LEGISLATIVE COUNCIL

Tuesday 14 November 1995

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

OMBUDSMAN'S REPORT

The PRESIDENT laid on the table the Ombudsman's Report for the year 1994-95.

MEMBERS' INTERESTS

The PRESIDENT: Pursuant to the provisions of section 3(2) of the Members of Parliament (Register of Interests) Act 1983, I lay upon the table the Registrar's Statement, November 1995, prepared from primary returns of new members of the Legislative Council.

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I move:

That the Registrar's statement be printed.

Motion carried.

PAPERS TABLED

The following papers were laid on the table:

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

Reports, 1994-95—
- Department of Treasury and Finance—Erratum
- South Australian Superannuation Board—Sixty-Ninth Report
- ETSA Contributory and Non-Contributory Superannuation Schemes

SA Asset Management Corporation and its Controlled Entities—Auditor-General's Independent Audit Report

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

Reports, 1994-95—
- Dairy Authority of South Australia
- Pipelines Authority of South Australia
- Public Trustee
- South Australian Meat Corporation (SAMCOR)
- Soil Conservation Boards
- Australian Barley Board
- Australian Major Events

Listening Devices Act 1972—Report prepared pursuant to Section 6b(3)

Summary Offences Act 1953—Returns for Road Block Establishment and Disaster Area Declarations for period 1 July 1995 to 30 September 1995

Regulations under the following Acts—
- Conveyancers Act 1994—Education Program
- Fisheries Act 1982—Rock Lobster
- Second-hand Vehicle Dealers Act 1995—Principle
- Stock Act 1990—Identification by Tagging

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

Reports, 1994-95—
- Enfield Cemetery Trust
- Department of Environment and Natural Resources
- Racecourses Development Board

Regulations under the following Acts—
- Harbors and Navigation Act 1993—Restricted Areas—Thevenard
- Local Government Act 1934—Parking—Spaces and Offences
- Motor Vehicles Act 1959—Written Authorisation
- Road Traffic Act 1971—Clearways—North Terrace

District Council By-laws—
- Eudunda—
  - No. 2—Animals and Birds
  - No. 3—Dogs
- Tanunda—No. 8—Moveable Signs on Streets and Roads

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

Reports, 1994-95—
- Libraries Board of South Australia
- South Australian Women's Advisory Council.

INDOCHINESE AUSTRALIAN WOMEN'S ASSOCIATION

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to make a ministerial statement on behalf of the Premier on the subject of the Indochinese Australian Women's Association.

Leave granted.

The Hon. R.I. LUCAS: As I said, this is a statement made by the Premier. It is as follows:

Yesterday I received a letter signed by five women who recently sought election to the management committee of the Indochinese Australian Women's Association. The terms of the letter, its wide circulation to members of Parliament and others, and the prominent report of its contents in today's *Advertiser* warrant this public and immediate response. At the outset, what should be made clear is what this morning's *Advertiser* report unfortunately failed to reveal—that the five signatories to this letter were unsuccessful candidates for election to the management committee at the annual general meeting of the association on 2 November 1995. The names of all five—

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: I beg your pardon?

The Hon. M.J. Elliott: He's not talking about the police investigation on other matters, is he?

The PRESIDENT: Order! The Minister.

The Hon. R.I. LUCAS: If the Hon. Mr Elliott wants to make any allegations, let him do so, instead of making snide comments by way of interjection.

An honourable member interjecting:

The PRESIDENT: Order! The Minister.

The Hon. R.I. LUCAS: If the Hon. Mr Elliott wants to make snide interjections, let him do so publicly so that they can be responded to. The Premier continues:

The names of all five were on a voting ticket distributed at the meeting by, amongst others, Tung The Ngo, who is the subject of the following reference in a document signed by the Leader of the Opposition, 'Tung represents the strongly-held Labor north-west ward of the city of Enfield and we are delighted that he is currently working in the Labor movement.' As I am advised, this election in fact represented an attempt by the Labor Party to gain control of the Indochinese Australian Women's Association for Federal election purposes. I have spoken—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: The Premier continues:

I have spoken to the Hon. Julian Stefani about this letter. His absolute denial of the conduct alleged is supported by the following correspondence I have received today. The first is a letter signed on behalf of the Executive Council of the Indochinese Australian Women's Association by the President, Mrs Pat St Clair-Dixon. The letter states:

At a specially convened Executive Council meeting today, Monday 13 November, it was unanimously agreed to write to you in support of Mr Stefani, who has served our association in an honorary capacity for many years. The AGM was attended by well over 300 members of ICHAWA. The Chairmanship of the meeting left a lot to be desired and we were disappointed at the overt political tones that the evening assumed. This not from Mr Stefani but others, including men using overbearing and intimidating tactics. The executive is not an activist, political organisation. We are here to serve ICHAWA, not a political

Party. Mr Stefani has always supported and guided ICHAWA in an apolitical way, and on the evening—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: You don't like these things.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: Mr President, I am very disappointed that the representatives of the Labor Party, including the Hon. Anne Levy and the Hon. Carolyn Pickles, are laughing at the facts and statements being made by the women representing ICHAWA. Let it be recorded on the public record that the Hon. Anne Levy and the Hon. Carolyn Pickles join with their male colleagues in laughing at these particular statements being made—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: —by the executive council, the official representatives, of ICHAWA. Let that be on the public record. I will continue with the quotation from the letter:

> . . . and on the evening in question his—

that is, Mr Stefani's—

> behaviour as always showed dignity and the ethics of a true Christian.

Mrs St Clair-Dixon has also sent me a letter with some of her own observations about events at the AGM, in which she has stated:

> To suggest that Mr Stefani flagrantly attempted to influence the outcome of the election is a gross misrepresentation of events. Again I would suggest that the imagined behaviour of Mr Stefani is a projection of the frustrations and anger of the group who wrote to you. The Vietnamese women were subjected to a constant barrage of election material from this group who signed the letter about Mr Stefani. It must be very annoying, to say the least, to have put out so many pamphlets, spoken so many words and been so bitterly disappointed with the election outcome.

I am advised that the association has received many telephone calls today expressing anger about the allegations made against Mr Stefani on the grounds that they are baseless.

This was not the first AGM of the association that Mr Stefani has attended. He has attended many others since he became a member of the South Australian Ethnic Affairs Commission, as it then was, in 1981. The commitment of the Hon. Julian Stefani to the ethnic community is well known and, during his many years of involvement, he has taken a particular interest in a number of organisations including the Indochinese Australian Women's Association. This organisation has gone through a very unsettling period, which has been reflected in some of the events at the annual general meeting. The ultimate consideration for us all in this matter are the Indochinese women who have made their home in South Australia. Their best interests will be served by ensuring that this association is very quickly allowed to proceed with its work on behalf of the women and their children for whom it was set up to serve.

EDS CONTRACT

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

Leave granted.

GARIBALDI SMALLGOODS

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

Leave granted.

GRAND PRIX

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a ministerial statement made by the Minister for Tourism in another place on the subject of the 1995 EDS Australian Formula One Grand Prix.

Leave granted.

QUESTION TIME

CHILDREN'S CENTRES

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 funding for children's centres.

Leave granted.

The Hon. CAROLYN PICKLES: In April the Grey Ward Centre in Wright Street and two other fully integrated child care kindergarten centres—the Keith Sheridan Centre at Halifax Street and the Margaret Ives Centre at Norwood—were given an undertaking that no decision on the policy for future funding will be taken without full consultation with the centres. The Department of Education and Children's Services began reviewing Bowen formula funding for the Grey Ward, Keith Sheridan and Margaret Ives Children's Centres in 1994 without the knowledge of the three centres involved. After the centres became aware of the review, a joint meeting with the Department of Education and Children's Services in April 1995 agreed that any change to funding would be the result of continuing consultation between the centres and the Department of Education and Children's Services officers. Additional information from all parties was required before further consultation meetings would be held. After a significant lag a further meeting was set for 21 September 1995.

However, flying in the face of the earlier agreement, the meeting was pre-empted with a letter from DECS to all three centres dated 13 September informing them that funding under the Bowen formula would cease and that all funding would henceforth be under the Child Care Act; in other words, State funding would cease. No consultation was undertaken with relevant unions. Union representatives had sought talks but had been refused on the basis that no decision was expected in the near future. As a result of these events, the Bowen funding action committee has now been formed and a meeting of 70 parents held on 21 September voted overwhelmingly to seek a reversal of the decision from the Minister, and agreement that any further developments would proceed only with consultation and negotiation.

I now understand that, last Monday, the group met with the CEO of the Department for Education and Children's Services (Mr Denis Ralph) who said that he would extend the deadline for a decision but that the decision would still stand. The parents are concerned that this decision will lead to less funding, fewer staff, lower standards and higher fees. My questions to the Minister are:

1. Why did the Minister fail to honour the commitment to consult with the integrated centres before making a decision to alter funding policy?

2. Will the Minister agree to the request from the parents to reverse his decision and consult before any further decisions are made?

The Hon. R.I. LUCAS: The answer is 'No.' As the Chief Executive Officer has indicated, the decision has been taken, but there will continue to be discussions and consultation in relation to the implementation of the decision that has been made. With respect to some of the claims from the honourable member as to the possible effects of the change, which will bring these children's services into exactly the same structure and arrangement as all others in South Australia, I will take that on notice and bring back a reply when I have had some further advice. My understanding is that these centres will now be treated as are virtually all other centres in South Australia, as opposed to being treated differently.

INDOCHINESE AUSTRALIAN WOMEN'S ASSOCIATION

The Hon. R.R. ROBERTS: I seek leave to make an explanation before asking the Minister for the Status of Women a question about the alleged harassment by the Hon. Julian Stefani of women attending a public meeting.

Leave granted.

The Hon. R.R. ROBERTS: I was delighted to hear the statement read out by the Leader of the Government in this place in an attempt to explain away what occurred on that occasion. He made an attempt to denigrate me and my colleagues on this side of the Chamber in respect of a statement that was never made. The derision expressed by this side of the Council was in response to his allegation that Mr Stefani would not politicise the Indochinese Women's Association. That was clearly what we were talking about. In his explanatory remarks which took the form of a statement by the Premier, what the Leader of the Opposition—the Leader of the Government has done—

The Hon. R.I. Lucas interjecting:

The Hon. R.R. ROBERTS: He ought to be.

The PRESIDENT: Order!

The Hon. R.R. ROBERTS: The Leader clearly established that there are two sides to this argument, and the Premier suggested in his statement that we should believe only one side of the argument. What has been reported and circulated publicly today by five people of impeccable repute, who actually said—

Members interjecting:

The Hon. Carolyn Pickles: You are laughing. You think they are not of impeccable repute. Mr Lawson—

The Hon. R.D. Lawson: I don't know them.

The Hon. R.R. ROBERTS: Mr Lawson?

The Hon. Carolyn Pickles: Mr Lawson.

The PRESIDENT: Order! I suggest the honourable member ask his question.

The Hon. R.R. ROBERTS: Yes, Mr President. A number of games are played in this place and two can play them. This has been widely distributed and these people have put their names to this document. Clearly they would not have done that without some consideration. I draw the attention of the Minister for the Status of Women to the Liberal Party's 'Make a Change for the Better' policy document, which is dated June 1993. On page 22, under the heading 'Open Government—Accountable to the Parliament', the document states that 'the Government will ensure the highest standards of ethical conduct by Ministers and all public officials in all that they do'. I have obtained copies of the correspondence signed by a number of women who attended the annual general meeting of the Indochinese Australian Women's Association on 2 November at the Woodville Town Hall, and I seek leave to table a copy of the correspondence.

