, at that time the representatives of employees were very nervous because they feared that the changes would all work against employees and, at that stage, they were expressing a preference to keep what they had.

Yet, I repeat, I was getting very clear evidence that the review process was failing not only for employers but also for employees, and failing in a number of ways. Probably its most important single failure was the time the review process was taking. People going to review with WorkCover were caught in the system for inordinate amounts of time, and it is very true to say that justice delayed is justice denied. At times justice is delayed for inordinate amounts of time, and those delays harm in a number of ways. A person might be caught with uncertainty in terms of their future financial position and status; they do not know what the resolution will be, and those uncertainties can impact also on one's ability to rehabilitate or simply to get on with one's life. There is no doubt that the inordinate amount of time being taken was the most damaging aspect of the review process.

At the time we were debating the Bill I indicated that I agreed that the legislation needed to be changed; I also indicated that the proposals the Government was then putting forward were unacceptable. I did not see that they would achieve any gains for employees. In fact, I felt that even employers, at the end of the day, would not have got significant benefit out of it, either. I thought the model put up by the Government was not a good one.

An agreement was struck eventually between the three Parties in this place that we would sit collectively around the table with representatives of employers and employees. We had a representative from the Employers' Chamber, the UTLC as well as one representative from each of the political Parties in this place. The committee met regularly, first on a weekly basis. Progressively the meetings were a little further apart, but we met as late as today when we met to discuss issues.

It has been a very constructive process. It would be fair and accurate to say that the representatives of both employers and employees see aspects in this Bill which they do not like and which they would prefer not to be there. I believe that, in the process, we have produced a Bill which in its totality and overall effect is far better for everyone concerned. I believe there will be winners all around, and it is not too often that one can say that about a piece of legislation, but that is the case.

I am quite willing to concede that people coming from different perspectives, be it employer or employee, will say, 'I don't like this, and I would like to see it changed.' But it would be a very dishonest person who said that the overall effect of this Bill would not be positive for all concerned. Because this is a consensus Bill and has been reached after a great deal of pain, I do not anticipate any significant change occurring in this place. The only change one would contemplate is one where the clear intent of the agreement which was reached between the various parties had not been achieved just due to drafting.

I have received extensive submissions from the Australian Plaintiff Lawyers, met with representatives of the Law Society, and I have also met with and received submissions from the UTLC in relation to various matters which are still of concern to those people. It is not my intention to go through the detail of those now, as I will do that in Committee. However, it is fair to say that the issues raised by them by and large were considered by the committee. They were not matters of oversight. The arguments put forward were considered within the working group, and whilst some issues still need to be addressed, and in some cases need amendment, there are other ways of addressing them. As I say, I will be leaving the particulars of that until Committee.

I finalise my comments by saying that it really has been a useful experience for all parties to sit around the table working things out, rather than trying to work them out on the run in the Parliament. I believe we have better legislation as a consequence of that, particularly in an area as difficult as workers' compensation. There would be few issues, the key areas being workers' compensation and industrial relations, which so divide the members of this place that trying to get sensible debate in this Parliament is almost impossible.

Frankly, unless we go through this sort of process we will battle to get good legislation. I can only hope that the Government has learnt something from this experience in that it will be more prepared in the future to sit down and be inclusive rather than exclusive. Certainly in the early days the Government was barging ahead doing things without carrying out proper consultation. I am sure members of this place can recall a number of examples where consultation that should have occurred, particularly with the unions in the areas of industrial relations and workers' compensation, did not occur and, as a consequence, problems were created for everyone. I suppose that we are still seeing signs of that even today, if one looks at police issues, etc. However, I will not digress into those matters now. I support the second reading.

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

OPAL MINING BILL

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

TOBACCO PRODUCTS (LICENSING) (MISCELLANEOUS) AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

This Bill seeks to amend the *Tobacco Products (Licensing) Act* in respect of a number of issues.

The proposed amendments will combat the loss of revenue due to 'price wars' in the market place and modify the investigation,

inspectoral, seizure and penalty powers to help combat the illicit trading of tobacco products.

Tobacco licence fees in 1994-95 fell short of budget estimates by $21.8 million, of which a major contributor was cigarette 'discounting wars' waged by tobacco manufacturers in an effort to increase respective market share. The Government announced at the time that it would take action to ensure that South Australian taxpayers were not effectively subsidising the discounting war of the major tobacco companies.

Certain non-legislative action has already been taken and in order to further protect the revenue base, the Bill proposes to strengthen the Act in a number of ways to ensure that licence fees are paid where wholesalers provide stock to retailers other than by way of sale.

Firstly, the definitions of 'tobacco merchandising' and 'tobacco merchant' are to be widened to include all dealing in tobacco products.

Secondly, the Bill proposes to amend the definition of 'sale' and the corresponding definition of 'purchase' to include, but not be limited to, the exchange or supply of tobacco product whether or not for valuable consideration.

Additionally, a significant number of technical or minor amendments are proposed to upgrade the inspectorial, seizure and penalty powers to ensure those who seek to avoid their obligations by illicit trading in tobacco products can be made accountable.

For example, it is proposed to amend the Act so that an unlicensed tobacco merchant proposing to commence a business within the State, or proposing to continue a business in the State, shall be required to notify the Commissioner of Stamps. The provisions will require prescribed information to be provided to the Commissioner. It is the Government's intention for regulations to be made requiring an unlicensed merchant to advise the Commissioner of the address of any place of business within the State, residence, and registered business office. The date from which any business is or is proposed to be carried on will also be required to be provided to the Commissioner.

Finally, the Bill proposes a provision that will more adequately deal with the situation where tobacco product is seized because the inspector reasonably suspects that an offence has been committed. Under the provisions being proposed in this Bill, tobacco products may be forfeited to the Crown where the Commissioner is satisfied that the product should be sold in order to avoid loss due to the deterioration of the products, or where a court convicts a person of an offence against a provision of the Act. Any forfeited product would be sold by public tender.

The Government is continuing in its efforts to ensure our revenue regimes are efficient and effective and in this instance is taking action so that the community can have confidence that the tobacco licensing system will provide that legitimate tobacco merchants are not disadvantaged by the illegal activities of those few who seek to avoid their liabilities.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 4—Interpretation

This clause makes a number of amendments to the definitions contained in section 4 of the principal Act.

A 'purchase of tobacco products' would, under this measure, be defined to include any receipt of tobacco products in the course of a business and 'sale of tobacco products' would be correspondingly defined to include any supply of tobacco products in the course of a business.

The definition of 'tobacco merchandising' is amended to include the possession or storage of tobacco products for or prior to sale.

The definition of 'tobacco product' is amended to include any packet, carton, shipper or other device in which tobacco products are contained.

New subsection (2) will ensure that the return of tobacco products is not caught by the new definitions of 'sale' and 'purchase'.

Clause 4: Amendment of s. 9—Consumption licences

Section 9 of the principal Act is amended to provide that a person must be 18 years old (rather than the current age limit of 16) to obtain a consumption licence.

Clause 5: Amendment of s. 11—Classes and terms of licences

This clause makes two minor amendments to section 11 of the principal Act to clarify the intent of the section.

Clause 6: Amendment of s. 13—Licence fees

Section 13 of the principal Act is amended to allow the Commissioner to grant an extension of time for payment of a licence fee, or allow payment to be made by instalments.

Clause 7: Amendment of s. 15—Declarations to be obtained from purchasers

This clause does not make any substantive change to section 15 of the principal Act but merely provides for the offence created by that section to be stated in a clearer way.

Clause 8: Amendment of s. 16—Notice to be displayed for the information of prospective purchasers

This clause does not make any substantive change to section 16 of the principal Act but merely provides for the offence created by that section to be stated in a clearer way.

Clause 9: Substitution of s. 17

This clause replaces section 17 of the principal Act. New section 17 provides that an unlicensed tobacco merchant operating within the State must give notice to the Commissioner (complying with the regulations) no more than two months before commencing to so operate and at two monthly intervals while continuing to so operate. The maximum penalty for breach of this requirement is a fine of $20 000.