Leave granted.

An honourable member interjecting:

The Hon. R.R. ROBERTS: In a way, I wish he had actually heard you. It is stated in this correspondence that the Hon. Julian Stefani attended this meeting of the Indochinese Australian Women's Association in his capacity as the parliamentary secretary to the Premier and Minister for Multicultural and Ethnic Affairs, that at this meeting Mr Stefani acted in an abusive and threatening manner to many of the women involved in the meeting and that his behaviour included attempting through intimidation to influence the outcome of elections being conducted at that meeting.

The Hon. Mr Stefani's alleged behaviour caused great distress not only to the authors of the letter but also to many other women attending the meeting. Given the serious nature of these allegations and the commitment by the Liberal Party to the highest standards of ethical behaviour by Ministers and all public officials, my questions to the Minister for the Status of Women are:

1. Has the Minister investigated the claims made in the correspondence from the women who attended this meeting and, if not, why not?

2. Will the Minister ask the Hon. Mr Stefani to apologise to the women who were offended by his alleged behaviour and, if not, why not?

The Hon. DIANA LAIDLAW: The assertions to which the honourable member referred were directed to the Premier and they were circulated to all members of Parliament. I became aware of this last Friday when the Hon. Julian Stefani left a message at my office advising that he believed he would be accused of intimidating behaviour and at that time he wanted to say that there was no foundation to such statements. I was most interested, having just been alerted in that manner, to find that this letter was circulated to all members of Parliament.

In respect of these women, I am not sure what their motivation is in doing so. I know that one woman does work at the Women's Information Switchboard. The Director of the Office for the Status of Women has interviewed her in relation to her concerns, and I am awaiting a report in that regard.

In terms of the highest standard of ethics to which the honourable member has referred, I simply point out to the honourable member the statement by the Executive of the Indochinese Australian Women's Association which says in part:

> Mr Stefani has always supported and guided ICHAWA in an apolitical way and on the evening in question his behaviour as always showed dignity and the ethics of a true Christian.

In terms of ethical behaviour, I do not think one could ask more of any member of Parliament.

The Hon. R.R. ROBERTS: My question under Standing Order 107 is to the Hon. Julian Stefani on a public matter connected with the business of the council with which Mr Stefani is specifically concerned. Will the Hon. Mr Stefani apologise to all those who attended the Indochinese Women's Association annual general meeting on 2 November for his threatening, harassing and intimidating behaviour and, more specifically, will he desist from the threat to further victimise the women who attended that meeting?

The Hon. J.F. STEFANI: The answer is 'No.'

Members interjecting:

The PRESIDENT: Order!

VENUS BAY

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for the Environment and Natural Resources, a question about the aquaculture proposal at Venus Bay.

Leave granted.

The Hon. M.J. ELLIOTT: Venus Bay on South Australia's West Coast has been identified as an ideal location for the development of aquaculture activities. The local (Elliston) council has supported in principle the development of such an industry and the local community, I understand, is in general agreement. Several proposals have been mooted for the area, one of which seeks to develop an aquaculture facility on land on the south headland near the township which is currently zoned for coastal conservation and recreation under the care of the District Council of Elliston.

There is a great deal of local opposition to the development of this area, both from the local community and from the council itself. They say that this area has only recently been fenced off from vehicles and is beginning to regenerate. It is one of the most prominent headlands on the coast, and any spoiling of this area could negatively impact on tourism, which is already a viable industry in the region.

A letter to the *Advertiser* dated 22 September this year from the Venus Bay Action Group, which is opposed to this site for the development, reads:

> To deliberately allow a development that could possibly jeopardise tourism, an established and viable industry on which the town is so dependent by encouraging one that. . . will have minimal impact on the economy of the town itself, would be a very grave mistake, perhaps even an act of environmental vandalism.

Also, this proposal for land-based tanks has raised questions over future public access to the headland, its contravention of State planning principles and the environmental impact.

The State Government's own Regional Coastal Areas Supplementary Development Plan states that development should not be located in delicate or environmentally sensitive coastal features. It also quite clearly contravenes the guidelines that were laid down by the local council before such a proposal came forward and not in reaction to it. However, local Liberal MP Liz Penfold has stated that the south headland is her preferred site for the proposal. In a letter to the Venus Bay Action Group she states:

> I believe that if the Government wants to pursue economic growth through aquaculture then the south head site could be considered a favoured site for the development.

I understand that a planning application for the development is currently before the Development Assessment Commission (DAC). However, the developer (Kon Paul) must have tenure of the land before the DAC is obliged to process the application. I believe that he does not have tenure, as the land is still under the control of Elliston council. The council has refused to give up tenure for the land.

I have been told that the applicant is attempting to gain tenure directly from the Department of Environment and Natural Resources, in effect, bypassing local government. I know that the local people support the aquaculture industry and support tanks being located in the Elliston area; they simply do not support their going onto the headland. My questions to the Minister are:

1. Does the view of the local member (Liz Penfold) reflect the State Government's position in respect of the south headland site?

2. What is the Government's view about this application?

3. Is the Government aware that this application contravenes many of its own planning and environmental guidelines, and does the Minister for the Environment and Natural Resources intend to intervene to take the land back from the Elliston council and give it to the developer so that the development will proceed on that particular site?

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

HIGHBURY DUMP

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister representing the Minister for Housing, Urban Development and Local Government Relations a question about the Highbury dump and/or landfill.

Leave granted.

The Hon. T.G. ROBERTS: In the report to the Minister for Housing, Urban Development and Local Government Relations there is a response to the environmental impact statement prepared by Enviroguard in July 1995 entitled 'Restoration of the Highbury sandpit by landfill of solid general waste'. In the summary of its reply, the EPA points out that it has major concerns about fundamental aspects of the project as proposed. The most important of these fall into four categories: the inadequacy of the proposed buffer; the suitability of the bioreactor concept for this area; the nature and integrity of the proposed clay lining system; and the protection of groundwater. In addition there is a wide range of general environmental impacts, including litter, odour, noise, dust and surface water quality, which have not been adequately addressed in the environmental impact statement.

The community action groups that have been formed in the area and the public meetings that have been held have probably been some of the best attended, best organised and best facilitated meetings that I have attended to oppose any landfill project within the metropolitan area. They have drawn on sound advice and good scientific evidence, and have kept the public informed about the proposal that is being put forward by the Government. They have not been provocative: they have gone about their work in an educative way and, as a consequence, they have been able to get on side many members of Parliament, including the Hon. Sandra Kanck, the Hon. Michael Elliott, Robin Geraghty, the local member (Dorothy Kotz) and myself, who have been supportive of the presentation of the evidence on behalf of the community to try to get the Government to look at alternatives to this site. The EPA's conclusion is as follows:

> On the evidence presented in the environmental impact statement, the authority would not support an authorisation for the use of this site as a depot for disposal of putrescible waste.

In view of the long time delays that are involved for the community with regard to planning their lives around a 'Yes/No' answer, which could have been given much earlier under the current Act, my questions are:

1. Based on the EPA's conclusion, will the Government rule out any future use of the Highbury sandpit and its environs as a waste disposal area?

2. If the answer to the foregoing question is negative, will the Government announce a rehabilitation plan for the area?

3. Is the Government in a position to announce a preferred northern site for the disposal of metropolitan waste and for recycling programs?

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

ROAD TRAINS

The Hon. T.G. CAMERON: I seek leave to make an explanation before asking the Minister for Transport a question about road train operations.

Leave granted.

The Hon. T.G. CAMERON: The road train operator, Active Haulage (which incidentally is South Australian owned and operated), has had its existence put in doubt by the decision of the Minister for Transport to revoke all its road train permits for a period of one month commencing today. The permits were suspended following the fourth incident of one of the company's drivers being caught travelling at a speed of 113 kilometres an hour when the limit for such road trains was 90 kilometres an hour.

As the Minister would be aware, the moment the company ascertained that the employee was guilty of speeding he was dismissed. Active Haulage has warned its drivers in writing not to travel in excess of 90 kilometres an hour and has fitted all its road trains with speed governors with their speed limit set at 90 kilometres an hour. As the Minister also knows from representations made to her on behalf of this company, in the past drivers have been caught tampering with the speed governors without the knowledge or consent of the owners.

The Minister, by suspending Active Haulage road train licences for one month, will bankrupt the company and the Managing Director personally (his house is part of the company's loan guarantee) and will cause the loss of 35 South Australian jobs, yet the offending driver still will be free to work for other transport companies. Therefore, my questions are:

1. Will the Minister advise the current status of Active Haulage with regard to the suspension of its road train permits?

2. Will she advise what steps she has taken to ensure that offending drivers as well as operators are dealt with appropriately so as to ensure that speed limits are enforced and commensurate penalties are applied to all offending parties?

The Hon. DIANA LAIDLAW: Today I have written to Active Haulage in response to a management proposition that it has forwarded to me, and the company has until the close of business tomorrow to reply. I am interested in the tenor of the honourable member's question. He would appreciate that, in the interests of road safety generally, the permits are applied essentially as a concession from the rules and the law as established under the Road Traffic Act in terms of mass, distance, dimensions and speed. Because it is an exemption from the law that we have established in this Parliament, certain responsibilities come with that exemption, now entitled a permit.

In the public interest, Ministers around Australia have a right to expect that an operator agreeing to permit conditions will comply with them. Because there has been some concern amongst transport operators in this State and Australia-wide about a number of offending operators, I spent time with the Commercial Transport Advisory Committee and the licensing section of the Department of Transport, and together we devised a four phase permit suspension scheme, which has been endorsed by national heavy vehicle transport operators across the country.

When I attended the Transport Ministers Conference in Hobart two weeks ago, I was interested to hear that Ministers in other States had been advised by transport operators in their States to urge me to continue with the suspension scheme and the warning that permits issued to Active Haulage would be withdrawn. It is of interest, too, that operators generally have invested heavily in upgrading their vehicles to ensure that in a management sense both driver and operator have an understanding of the way in which that vehicle is being operated once it leaves the factory gate. This is particularly important, because it is difficult for the manager or operator of that vehicle or company always to guarantee what will happen outside that factory gate.

In these circumstances, I find it particularly interesting that, of the 31 companies that have been issued the first warning (and these companies are from around Australia as well as based in South Australia), there has been an enormous drop-off in the need to write again to any company other than a small minority. As I recall, of all the companies that hold permits in South Australia for the operation of road trains and B-doubles, about four have received second warnings, two have received third warnings and only one has received the fourth warning. That is Active Haulage. All the others have learnt through this system that they would not have the support of other road users if they continued to abuse the permit conditions. Secondly, they realised that a lot was at stake if they did not get their company management in order.

I have been fascinated to see what new management structures Active Haulage has been able to come up with in the past two or three weeks to deal with the problem that most companies have been prepared to address without going through the four stages of the permit suspension scheme. I have welcomed its submission, considered it in detail and proposed some modifications. In the case of one permit (and I do not have its number with me), the company agrees that there should be a 12 month suspension. That vehicle's permit operation will be suspended for 12 months from tomorrow's date. Depending on the reply from Active Haulage, there are a number of other options.

Throughout Australia Transport Ministers of all political persuasions have supported my action in this instance—action which I have not wished to take. Active Haulage knew the rules; it signed the dotted line when it got its permit, but it was not prepared to comply with those rules in terms of interviewing operators and guaranteeing that they had responsible staff, drivers and so on. Other companies have seen fit to invest in such management practices, both at the employment level and in equipping their prime movers with computer devices that provide read-outs, which are an educative tool.

I am not prepared to accept that regulatory authorities alone should have the job of policing behaviour in terms of permits. I believe it should be a self-regulation system, and I am pleased to see that Active Haulage is increasingly coming to that same conclusion.

In terms of offending drivers, I accept that there must be more discussion in this respect, and a meeting with the TWU, the South Australian Road Transport Regulatory Authority and me within the next few weeks will look at this. One of the issues we will have to address is that drivers cannot have demerit points awarded against them for going over the

maximum permit speed limit of 90 km/h, because it is not the maximum speed limit at which they are entitled to drive. The general speed limit in this sense is 100 km/h. So, they are not earning demerit points, and in my view that is one matter that we must explore with the TWU and others. If the honourable member has some ideas in this field I would certainly be pleased to work with him on this matter, in the interests of safety on our roads.

The Hon. T.G. CAMERON: As a supplementary question, will the Minister ensure that all road train operators in South Australia are treated in the same way as Active Haulage, that is, for speed tickets all road train permits held by the operating company be suspended for at least one month, irrespective of their size or influence with the Government?

The Hon. DIANA LAIDLAW: I have had no cause to issue to any company other than Active Haulage this decision to withdraw one permit for one year and the rest for one month, because no other operator has come to the attention of the police in the way that Active Haulage has done so. The permit system—

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: Then it would work according to the four phase permit suspension scheme. I know it has been suggested around the traps that if it was another operator, such as one from the South-East, I would not be prepared to do this. I think that is scurrilous, because that operator has invested heavily both in employee practices and interviewing in the first place in terms of the character of the drivers it takes on and in investing in technology and speed limiting in the prime mover. Of course, all would be treated the same. In fact, Active Haulage has been treated very leniently in the circumstances, because the fourth phase of the permit suspension scheme indicates that all permits will be withdrawn for a period of one year. I have not sought to exercise the maximum penalty in this case. I have indicated that one permit only will be withdrawn for one year, and the company has agreed to that, and that others, subject to advice from the company by the close of business tomorrow, will be considered.

The owner of the company is well aware of this scheme. It has been known nationwide for a year. It is the only company that has sought not to invest and manage as seriously as others in terms of its permit system. It is not a right. It is one that is granted to the company on the understanding that, in the interests of road safety across the State, it will honour certain conditions. We are still to have further discussions, but he has not been seen to date to employ the management practices which would indicate he would honour those conditions.

Generally those permits could be removed straight away. Instead, we have introduced a four phase warning permit suspension scheme so, in addition to the undertakings that he gave when he applied for and received that permit, we have given him four warnings. He has known those rules and, only since the last time that I said one permit for one year and the rest for one month would be withdrawn, he has now seen fit to implement a management plan which has some positive elements. We will have further discussions and he has an opportunity to reply by the close of business tomorrow.

It is interesting that, throughout Australia, the publicity this case has received has been welcomed by transport operators, and I have many letters that I could show the honourable member—not from transport operators that compete with this company, as I do not want to denigrate them in this way, but from companies that do a different type of business in a different direction—that support what has been done by me and the Government in this instance. We have the unanimous support of the heavy road vehicle transport associations across Australia. We have the support of Liberal and Labor Ministers in various State Governments, because they know how important it is that the permit conditions are honoured in the interests of road safety.

COMMUNITY PROTECTION ACT

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Attorney-General a question about the New South Wales Community Protection Act.

Leave granted.

The Hon. A.J. REDFORD: In today's *Australian*, an article is entitled 'States fight to gaol those likely to kill'. It was reported that South Australia and Victoria plan to intervene in a New South Wales challenge in the High Court to Parliament's power to pass controversial legislation keeping individuals in gaol beyond their release date. The High Court is looking at an appeal brought by convicted killer, Mr Gregory Wayne Cable, and the appeal is to be heard next month. The High Court has given Mr Cable special leave to challenge the validity of the law passed by the New South Wales Parliament last year, which legislation is reported 'to be solely to keep him in prison'.

Officers of the South Australian and Victorian Solicitors-General have confirmed instructions, according to this article. Mr Cable was sentenced to a maximum of four years in gaol in 1990 for killing his estranged wife, but the New South Wales Government passed the Community Protection Act which enabled Cable to be kept in prison if a judge concluded that he would be likely to commit a violent crime in the future. In February this year, Justice Levine in the New South Wales Supreme Court found there was a substantial likelihood that Cable would commit such an act and detained him for six months. His decision, according to the article, was upheld by the New South Wales Court of Appeal. In the light of that, my questions are as follows:

Will the Attorney confirm that South Australia will intervene in the New South Wales appeal? If so, why, and upon what basis is South Australia seeking to uphold the New South Wales legislation? Finally, is the Government currently thinking of introducing legislation similar to the New South Wales Community Protection Act?

The Hon. K.T. GRIFFIN: I can confirm that I have authorised intervention in the High Court in relation to this matter but I can also say quite categorically that the Government has no intention to introduce similar legislation to the Community Protection Act of New South Wales. That Act, as the Hon. Angus Redford has indicated, was enacted in the New South Wales Parliament specifically to deal with a man called Cable because of the threats which he had made to those who were caring for the children of his deceased wife and himself. Whatever the merits of that particular legislation, Cable has challenged the validity of that legislation. It has gone to the New South Wales Supreme Court which has upheld the validity of that Act. It has gone to the New South Wales Court of Appeal which has upheld the validity of that Act, and Cable has been granted leave to appeal to the High Court. Of course, the High Court is the last avenue for him to have the New South Wales Community Protection Act overturned.

I think members need to appreciate that there are many occasions where Attorneys-General around Australia, including the Commonwealth Attorney-General, receive notices under the Federal Judiciary Act intimating that there is an issue before a court which involves a question of constitutional interest or validity, and in those circumstances Attorneys-General decide whether or not they will intervene in those proceedings, either on all the grounds which are raised by the appellant or on more limited grounds. We did it in this State in relation to the Western Australian challenge to the Commonwealth Native Title Act, but we intervened on limited grounds. There are many other instances where I and my predecessors have authorised intervention.

This particular case raises important questions about the powers of a State Parliament to legislate. The appellant is arguing that the Community Protection Act in New South Wales is beyond power, and that the State Constitutions are limited by section 106 and other aspects of the Commonwealth Constitution. In those circumstances, notwithstanding that the Commonwealth does not have jurisdiction to legislate, it is argued that the States' competence to legislate in a wide range of areas is thereby limited. It so happens that this particular case is the case where those very important constitutional issues are being raised. Although we are not effectively supporting the Community Protection Act, that may be how it is perceived. The fact is that that is a peripheral issue to the constitutional questions which arise and which I have decided should be the subject of submissions by this State. We cannot afford to allow issues to be resolved against the interests of the State, and the State Parliament in particular—not the Government—by not appearing. So, I have decided it is appropriate to intervene, and that will occur when the matter comes on in the High Court in December.

AQUACULTURE

In reply to **Hon. T. CROTHERS** (26 September).

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

1. Since December 1993 the South Australian Government has directly contributed funds to:

- the Research and Development program presently being undertaken by A Raptis and Sons into the feasibility of mussel farming in South Australia. These funds were allocated for the research program on the condition that they will revert to loan funds if the company proceeds to commercial development;
- the preparation of an industry development and marketing plan for the marron farming industry on Kangaroo Island;
- marketing and promotions activities in Asian food and hotel expositions; and
- research into the farming of rock lobster in Port Lincoln.

The government has provided significant in-kind support through the salaries and wages of research scientists and development officers in the SA Research and Development Institute and Primary Industries South Australia.

The funds have assisted the ongoing research and development associated with:

- farming of southern bluefin tuna near Port Lincoln;
- farming of snapper near Whyalla;
- consolidation and expansion of the oyster farming industry on Eyre Peninsula; and
- development of artificial (cereal based) feeds for tuna and abalone aquaculture.

2. The present export of aquaculture produce from South Australia is dominated by the exports of southern bluefin tuna. This present calendar year the value is expected to exceed $50 million and could be as high as $80 million. The remaining sectors of the industry are not yet able to enter the export market as they are unable to meet the volume and consistency of supply needed for exports. Nevertheless, early efforts are being made to establish a reputation through the provision of limited sample shipments such as barramundi to Europe.

3. The government's direct contribution to aquaculture research and development has been through the funding of staff at the SA Research and Development Institute. 1995-96 budget allocation to the SARDI aquaculture program is: $204 000

4. The government commissioned the preparation of an aquaculture development plan. Primary Industries South Australia has also recently completed an industry-wide survey which canvassed the industry for data related to employment but the results of the survey have not yet been compiled.

5. The aquaculture industry development plan will address marketing opportunities. Value adding and niche marketing are important components in any industry development plan.

FIELD CROPS

In reply to **Hon. T. CROTHERS** (28 September).

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

1. South Australian Research and Development Institute (SARDI) and Primary Industries SA allocated a total of $5.284m in the financial year 1995-96 to research on field crops and legumes. Of this amount $2.867m is from outside funding bodies.

2. SARDI is conducting research into quite a wide portfolio of new crops. In the field crops: hemp, coriander, mustard, canola, linola, export oat hay, safflower, flax and durum wheat. In the legumes: rough seeded lupins, yellow lupins, lathyrus, narbon beans, vetch, and navy beans.

3. SARDI, through its breeding programs, grains chemistry unit and field crop evaluation unit are value adding to South Australia's field crops. The field crop evaluation unit is looking at the effects of environment and management on quality. Grains chemistry is monitoring and characterising the quality traits of various lines from different breeding programs. Specifically SARDI is involved in improving the quality of oat hay for the Asian market, wheats are being tested and bred for noodle quality and Chinese steam buns. Japan and China are potentially big markets for malting barley—breeders, chemists and agronomists are seeking to produce varieties suitable for these markets. The quality of grain legumes is being improved and new resources are being put into these areas, researching cooking times and ease of splitting. The processing qualities of canola oils and margarine are being investigated. All this research effort is aimed at value adding for South Australian end products.

TUNA FARM NETS

In reply to **Hon. ANNE LEVY** (18 October).

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

The report requested by the department was provided on 14 August 1995.

The department has convened a meeting between key agencies and individuals, namely;

the Tuna Boat Owners Association of Australia,

the South Australian Museum,

the Department of Environment and Natural Resources (which is responsible for the protection of marine mammals)

the South Australian Research and Development Institute (which is undertaking an environmental monitoring program around tuna farms and has the best technical knowledge to recommend any changes in net design or application) and

the department.

The meeting will take place on 7 November 1995. Delays were due to the unavailability of key individuals during September and October.

The meeting will fully discuss the issue, consider all points of view on the extent and seriousness of the entanglement problem in light of the formal report and consider implementation of preventative measures.

AUDITOR-GENERAL'S REPORT

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

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

1. The details of the directions to which the Auditor-General refers are as follows:

- "One and All" sail training vessel—$90 000

Funds were used to dress the sails of the ship to promote "South Australia" and "Sensational Adelaide", to sponsor the ship to act as the radio relay vessel during the 50th anniversary of the Sydney-Hobart yacht race, to sponsor the ship to travel to major ports on the east coast to promote South Australia, including onboard tourism industry hospitality, and to assist in the recently completed refit and refurbishment.