Clause 10: Substitution of Division

This clause substitutes a new division III in Part IV of the principal Act as follows:

DIVISION III—INSPECTORS

22. Identification of inspectors

Inspectors (other than police), must be issued with an identity document and must, on request, produce the document for the inspection.

22a. Powers of inspectors

This provision outlines the powers of inspectors and the circumstances in which those powers may be exercised. The powers include the power to enter premises, to break into or open premises, to require a person to produce a record of information, to examine, copy or take extracts from a record of information, to seize and retain tobacco products or records of information, require a person to state their name and address and produce evidence of identity, to require a person to answer questions, to require a person to produce their licence for inspection, and to give directions in connection with the exercise of a power or in connection with the administration and enforcement of the Act.

22b. Offence to hinder, etc., inspectors

This provision provides for the offence of hindering or obstructing an inspector. The maximum penalty is a fine of $20 000.

22c. Self-incrimination

This clause overrides the privilege against self-incrimination for the purposes of proceedings under the Act (but not in respect of any other proceedings).

22d. Powers in relation to seized tobacco products

This provision sets out what will happen after tobacco products have been seized.

If the products are going to deteriorate, the Commissioner may determine that the products are forfeited. Products will, in any case, be forfeited if a person is convicted of an offence in relation to the products (unless the court declares that the circumstances of the offence were trifling). When products are forfeited the Commissioner may sell the products by public tender.

The owner of seized products will, however, be entitled to recover them or, if they have been sold by the Commissioner, be paid compensation in respect of them—

- if a prosecution for an offence against this Act in relation to the products has been commenced but the defendant is acquitted, the prosecution is withdrawn or lapses or the court hearing the proceedings determines that the circumstances of the offence were trifling; or
- if a prosecution for an offence against this Act in relation to the products has not been commenced within three months and the District Court determines that the justice of the case requires that the products be returned or that compensation be paid;

After three years, if the products have not been forfeited or returned to the owner, they are automatically forfeited to the Crown and the owner will not have any right to recover the products or be paid compensation in respect of the products (other than a right that has already arisen or been determined).

Compensation payable in respect of products will be in an amount equal to the amount paid by the owner of the products

when he or she purchased them or, if the owner is the manufacturer, their value determined on the basis provided under section 14 for the purpose of assessing licence fees.

Clause 11: Amendment of s. 24—Secrecy

Section 24 of the principal Act is amended by adding to the list of persons to whom disclosure of information may be made the Comptroller-General of the Australian Customs Service.

Clause 12: Insertion of s. 24aa

This clause inserts a new section 24aa in Part V of the principal Act providing for the Commissioner to keep a public register of licensees under the Act.

Clause 13: Amendment of s. 27—Keeping of records

This clause substitutes new subsection (1) and (1a) in section 27 of the principal Act providing for the keeping of records in relation to tobacco merchandising and the transportation of tobacco products prior to sale. The penalty for breach of the record keeping requirements is a maximum fine of $10 000.

Clause 14: Insertion of s. 29a

This clause inserts a new section 29a in the principal Act providing that a tobacco products wholesaler must give purchasers an invoice containing prescribed particulars. Failure to do so will attract a maximum fine of $10 000.

Clause 15: Insertion of s. 31a

This clause inserts a new section 31a in the principal Act providing that the Commissioner may recover amounts payable under the Act. The new clause also provides an aid to proving the amount payable by certificate of the Commissioner.

Clause 16: Amendment of s. 32—Evidentiary provisions

A new subsection (3) is inserted in section 32 of the principal Act providing an aid to proving that a person purchased or was in possession of the tobacco products for the purposes of sale.

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

CRIMINAL LAW (SENTENCING) (MISCELLANEOUS) AMENDMENT BILL

Returned from the House of Assembly without amendment.

ADJOURNMENT

At 6.26 p.m. the Council adjourned until Wednesday 25 October at 2.15 p.m.