- Payments made as follows:
  Sponsorship Sydney to Hobart Yacht Race—1 November 1994
  Making and supply of two sails bearing tourism logo—8 December 1994
  Transportation of Mary McKillop Pilgrimage Cross/Making of Battle Flag—22 February 1995

· Port Dock Museum—$5 000—Payment made 2 February 1995
A premier State rail museum. Funds used to redevelop theatrette.

· Pichi Richi Railway—$10 000—Payment made 24 August 1994
A popular tourist attraction in the Port Augusta and Quorn region run by volunteer organisation. Funds used for railway's ongoing operations.

· Lincoln Cove Resort—$20 000—Payment made 20 June 1995
Urgently required independent legal advice (for Government) in relation to strata title.

· Paddle Steamer "PS Marion"—$10 000—Payment made 14 November 1994
To assist in vessel's restoration.

· Left-handed Golfers Event—$1 000—Payment made 10 November 1994
To assist in staging the event.

· SACA Sporting Museum—$5 000—Payment made 7 April 1995
To assist future development of the museum.

· Waikerie—Walkway and Lookout—$15 933—Payment made 20 June 1995
Assistance for Centenary Cliff-Top Walk to provide panoramic views for tourist attraction.

2. No, the Minister did not notify the Board. The Minister notified the Chief Executive as he is required to do. However, the Minister has been advised that the Board was notified of Ministerial directions by the Chief Executive, who is also a member of the Board, at subsequent Board meetings. In all cases there was never any intent to mislead, withhold information or bypass the Board; it was simply a matter of expediency.

3. No, the Minister will not give an undertaking that the practice of giving Ministerial directions will cease. The South Australian Tourism Commission Act 1993, Section 7, gives to the Minister the power to "control and give direction to the Board" and there will be occasions when the Minister will be required to give directions to facilitate Government policy or when urgent decisions need to be made.

4. No, the Minister did not contact the Auditor-General's office to ensure the payments complied with the requirements of his Department. However, prior to the release of the 1995 report, a discussion was held between the Auditor-General and staff of the Minister's office at which time the Auditor-General indicated that he believed the Minister had, at all times, acted lawfully in giving direction to the Commission. Also, following the tabling of the report, the Minister has had detailed discussions with the Auditor-General regarding the issues raised. In these discussions the Auditor-General stated that he was satisfied with the actions taken by the Minister to ensure that the Commission has adequate and appropriate administrative procedures in place so that future Ministerial directions are dealt with in compliance with the accountability requirements of the Act.

RABBITS

In reply to **Hon. T.G. ROBERTS** (11 October).

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

On 11 October 1995, I released a Ministerial Statement advising that the rabbit calicivirus being tested under quarantine conditions on Wardang Island had moved to areas on the Island outside of the quarantine area.

The method of spread of the virus to these areas is not clear but may have been due to the activities of birds or insects.

Since then, we were advised on the 16 October that the virus had been detected in a rabbit on the mainland at Point Pearce, adjacent to Wardang Island.

The contingency plan to contain the disease on the mainland has been put into action.

The purpose of the plan is to eradicate the virus from the mainland and does not address the issue of prey-switching whereby feral predators may switch from feeding on rabbits to native mammals.

If RCD became widely established, it would not 'wipe out' rabbit populations, as suggested by the Hon. T G Roberts, but is likely to greatly reduce their abundance and be a further tactic for the efficient control of rabbits.

Rabbits already go through major fluctuations in abundance in response to seasonal conditions. For example, drought can cause a major reduction in rabbit numbers.

If RCD is released, the impact on native animals, such as rats, hopping mice, plains rats, dunnarts, bettongs and bandicoots, due to prey-switching by feral and native predators, is unlikely to be greater than the impact from prey-switching which is regularly caused by drought.

Any impact caused by RCD could indeed be less than that with drought because native animals are particularly susceptible to predation during drought, when their susceptibility is increased because they must forage over large areas with sparse vegetation to find food.

Furthermore, rabbits are the worst environmental pest in Australia. A major reduction in their numbers would greatly benefit the survival of native animals because of reduced competition for food and places in which to live.

On balance, the release of RCD is considered to benefit native animals rather than threaten them.

Any risk of prey-switching by foxes is being reduced in agricultural areas of South Australia through the high levels of control of foxes being achieved with current, community-based control programs.

EMPLOYMENT

In reply to **Hon. G. WEATHERILL** (11 October).

The Hon. K.T. GRIFFIN:

1. Since the Government came into office up to 30 June 1995 there have been 8841 separation packages paid in State Government departments throughout South Australia.

2. As published in the Financial Statement 1995-96, a further 3200 workforce reductions are planned across the public sector for the period 1995-96 to 1996-97.

3. According to the Australian Bureau of Statistics Quarterly Labour Force Data, between November 1993 and August 1995, the number of total employed in South Australia over the age of 15 years rose from 635 500 to 662 500—an increase of 27 000 on a seasonally adjusted basis.

The ABS does not produce seasonally adjusted Labour Force data by Industry Sector. Consequently, the table below gives the unadjusted (or actual) number of total employed in South Australia. The total number of employed before adjustment for seasonal factors was 20 800.

The Change in South Australian Employment between August 1993 and August 1995.

Industry Segment	Employment Change (000's)
Agriculture, Forestry & Fishing	-1.2
Mining	-1.7
Manufacturing	8
Electricity, Gas & Water	-0.3
Construction	-4.2
Wholesale Trade	-4.6
Retail Trade	5
Accommodation, Cafes & Restaurants	6.8
Transport and Storage	-0.6
Communication Services	4.6
Finance and Insurance	-0.9
Property and Business Services	5.4
Government Administration and Defence	3.1
Education	-1.5
Health and Community Services	6.4
Cultural and Recreational Services	-0.5
Personal and Other Services	-3
Total Unadjusted Net Change in Employment	20.8

Source: ABS Table 41 Labour Force—Employed Persons—South Australia—Total Industry.

Note that certain industries, when seasonally adjusted, would show a significant rise in employment, particularly agriculture, where employment is largely seasonal.

It can be seen from the table that employment has risen strongly in Manufacturing, Accommodation, Cafes and Restaurants, Communication, Property and Business Services, Government Administration and Defence, Health and Community Services.

Some examples of particular firms that have, or will be, taking on workers include Motorola, Australis Media, Entech, Tandem Services, Sola Optical, Southcorp, Gerard Industries, Castalloy, British Aerospace, AWADI, JB MacMahon, Wirrina, Mitsubishi and General Motors Holden—just to name a few.

LASER RADAR GUNS

In reply to **Hon. SANDRA KANCK** (18 October).

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

There is no such device as a Laser Radar Gun. There are two types of hand held speed analysing devices used in South Australia:

- Radar gun
- Laser gun.

They are similar in appearance and perform the same function, viz. 'down-the-road' speed detection. The radar gun uses the radar principle and the laser gun emits a laser beam, i.e., a series of pulses. The beams, whether radar or laser, are affected by the speed of a moving vehicle and the devices determine the speeds of the target.

Secondly, both devices emit an invisible beam. No 'flash' of light takes place, and no separate light source is used. However, a speed camera device, operated during darkness, uses a low intensity flash to illuminate the rear number plate of the offending vehicle.

Laser guns are categorised 'Class 1 Eye Safe'.

The following are answers to the specific questions asked:

1. Yes. Extensive investigation has been carried out into the safety of laser hand guns.

2. All aspects of safety are covered in all laser equipment training courses. Instructions for use are contained in the speed detection manual.

3. There is no Electromagnetic Radiation (EMI) emitted from laser guns. The equipment emits a light beam. The equipment is classified as 'Class 1 Eye Safe' by world standards and if used in compliance with instructions is completely safe.

4. At this time it is not considered to be an issue.

In reply to **Hon. T.G. ROBERTS:**

The Hon. K.T. GRIFFIN: Laser guns do not have any potential dangers for the operators provided the units are used in accordance with instructions.

WILLS

In reply to **Hon. R.D. LAWSON** (17 October).

The Hon. K.T. GRIFFIN: The advertising by the distributors of the "Do it Yourself" will kits may not be technically misleading, but the wording does imply that there is some arbitrariness in the Government's determination of who receives a person's property or cares for children after death, if there is no will. It would be more accurate and informative to state that there are laws which lay down rules for such a distribution, removing the direct responsibility from the Government.

With respect to the process involved in an intestate estate, Part IIIA of the Administration and Probate Act 1919 applies. The closest next of kin has prior right to apply to the Supreme Court for a grant of Letters of Administration. The administrator, so appointed, collects assets, pays liabilities and distributes the net estate according to the rules governing the distribution of intestate estates laid down in the Act. More immediate next of kin within the meaning of Section 6 may challenge this distribution under the provisions of the Inheritance (Family Provisions) Act on the basis of fairness and special need. This application for special consideration can be determined by the Supreme Court.

Pursuant to the Guardianship of Infants Act, a father or mother may appoint testamentary guardians in his or her will. If there is no will, or such an appointment, the Court has the power to make orders for the custody of the infant/s.

BOWKER STREET LAND

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about the sale of school land.

Leave granted.

The Hon. P. HOLLOWAY: On Wednesday 18 October I asked the Minister a question about the future of Bowker Street Reserve, currently under the control of the Minister's department. Last Thursday night I attended a public meeting at Paringa Park Primary School. The meeting was attended by 200 local residents who unanimously opposed the sale of the land. An officer of the Minister's department and the member for Mitchell attended the meeting. It was also reported on ABC radio this morning that the Treasurer had become involved in the sale of land used by Westbourne Park Primary School at Cumberland Park. The Treasurer, when in Opposition, was reported as saying that the land would be sold 'over his dead body'. My questions are:

1. Will the Minister heed the wishes of local residents of North Brighton and retain the land at Bowker Street as a public reserve?

2. Does the Minister intend to meet residents of the area to hear first-hand their opposition to the sale of the land?

3. Are reports that the sale of land at Westbourne Park Primary school is being delayed subject to the Treasurer's consideration correct? Will he provide details of the Treasurer's involvement in the sale process and will he also give details of any conditions which relate to the sale of that land?

The Hon. R.I. LUCAS: I thank the honourable member for his questions.

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: I do not like to judge the relative merits of questions—they are all not worth much. In relation to Bowker Street, I am happy to meet anybody, but my decision as Minister has been taken, namely, that it is surplus to the requirements of the Department of Education and Children's Services and in due course I will sign the appropriate documentation for that to occur. I am nevertheless very happy to see the eventual use of that land—all or part of it—retained as open or recreational space. I have said that all along. Whether it be Westbourne Park, Bowker Street, Glenside or Norwood-Morialta, we make a judgment in the Department of Education and Children's Services as to whether it is surplus. I am very happy for local communities, if they can, to organise through the local council (in this case the Brighton council), or with other departments and agencies that are interested in particular properties or parts of properties, for land to be purchased and retained as open space, if such communities decide that that is an important project for them.

It is correct that in one or two areas throughout the metropolitan area local councils have taken the decision that the open space is so important for their residents that they are prepared to purchase the land to be retained as open space. That is a perfectly proper and appropriate decision for local councils to take on behalf of residents and those residents who enjoy the open space will be able to assist in the retention of that open space for their benefit and the benefit of the children in that community.

However, I have to look after the students in literally dozens of other school communities who, if we adopt the position suggested by the honourable member, will be deprived of much needed redevelopment, maintenance and

minor works within their school buildings if the Department of Education and Children's Services is required to give away to local councils ovals such as Bowker Street so that residents in that community could benefit. The Government has to look after the students in many other schools who are waiting for this money so that they can have their much needed facilities redevelopment. I do not have the figures with me and I am remiss in not bringing them as I thought on the weekend that I would need to bring them. A number of schools within the honourable member's electorate are enjoying the benefits of the back-to-school grants and minor works maintenance.

The Hon. Anne Levy: The whole State is his electorate, as it is in your case.

The Hon. R.I. LUCAS: Well, his area of interest from a previous life. They are enjoying the benefits of the capital works program of the Department of Education and Children's Services. It is schools like those that benefit from the department's being able to sell part or all of school properties, whether through the declaration of surplus land or closures and amalgamations of school buildings. Our policy is no different from the policy adopted by previous Governments over many years in terms of declaring surplus properties and using that money for redevelopment or new school development within the Education Department.

I am treating the Westbourne Park oval decision in exactly the same way as I am treating Bowker Street, although I am farther down the path. I may have signed the document already declaring that land surplus and we have advertised the land. I was interested to hear this morning a claim on the radio that in some way the Treasurer had intervened and stopped the process. It is news to me. Certainly I have signed the declaration that it is surplus. I understand that it is with the Department for Environment and Natural Resources and being handled for disposal in the normal way. I am not aware of the background to the claim made on radio this morning. I am certainly not aware of that proposition.

I am the Minister responsible for declaring it surplus and have done so and I am treating it in much the same way as I treat all other similar decisions within the department, and whether it concerns a Liberal or Labor member of Parliament is not the principle upon which we operate. It is a question of being fair in all of these things and sometimes Ministers take difficult decisions and sometimes other Ministers in Cabinet as local members may not be 100 per cent happy with decisions that Ministers take but in the end, with Cabinet solidarity, support the collective decisions that Cabinet takes, irrespective of the personal views of Ministers. If that were to be correct—and I do not whether those statements are correct—it would be an indication of how fair is the Government in not adopting one standard for one area and another standard for another area.

SOUTH AUSTRALIA—STATE OF BUSINESS

In reply to **Hon. R.R. ROBERTS** (26 September).

The Hon. DEAN BROWN:

1. The publication does recognise the importance of primary production to the South Australian economy and to our export efforts.

2. and 3. The editorial content was arranged and written by the *Australian*.

FAMILY DAY CARE

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

The Hon. R.I. LUCAS:

1. As part of the planned State budget, the number of Family Day Care managers was reduced from six to three. No other reductions have occurred.

Family Day Care in South Australia is not 'worse off' than other States.

2. The additional 4 000 national Family Day Care places announced in the last Commonwealth budget have not yet been allocated. Each new allocation is considered individually and allocated on a needs basis. All new funds that come with the new places will be allocated to the Family Day Care budget.

3. The ratio of field workers to care providers varies across the State and nationally. South Australia is not worse off than other States. Current ratios in South Australia range from: 1 full time equivalent field worker to 27 care providers to 1 to 30.

The Commonwealth is not able to provide details on the range of ratios interstate and detailed information from other States and Territories is difficult to collect. The ranges do vary enormously. The information available indicates that:

- in Victoria the recommended ratio is 1:25 but the actual varies from 1:25 to 1:60.
- in the ACT the ratio is estimated as between 1:27 and 1:33.
- in Queensland the ratio also varies from 1:20 to 1:30.
- Information from other States is not available currently. However, the National Family Day Care Council have prepared comparisons on the total Family Day Care support staff, which includes administration and field worker staff (see table). This suggests that South Australia is well placed in the middle of the range compared to other States and Territories.

However, in South Australia management and administrative changes are being effected. This is aimed at linking the schemes more closely and achieving greater consistency across the program, as well as involving changes to work practices and responsibilities.

Part of the reorganisation involves strengthening the support provided to Family Day Care at a central level to ensure services provided are consistent and better coordinated.

It has been acknowledged that the Department for Education and Children's Services (DECS) as the sole sponsor of Family Day Care in South Australia receives the same Commonwealth funding as other schemes and is more able to evenly ensure that ratios and levels of support are more consistent within all schemes in the State. This will continue within the context of any administrative changes. These changes are aimed at providing consistent, well managed and planned services that meet local needs. The consolidation of management will strengthen the role and functions of Family Day Care's operation.

State	Carers	Coordination Unit Staff	Sponsors (schemes)	Parents of #s children
Victoria	5 500	392	93	25 492
	30%	21%	27%	28%
NSW	4 788	620	112	25 316
	26%	34%	33%	28%
Queensland	3 404	393	77	16 738
	19%	21%	22%	18%
SA	1 713	163	6	9 498
	9%	9%	2%	10%
ACT	889	79	11	3 416
	5%	4%	3%	3%
WA	856	110	26	6 155
	5%	6%	8%	7%
Tasmania	710	60	11	4 027
	4%	3%	3%	4%
NT	252	32	8	985
	1%	2%	2%	1%
Total	18 102	1 849	344	91 627

(Numbers estimated for 1995-96 based on the 1993 Census of Child Care services with a 20% increase included based on current 1995 estimates).

6.1.3 Level of support

Relative levels of support to carers via coordination units relate closely to carers' resourcing, training, support visiting and administrative support.

In relation to levels of support provided, the figures which correlate to inform are those percentage numbers of carers and percentage numbers of coordination unit personnel.

In NSW (by 30 per cent), Queensland (by 11 per cent), Western Australia (by 20 per cent) and NT (by 100 per cent) the levels of coordination unit personnel are higher than the levels of carer

population. One could assume that this has a direct impact on the potential for coordination unit personnel to deliver support to carers.

In Victoria (by 30 per cent), ACT (by 20 per cent) and Tasmania (by 25 per cent) the level of coordination unit support available is lower than the carer population, and assumptions could be that this detracts from the capacity for coordination units to adequately support carers.

NATIVE VEGETATION

In reply to **Hon. T.G. ROBERTS** (11 October).

The Hon. DIANA LAIDLAW: The Minister for the Environment and Natural Resources has provided the following information.

The State Heritage Register is designed to protect places of heritage significance to the whole of South Australia and places entered in the Register must fulfil at least one of seven criteria under the Heritage Act 1993. Unless those trees at Noarlunga have particular cultural and landscape qualities of State significance, beyond being outstanding examples of pre-European vegetation, they will not be entered in the Register.

Presently there are two other legal mechanisms to protect stands of trees in South Australia, namely:

1. Entry in a list of local heritage places, under the Council's Development Plan

   Trees may be designated in a list of places of local heritage value under Section 23(4) of the Development Act 1993. However, Councils have to prepare an amendment to the Development Plan, with extensive public consultation, to create such list.
2. Designated under the Native Vegetation Act 1991

   Though stands of trees can be protected under the Native Vegetation Act 1991, the Act specifically excludes Metropolitan Adelaide, including Noarlunga.

As stated in my earlier response on 11 October 1995 this stand of trees is important and their significance will be taken into account during the designing of the southern expressway. In particular, an environmental impact statement will be required for the expressway south of Reynella to Noarlunga and the significance of this native vegetation will be addressed during the preparation of that EIS.

AUDITOR-GENERAL'S REPORT

In reply to **Hon T.G. ROBERTS** (11 October).

The Hon. DIANA LAIDLAW: The Minister for the Environment and Natural Resources has provided the following information.

Financial Statements for the Statutory funds mentioned are produced by the Department of Environment and Natural Resources (DENR), are audited by the Auditor-General, and are printed in the DENR annual report, however, they do not appear in the Auditor-General's Report.

The Public Finance and Audit Act gives the Auditor-General power to determine whether particular statements are included in their published report or not. A decision was made that these funds were of insufficient size and materiality to warrant specific mention within the report.

In reply to **Hon. A.J. REDFORD** (17 October).

The Hon. DIANA LAIDLAW: I provide the following information in relation to the use of credit cards by the State Opera of South Australia and the State Theatre Company.

State Opera of South Australia

The non-compliance of State Opera in its use of credit cards, as reported by the Auditor-General in his 1994-95 report relates to the use of AMEX (American Express) credit cards rather than the Treasury required Westpac State Government credit card. AMEX has sponsored raffle prizes for 'Opera in the Park'. These prizes, last year amounted to approximately $5 000.

On the advice of their auditor, State Opera has written to Treasury seeking exemption from the use of Westpac credit cards. However, as yet, no decision or direction has been received.

Of the two cards in use by State Opera, the one used by the chief executive has had a transaction dollar limit of $3 500—an amount that exceeds the $1 000 limit set by Treasury. While reducing this limit will cause inconvenience in the purchase of overseas travel and accommodation, State Opera will now operate within Treasury guidelines, and reduce the transaction limit to $1 000.

State Theatre Company

State Theatre's non compliance with the Treasurer's Instructions, also relates to using credit cards from a financial institution other than the required Westpac, and also exceeding, on one occasion, the transaction limit of $1 000—when $1 700 was paid by card for computer software.

State Theatre has now ceased using its BankSA credit cards, and the three cards now in use are with Westpac. State Theatre cards are principally used for the purchase of materials and costumes. Apart from this, the cards are used for some incidental travel and entertainment.

In reply to **Hon. P. HOLLOWAY** (11 October).

The Hon. DIANA LAIDLAW: Further to the questions that you asked when noting the Auditor-General's Report on 11 October, I am pleased to provide the following information.

Information Systems

Discussions were held between Auditor-General representatives and information system department managers to clarify the points raised in the 'Interim Audit 1993-94 Computing Review' dated 28 March 1994.

A formal response was issued on 1 August 1994 which detailed the proposed actions to the points raised. The rapid organisational changes, reduction in staff numbers and the demands of the Office of Information Technology had impinged on TransAdelaide's provision of an earlier response.

Reduction in staff numbers continued in 1994-95. The reduced information technology staff level was expected to support the same level of service as previously provided. Proposed actions to address the points raised in the Auditor-General's report were deferred due to the reduction in staff numbers—but are now being addressed.

In relation to the 1994 computing review, there were four main issues of concern—

Strategic Information Technology Plan 1994-98

Although the Strategic Information Technology Plan 1994-98 was not formally endorsed, major steps in its implementation were separately approved—and the following actions implemented. For example:

The mainframe computing facilities previously outsourced to Southern Systems were decommissioned in October 1994. TransAdelaide's computing facilities have been downsized to open systems mid-range computers provided at a substantially lower cost.

Work on the revised strategic plan has commenced. Information Technology planning workshops have been conducted to identify the areas of technology of benefit to TransAdelaide, taking full advantage of the latest in information technology facilities which will enhance the efficiency and effectiveness of their service provision

· Management Reporting

With the extensive reorganisation within TransAdelaide the requirements for new project development work have been contained while a new focus is being formulated for TransAdelaide.

A System Review Group was established in July 1994 for the purpose of reviewing computer applications which are currently in use within TransAdelaide with the aim of further improving or discontinuing their use. New project development work will be formally approved by the System Review Group.

Project Steering Committees chaired by the Project Sponsors are formed to monitor the progress of projects in terms of resources, time-frames and costs. Additionally, the relevant levels of reporting will be addressed via the 'Best Practice Program' currently under way within TransAdelaide.

· Policies and Procedures

It is acknowledged that the level of documentation for the policy and procedures must increase. While the majority of procedures are established, these are not fully documented. The reduction of experienced staff members within Information Systems department has impeded this documentation process. Information systems management is currently reviewing the resources required to complete the level of documentation required for the policies and procedures.

· Controls over the activities of programmers and application administrators

Many of the operational activities of TransAdelaide require supportive computing systems. However, the level of segregation of duties requested by the Auditor-General are deemed to be impracticable and may unduly inhibit the support activities. Certainly the cost of providing separation

of duties for all applications is, in TransAdelaide's view, not warranted.

Thus, TransAdelaide accepts in principle, the risks associated with the observed inadequacies of segregation of duties and restrictions of access to most production systems.

TransAdelaide has guaranteed that the agency will continually re-assess the operational activities to ensure an acceptable risk factor is maintained, while conscious of their limited resources and without compromising service to their clients.

2. Accounts Payable

The Auditor-General has commented that there was room for improvement regarding the segregation of duties, the timeliness of payments and the control over cheque stationery

· Segregation of Duties

The Accounts Payable section consists of three personnel. All invoices must be certified and approved for payment in accordance with Treasurer's instructions and TransAdelaide administrative instructions. No Accounts Payable Officers have any delegated authority to approve invoices for payment.

Given the small number of staff, duties have been segregated as far as practicable. There are insufficient personnel to provide the level of delegation as requested by the Auditor-General. The increase in resources required to adequately segregate duties is not justified and TransAdelaide accepts any risks that may arise.

· Timeliness of Accounts

The majority of accounts are paid in accordance with the supplier's trading terms.

Medical accounts, relating to workers compensation claims, are generally not paid in accordance with trading terms but upon acceptance of the claim.

· Cheque Stationery

Cheque stationery is kept in a secure location with only two officers having access. In addition, all manual cheques must be signed by two authorised signatories. There is minimal risk of a non bona fide cheque being produced, therefore I consider that the control over cheque stationery to be adequate.

3. Materials Management

As indicated to the Auditor-General, a stocktake was conducted as part of the relocation of the warehouse from Regency Park to Mile End in July 1995.

A program for the 1995-96 year is being established for all TransAdelaide warehouses. The program will identify all warehouses, stocktake dates, requirements, objectives and the methods to be employed to achieve effective and efficient stocktakes. A full review of current stocktaking practices and procedures is currently under way.

In addition, TransAdelaide will begin a program of cyclical stocktakes of all warehouses in 1995-96 based on inventory usage frequencies. This will be supported with comprehensive reviews of all inventories and their stockholding parameters to ensure effective and efficient Materials Management practices are adhered to.

4. Fixed Assets

The delays in addressing the residual values of assets flowed from delays in the implementation of the new fixed asset system. When this new system became available, the backlog of Fixed Asset data contributed to further delays in addressing policy issues.

The estimated 'Asset Lives' issues have been addressed in the draft Revised Fixed Asset Administrative Instruction which will be completed during the 1995-96 financial year, following the processing of fixed asset transfers to other agencies.

5. Accounts Receivable

All access levels to the accounts receivable have been reviewed. Access to the accounts receivable system is required by three officers to perform their work duties. On occasions access is given to information systems personnel in order to carry out system maintenance.

The accounts receivable system is reconciled to the general ledger on a monthly basis.

There has been an increase in resources devoted to the follow-up of outstanding accounts. All outstanding accounts are followed up monthly.

6. Cash Receipting

TransAdelaide has been particularly vigilant in the monitoring of data cassettes. The level of awareness at Depot level of the importance of prompt follow-up of missing cassettes and operator cash discrepancies has increased since the level of income received by TransAdelaide is dependent on the number of ticket validations. In addition, new reports have been developed to highlight and summarise shortages.

All cancelled receipts are reviewed by an independent officer who seeks explanations in all instances.

Three separate reports cross-check the amount of cash received from debtors and then transferred to the accounts receivable system. I believe this check provides sufficient control.

7. Payrolls

The Auditor-General conducted a Payroll Interim Audit during the first half of the year, the report of which was received by TransAdelaide in May 1995. During the same period, TransAdelaide was systematically addressing the issues raised in the 1993-94 audit.

The controls referred to by the Auditor-General, have been implemented and the one matter that remains outstanding is the completion of documented systems method and controls. Failure to comply with this undertaking is directly related to the Government requirement to update the current version of Concept Human Resources Management System (7.04) to Concept HMS Version 7.10. It was considered more appropriate to document system methods and controls as they will apply to the latest version of the System, as opposed to producing documentation for an outdated version of the software and then having to modify same to meet the requirements of the new version.

TransAdelaide has liaised with staff of the Auditor-General's Department during this process, not only to keep them informed of progress, but to ensure that responses/initiatives were in keeping with the requirements/recommendations expressed by the Auditor-General.

8. Austrics

The proposed transfer of Austrics to the private sector has been undertaken at all times in conjunction with the Crown Solicitor's Office, the Office of Information Technology and the Economic Development Authority. The processes being followed are those which have been formally laid down by the Office of Information Technology.

TransAdelaide has a long term commitment to support Austrics and thus has placed a high priority on transferring Austrics to the private sector as a total unit—and expanding Austrics to become a significant exporter of information system technology.

It was part of the strategy not to immediately appoint a board following the formation of TransAdelaide under the Passenger Transport Act on 1 July 1994. However, the appointment of members is well advanced with the goal being to have a Board in place by mid November 1995.

ACTIVE HAULAGE

The Hon. DIANA LAIDLAW (Minister for Transport): I seek leave to make a brief ministerial statement about Active Haulage.

Leave granted.

The Hon. DIANA LAIDLAW: In relation to an answer I gave earlier to the Hon. Terry Cameron in terms of second and third warnings, I indicated that about two or three permits have been withdrawn. In fact, seven permits have been withdrawn overall, and Active Haulage looms large in that number. I wanted to correct that figure.

CARRICK HILL

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister for the Arts a question about Carrick Hill.

Leave granted.

The Hon. ANNE LEVY: There has been considerable discussion in the newspaper, with an article by John Emery, followed by a letter from Chris Laurie, the initial Chair of Carrick Hill Trust, David Dridan the well-known artist and Deputy Chair of the trust, and a letter from David Tonkin, who I think members opposite will remember was Premier of this State from 1979 to 1982, discussing the situation at Carrick Hill and how, unless it receives extra funds for maintenance, it will be in dire straits. This is not a criticism of the current trust or the manager, although I point out that Carrick Hill has not had a director for nearly 18 months. The

question arises as to whether the Minister will consider sale of part of the land of Carrick Hill, which was suggested over 10 years ago and which was turned down by a majority on the select committee. One member indicated that it would be better to sell the Gaugin than to sell a small portion of the land. My questions are:

1. Is the Minister considering a sale of the half dozen blocks on the little pan handle out from the main part of the Carrick Hill land, which would in no way affect the glory that is Carrick Hill?

2. Will she introduce legislation to enable that to occur, given that she has the assurance from the Opposition that it would support such legislation and that, if a conscience vote were allowed on the Government side of the House, the Bill would certainly pass?

The Hon. DIANA LAIDLAW: I appreciate the honourable member's indication of support in this place and elsewhere in terms of the sale of the land. It is one prospect, among many, that has been considered by the board and the Department for the Arts and Cultural Development. I anticipate receiving a business plan at least in early December if not late November outlining a number of options that should be explored in this area. The sale of the land has to be one such option to be considered by Cabinet and by Parliament.

ASSENT TO BILLS

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

Constitution (Salary of the Governor and Electoral Redistribution) Amendment,

Criminal Law (Sentencing) (Miscellaneous) Amendment,

Land Tax (Home Unit Companies) Amendment,

Pay-roll Tax (Exemption) Amendment,

Stamp Duties (Miscellaneous) Amendment,

Summary Offences (Indecent or Offensive Material) Amendment,

War Terms Regulation Act Repeal,

Workers Rehabilitation and Compensation (Dispute Resolution) Amendment.

CRIMINAL LAW CONSOLIDATION (MENTAL IMPAIRMENT) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 25 October. Page 354.)

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their indication of support for this Bill, and it seems that all members are in complete agreement on policies contained in the Bill. That is unsurprising, since the Bill is designed to provide for greater justice and fairness for those with mental impairment who are unfortunate enough to find themselves in the criminal justice system. However, the Leader of the Opposition has foreshadowed some amendments which deal with the notion of victim in the Bill and I should like to spend a moment on that issue. I note that the amendments are now on file, and I expect to be able to deal with those tomorrow. What I now refer to may have been more than adequately covered by the amendments, but I indicate that I am certainly prepared to look at the amendments and deal with them in the Committee, most probably tomorrow.

As the Hon. Carolyn Pickles pointed out, the word 'victim' appears three times in the Bill. Section 269R requires a report to be placed before the court setting out the views of the next of kin of the defendant and the victims, if any, of the defendant's conduct. Section 269T requires the court to consider that report. Section 269Z requires the Minister for Health to provide counselling to next of kin and victims where it is proposed that a person contained under these provisions is to be released on licence. In general terms, for all these purposes 'victim' is defined as a person who suffered significant mental or physical injury as a direct consequence of the offence or the conduct. 'Next of kin' is defined as a person's spouse, putative spouse, parents and children. In her contribution, the Hon. Carolyn Pickles expressed a concern that these definitions are too narrow. Aside from a tidying up of the language of the Bill, the Opposition desires to include the immediate family of people who have been murdered. That was the intent at the time of the second reading contribution by the Hon. Carolyn Pickles. 'Immediate family' must, if it is to be extended, be more than spouse, children and parents included by the Bill at the present time. Any such line is bound to be arbitrary and honourable members will most probably agree with that. If we include aunts and uncles: what about cousins; what about other relatives? I am unaware of any agreed definition of immediate family.

The amendments which the Hon. Carolyn Pickles has put on file in relation to this matter will be considered on their merits. They should though be considered not by their intrinsic meaning, but rather by the obligations that they may impose upon those who are compelled to interview and collate the views for the court report and for those who are obliged to provide counselling. Whatever one's views on the rights of victims, it cannot be the case that the obligations of Government are overstretched. The Hon. Robert Lawson has also two specific questions. The first starts with the undoubtedly correct analysis of the procedural side of the Bill as involving two distinct hearings.

One hearing is about the mental competence of the accused—what used to be called insanity. The other hearing is about the merits of the case. That is, whether, on the limited facts available to the court, there is sufficient evidence that the accused committed the acts with which he or she is charged. Clearly, if there is insufficient proof that the accused committed the acts charged he or she should be found not guilty. Which of these hearings is to be held first will be up to the trial judge and will depend on the facts of the individual case. The honourable member has asked whether evidence heard at the first of these hearings, whichever it may be, can be taken as read in the second. In other words, the honourable member has the laudable aim of minimising undue delay and expense which may result if the same evidence has to be repeated. Obviously, such a course of action will be feasible only if the same jury hears both parts of the case.

The Bill does not deal with the issue. At the moment, therefore, it is left to the discretion of the trial judge to conduct the trial as he or she sees fit. The difficulties in regulating the issue are formidable. First, the question will only arise where the same jury is hearing both questions and where evidence led in one hearing is relevant and admissible in the other. In such a case the evidence will be led for one purpose in the first hearing and for another in the second. So,

for example, evidence of what the accused did may be relevant in determining whether he or she actually committed the act—that is the first hearing, but its frenzied nature may well be relevant in determining whether he or she was acting irrationally at the time—that is the second hearing. It follows therefore that, even if the same evidence is led in chief in both hearings, the other party will want to be able to cross-examine the witness in each hearing because the issues relevant to the hearing and to be subject to the cross-examination will be different.

It also follows therefore that, if the evidence is to be taken as read, that can only be done routinely, if at all, in relation to evidence-in-chief. But if evidence-in-chief is to be taken as read from the second hearing to the first, the examiner must ensure that he or she examines in chief his or her witness on everything that may be relevant to either of the two hearings. But, of course, a matter to be elicited in chief may be relevant and/or admissible in one hearing but not in the other. Honourable members may now be able to see a little more clearly why it is that the Bill does not seek to regulate this matter in detail. The very general provision authorising the trial judge in his or her discretion, and subject to such limitations and conditions as he or she thinks fit, would not give rise to the formidable complexities that a more detailed regulation of the possibilities would raise.

However, I would point out that section 59j of the Evidence Act currently states:

(1) A court may at any stage of civil or criminal proceedings
(a) dispense with compliance with the rules of evidence for proving any matter that is not genuinely in dispute;
or
(b) dispense with compliance of the rules of evidence where compliance might involve unreasonable expense or delay.

It seems to me that such a general provision would serve the purpose that the Hon. Mr Lawson has in mind. It goes without saying that if there is any proposed amendment in relation to this I would certainly give further consideration to it. The Hon. Mr Lawson also asked what provision was made for the situation where the limiting term that has been imposed upon a person subject to these provisions expires. In order to answer that fully I need briefly to return to a principal purpose of the Bill. Under current law and common law if a person is found not guilty by reason of insanity, or is found unfit to stand trial, the only disposition option available to a court at first instance is detention at the pleasure of the Crown. Under current law a person who is, for example, found guilty of common assault can, at the very worse, be imprisoned for two years but a person found not guilty by reason of insanity can be detained indefinitely. This fact alone explains why the use of the defence is limited to very serious crimes such as murder. The result is, of course, indefensible. The Bill seeks to provide justice to those people by providing that they cannot be dealt with more harshly than if they had been found guilty for the offence. This disposition is set by the court and is called a limiting term.

The short answer to the question raised by the honourable member is that where the limiting term expires the occasion for the intervention of the criminal law has ceased. Put another way, the jurisdiction of the criminal court has expired where that person has been, for example, detained for treatment during that period. It may be that the authorities are not convinced that the detainee is fit for or capable of dealing with normal society. In that case the remedy is the same as it is for any other such person. The detainee may be subject to involuntary civil detention under sections 12 and 13 of the Mental Health Act 1993. The detainee is then subjected to the appropriate regime with all of its protections and safeguards. The occasion for detention is the detainee's mental condition and not the fact that he or she has fallen under the rubric of the criminal justice system.

Bill read a second time

CRIMINAL LAW CONSOLIDATION (APPEALS) AMENDMENT BILL

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Interpretation.'

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

Page 1, after line 24—Insert paragraph as follows:
(c) by inserting after the definition of 'judge' the following definition:
'question of law' includes a question about how a judicial discretion should be exercised or whether a judicial discretion has been properly exercised;.

This amendment and other changes to sections 350 and 351 arise from the matter of Jacksimoni in which the Court of Criminal Appeal on 19 September 1995 declined to answer questions on a case stated under section 350(1)(a) of the Criminal Law Consolidation Act. The Parliamentary Counsel rather than further amending sections 350 and 351 of the Criminal Law Consolidation Act has taken the opportunity to completely redraft the sections. Some of the comments made by the court in Jacksimoni suggest that whether a trial judge has correctly exercised his or her discretion does not raise a point of law, and therefore no case can be stated for the Court of Criminal Appeal.

Notwithstanding the comments of the court in Jacksimoni, there is authority that a properly drafted case stated can raise a question of law in respect of the exercise of a discretion. What is done is to state the relevant facts in some detail and then to ask whether, as a matter of law, those facts would justify a particular exercise of discretion. Nevertheless, in view of the comments by the court in Jacksimoni it is sensible to make this clear in the legislation and this new definition provides that a question of law includes a question about how a judicial discretion should be exercised or whether a judicial discretion has been properly exercised. How a case is stated is dealt with in clause 5 of the amendments.

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

Amendment carried; clause as amended passed.

Clause 4—'Questions of law may be reserved.'

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

Leave out clause 4 and insert new clause as follows:
4. Section 350 of the principal Act is repealed and the following section is substituted:
Reservation of questions of law
350. (1) A court by which a person has been, is being or is to be tried or sentenced for an indictable offence may reserve for consideration and determination by the Full Court a question of law on an issue—
(a) antecedent to trial; or
(b) relevant to the trial or sentencing of the defendant,
and the court may (if necessary) stay the proceedings until the question has been determined by the Full Court.
(2) A question of law must be reserved for consideration and determination by the Full Court if—
(a) the Full Court so requires (on an application under this section or under another provision of this Part[1]); or
(b) the question arises in the course of a trial that results in an acquittal and the Attorney-General or the Director of Public Prosecutions applies to the court of

trial to have the question reserved for consideration and determination by the Full Court.

(3) Unless required to do so by the Full Court, a court must not reserve a question of law for consideration and determination by the Full Court if reservation of the question would unduly delay the trial or sentencing of the defendant.

(4) If a person is convicted, and a question of law relevant to the trial or sentencing is reserved for consideration and determination by the Full Court, the court of trial or the Supreme Court may release the person on bail on conditions the court considers appropriate.

[1.]See Section 352(1)(a).

I have to indicate opposition to clause 4 as printed. This new section 350 incorporates the existing section 350, the amendments to section 350 contained in the Bill and one amendment flowing from Jacksimoni. Subclause (1) repeats clause 4(1) in the Bill. Subclause (2) is a redraft of existing section 350(1)(a) and (2). Subclause (3) is new in order to ensure that criminal proceedings are not delayed by the inappropriate use of the case stated procedure now that it is so clearly spelt out how and when a case may be stated. New section 350(3) has been included. A court in deciding whether or not to state a case must consider whether the reservation of the question would unduly delay the trial or sentencing of the defendant, but the Full Court may still require a case to be stated if it considers other factors require a case to be stated. Subclause (4) is a redraft of subclause (3) in the Bill.

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

Clause negatived; new clause inserted.

Clause 5—'Case to be stated by trial judge and powers of Full Court.'

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

Leave out clause 5 and insert new clause as follows:

5. Section 351 of the principal Act is repealed and the following sections are substituted:

Case to be stated by trial judge

351.(1) When a court reserves a question of law for consideration and determination of the Full Court, the presiding judge must state a case setting out—

(a) the question of law reserved; and

(b) the circumstances out of which the reservation arises; and

(c) any findings of fact necessary for the proper determination of the question reserved.

(2) The Full Court may, if it thinks necessary, refer the stated case back for amendment.

Powers of Full Court on reservation of question of law

351A.(1) The Full Court may determine a question of law reserved under this Part and made consequential orders and directions.

Examples—

The Full Court might, for example, quash an information or a count of an information or stay proceedings on an information or a count of an information if it decides that prosecution of the charge is an abuse of process.

The Full Court might, for example, set aside a conviction and order a new trial.

(2) However—

(a) a conviction must not be set aside on the ground of the improper admission of evidence if—

(i) the evidence is merely of a formal character and not material to the conviction; or

(ii) the evidence is adduced for the defence; and

(b) a conviction need not be set aside if the Full Court is satisfied that, even though the question reserved should be decided in favour of the defendant, no miscarriage of justice has actually occurred; and

(c) if the defendant has been acquitted by the court of trial, no determination or order of the Full Court can invalidate or otherwise affect the acquittal.

Costs

351B.(1) If a question of law is reserved on application by the Attorney-General or the Director of Public Prosecutions on an acquittal, the Crown is liable to pay the taxed costs of the defendant in proceedings for the reservation and determination of the question of law.

(2) If the defendant does not appear in the proceedings, the Crown must instruct counsel to present argument to the Court that might have been presented by counsel for the defendant.

Section 351(1) is totally new, but the remainder of the provisions in the clause are a rewrite of the existing section 351 as amended by the amendments to section 351 in the Bill. New section 351(1) sets out how the presiding judge must state a case. This distils the case law on what is necessary for a case to be stated. One of the problems in Jacksimoni was that the case stated did not contain any facts. This provision will ensure that, in the future, courts will be quite clear on what must be contained in a case stated.

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

Clause negatived; new clause inserted.

Clause 6—'Right of appeal in criminal cases.'

The Hon. CAROLYN PICKLES: I move:

Page 3, lines 15 to 17—Leave out all words in these lines.

Our amendment removes the right that the Government seeks to give the DPP to appeal against acquittals on any ground in cases where the trial took place before a judge sitting alone. Our objection is essentially a matter of principle, although there are practical problems with the proposed Government reform. Philosophically, we are talking about double jeopardy. It is quite clear that, at common law, once a person has been acquitted, that is the end of the matter. Blackstone, one of the most respected and comprehensive writers on the subject of the English law, which South Australia more or less inherited, said that it was a 'universal maxim of the common law of England, that no man is to be brought into jeopardy of his life more than once, for the same offence.'

Two American cases state the principle in more contemporary language. In *ex parte Lange*, an 1873 case, the court said:

The common law not only prohibited a second punishment for the same offence, but it went further and forbid a second trial for the same offence, whether the accused had suffered punishment or not, and whether in the former trial he had been acquitted or convicted.

That case was cited in *Green v The United States*, a 1957 case found in Volume 355 of the *US Reports*, page 184. There the court stated:

The underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and powers should not be allowed to make repeated attempts to convict an individual for an alleged offence, thereby subjecting him to embarrassment, expense and ordeal, and compelling him to live in a continuing state of anxiety and insecurity as well as enhancing the possibility that even though innocent he may be found guilty.

This principle is so fundamental in the common law that it has been said that, even if a murderer was acquitted and then boasted that he or she had in fact committed the crime, there could be no retrial. The South Australian Bar Association expressed its view in this way:

It is the association's view that no right of appeal should be given to the Director of Public Prosecutions against a verdict of acquittal. 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.

The Attorney in his second reading speech described the Bar Association's submission as 'quite dramatic in its presentation of these issues'. It is no wonder that Michael Abbott QC, writing on behalf of the Bar Association as President of that organisation, made his point dramatically, for this is a very

substantial step away from longstanding and fundamental principles. This is particularly so when the proposed right of appeal is 'on any ground'. In other words, the Court of Appeal can potentially interfere with a trial judge's assessment of the evidence, the weight that should be ascribed to various facts, and so on. So the appeal can be based on the reasonings of the trial judge when he or she is carrying out what has been traditionally described as a jury function. That function is to find out what the facts are and to reach a conclusion based on the available and admissible evidence.

This raises the further point of why it is proposed to give the Crown the right of appeal against acquittals in respect of judges alone but not in respect of jury verdicts. As I understood the Attorney's second reading explanation on 26 October, he seemed to justify differentiation of appeal rights on the basis that 'it is much easier to see from the record what the judge did or did not do or what the judge did correctly or incorrectly.' That is put forward as a distinction between a case in which a trial judge sits alone and a case in which a judge directs a jury. Of course, in the matter of jury trial, the judge's summing up will be recorded and available for close scrutiny upon appeal, as happens at present when a convicted person appeals to the Full Court.

The Government seems to be advocating the potential scrutiny of the fact-finding abilities of trial judges (sitting alone) by appeal courts, while maintaining protection of the fact-finding abilities of juries from the same sort of scrutiny. It is hard to see the logic in that, although we are not for a moment suggesting that there should be Crown appeals against acquittals in both jury trials and trials where a judge sits alone. In opposing the Government's proposed appeals against acquittals, the Opposition is in the company of the Bar Association, the Law Society of South Australia and also the late Justice Lionel Murphy. Justice Murphy made his views on this matter quite clear in the case of *Demirok v The Crown*, a High Court case decided in 1977. He said:

> A balance must be achieved between the interests of society in prosecuting charges and the interests of society and the individual in avoiding multiple criminal trials.

As to the practical consequences of the Government's proposal for Crown appeals against certain acquittals, I again refer to the Bar Association submission, which says:

> The association believes that no counsel will recommend a trial by judge alone with the knowledge that if an acquittal is obtained the acquittal can be appealed by the Director of Public Prosecutions.
>
> The considerations that prompted the introduction of trials by judges alone, namely, a desire to speed up the court processes to make more effective use of the judicial time and to lower the cost of justice to the community, will be effectively discarded because no-one now will use the system of trial by judge alone, given the possibility of any appeal in the event of an acquittal.

I note that in his contribution the Hon. Mr Redford conceded that there was a great deal of force in the Bar Association's submission generally. In particular, the Hon. Mr Redford concurred that the effect in practical terms of this measure would be almost to eliminate the phenomenon of a trial by judge alone.

The other lawyer in this Chamber, apart from the Attorney and the Hon. Mr Redford, is the Hon. Mr Lawson QC. I take it that he also has some reservations about this measure, and I base that observation on the fact that he described it as an experiment which he would be anxious to review if it were not successful.

The Opposition's view is that it would be counterproductive to make a trial by judge alone dramatically less attractive as an option for people accused of serious crimes. At the heart of our criminal justice system is the goal of ensuring a fair trial, and in many cases an accused person might consider that a trial by judge alone would lead to a fairer trial than a trial by jury—and there are all sorts of reasons why that might be so. I suggest that the option of trial by judge alone has worked well, and it would be unfortunate to see that option almost routinely disregarded due to the lack of finality of an acquittal, which is what this Bill would bring about in respect of trials by judge alone.

The lack of finality is an important point. The Government is proposing a situation whereby an accused person can go to trial for a serious offence and be acquitted by a judge alone. The DPP then can appeal to the Full Court on any ground. The Full Court may say that the trial judge got the law wrong or excluded evidence from his or her consideration which ought to have been considered, or the nature of the judge's reasoning about the facts might be criticised. The result then might be that a new trial is ordered.

What happens at the new trial? The accused could be acquitted again, but that is not the end of the matter. The retrial is a trial like any other, and that trial taking place before a judge alone could result in an acquittal. On that second acquittal the DPP could appeal again, but even that is not the end of the matter: there could conceivably be a third trial on the same evidence. Perhaps the accused will be convicted this time; then he or she can appeal, and so it goes on. There could be any number of permutations.

In this context the law about reception of evidence after trial takes on a whole new meaning. In the Lindy Chamberlain situation, where very significant evidence came to light after conviction, a convicted person has a basis in limited circumstances to go back to the courts system and seek a retrial. If appeal avenues already have been exhausted it may be more appropriate to lodge a petition of mercy which may, in turn, lead to judicial reconsideration of the case.

But what will happen when the DPP comes up with so-called fresh evidence after the acquittal of an accused person? This might happen fortuitously within the allowed period for appeals, but it could just as well happen after the appeal period has expired. Would there then be a DPP application to extend the time in which to appeal, and could that be entertained by the courts? I ask the question rhetorically rather than specifically of the Attorney, because I do not believe that the amendment Bill before us has the answer to this. We could have a situation where an acquitted person started a new life, put the anxiety and expense of a criminal trial behind him or her, patched up damaged friendships and relationships, got a new job then got a notice from the DPP saying that they were going to have another go at that person by arguing for leave to appeal and subsequently pursuing a new trial. That situation should not be allowed to occur.

Another difficulty with the Government's proposal is that it does not seem to take into account the issue of the accused person's costs. At present there is a facility for the public first to fund the legal costs of an acquitted person in relation to a case stated to the Full Court on a question of law. The same applies for a convicted person who appeals to the Full Court. But the existing provisions of the Criminal Law Consolidation Act do not take into account the situation where an acquitted person might be the subject of an appeal by the DPP to the Full Court and the Attorney has proposed no consequential amendments which would ensure that the acquitted person has adequate resources to fight the appeal. This is particularly important because generally speaking the grounds of appeal will be completely beyond the influence of the

accused person and defence counsel at trial. It will generally be a matter of the trial judge allegedly getting it wrong in some way after having had submissions from both prosecution and defence counsel.

The question is: why should an acquitted person, someone presumed innocent, be bled dry financially when forced to fight tooth and nail before the Full Court to maintain his or her liberty, even though the appeal comes about through absolutely no fault of the acquitted person?

Finally, I recognise that this move was one of the aspects of the Liberal Party's pre-election platform, but now that the proposal has been seriously put forward and drawn fire from key groups of the legal profession, I trust that the Government will see that it would not be right to pursue this proposal. I understand that the Attorney may wish to make some detailed responses, and I am happy for him to defer this if he wishes to consider further what I have raised.

The Hon. K.T. GRIFFIN: I do not intend to defer the Committee consideration. I think that I can more than adequately deal with the matters which the honourable member has raised, but if I overlook any of them she can remind me and I shall be happy to endeavour to deal with them. It puzzles me that the Opposition is moving this amendment and is not supporting the quite proper and reasonable proposal that the DPP should have a right to appeal against an acquittal where the trial is by judge alone.

Only in the past few weeks the Hon. Sandra Kanck has asked me whether that might actually be extended to trials by judge and jury where there is an acquittal. I was quick to indicate that that is certainly not the Government's intention but was in the context of a decision which was made by both the judge in giving a direction to a jury and an acquittal by a jury in circumstances which attracted some public debate. I should have thought in that context, whilst one is not going to the point of proposing a right for the DPP to appeal in cases of an acquittal by a judge and jury, the proposal in the Government's Bill is quite reasonable and fair.

There is nothing inviolate about an acquittal in any event. We tend to use that rhetoric which suggests that it is an age-old right which is enshrined in the law. However, in Canada, for example, there is in some circumstances a right of appeal by the prosecution against an acquittal by a jury. One could make some argument for a right of appeal where a judge has quite deliberately misdirected the jury and the jury has been directed to bring in an acquittal.

Whilst juries are independent, they do tend to follow the directions which are given to them by a judge, particularly in those circumstances where they have been directed to acquit on the basis of inadequate evidence. We have been through that with the case only in the past few weeks which has attracted public attention, namely, the Jacksimoni case to which I referred in relation to other amendments in this Bill. That was another instance where the trial judge declined to accept a *nolle prosequi* and the Crown determined not to lead any further evidence because its principal evidence had been ruled out by the trial judge and the judge directed an acquittal.

There was no way in which that could be the subject of any review by the Court of Criminal Appeal, even on a case stated, as we subsequently found out to our cost. Hence, the reason for some amendments, which the Opposition has indicated it is prepared to support. I am not suggesting and the Government is not proposing that at any stage we move to a situation where even those cases should be the subject of an appeal by the DPP. You could mount a fairly reasonable argument in favour of that if you wanted to do that, but we have decided that we will not go down that track.

The Hon. T. Crothers: But isn't it a possibility that by doing this you could give two bites at the cherry?

The Hon. K.T. GRIFFIN: I was going to deal with the issue of double jeopardy, because the Hon. Carolyn Pickles has raised it. This has nothing to do with the issue of double jeopardy. This is all part of one set of proceedings, and there is no double jeopardy. Sure, an accused may be the subject of a retrial, but that happens where there is a conviction.

The Hon. T. Crothers: But did you say that, in one case you referred to, the Crown had already led some evidence and then sought to enter a *nolle prosequi* in respect to the matter? Surely that is double jeopardy.

The Hon. K.T. GRIFFIN: It is not.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: It is not double jeopardy. With respect, that is not correct. A *nolle prosequi* is a decision by the Director of Public Prosecutions to proceed no further with a prosecution. It is my view, although it is subject to litigation in the High Court at the present time, that a Crown Prosecutor or Director of Public Prosecutions has a right to tender a *nolle prosequi* and the court cannot reject it: the trial comes to an end. There are some judges who say—

The Hon. T. Crothers: That is double jeopardy.

The Hon. K.T. GRIFFIN: No, it is not double jeopardy. Some judges say, 'You have to get leave from the court to file your *nolle prosequi*.' That is the argument that is going up to the High Court. I do not agree with that point of view; I think that that is not the law, but we will see when the High Court has finally made a decision on it. It is not double jeopardy. The fact is that in many cases the DPP presently files a *nolle prosequi* for some reason. It may be that a prosecution witness has failed to turn up or that there is some defect in the evidence and, rather than proceeding but having recognised the difficulty, the Crown has decided to withdraw and then to reprosecute. Even when a *nolle prosequi* is filed, it leaves open the possibility for the DPP to prosecute again. That is not double jeopardy. Rather than exploring the whole issue of double jeopardy, we may agree to disagree on it. There is no double jeopardy.

In the Magistrates Court, a magistrate—a judicial officer independent of the executive—can hear cases and determine them up to the point where two years' imprisonment can be imposed. I know that the Bar Association argues that that has gradually crept up so that the category for so-called minor and summary cases has now been broadened significantly to include serious offences. That may be the case. The fact is that by law magistrates make those decisions. As far as I am aware, for as long as magistrates have been hearing these sorts of cases concerning minor offences—which some people might regard as major, but they are nevertheless summary offences—there has always been a right on the part of the prosecution to appeal against an acquittal by a magistrate. No-one has yet explained to me the distinction between a judge—a judicial officer independent of the executive—presiding over a trial by judge alone and a magistrate—a judicial officer, independent of the executive—presiding over a trial by magistrate alone. No-one has yet answered that; the Bar Association has not, except to argue that summary cases are less serious and that we do not want the parameters to go out too far. It is entitled to argue that if it wants to, but I would suggest that it is not a plausible or reasonable argument.

The Hon. T. Crothers: It could make the law perhaps more expensive with respect to what we provide to defend people who are being prosecuted for some offence or other at a time when funds are so limited; what you would do if you sought this different appeal is extend the cost.

The PRESIDENT: Order! The Attorney-General has the floor.

The Hon. K.T. GRIFFIN: With respect, I do not follow the argument about expense. I am arguing the issue of the principle of what is the difference between a magistrate hearing a matter solely and a judge without a jury hearing a matter which might attract three years' imprisonment rather than the magistrate's summary jurisdiction for up to two years' imprisonment. The Crown can appeal against an acquittal—against the decision of the magistrate. At the moment the law says the Crown cannot appeal against a decision by a judge alone. That is the dilemma which this proposal to amend the law is seeking to address.

The Hon. T. Crothers: Will that mean there will be more trials by jury?

The Hon. K.T. GRIFFIN: There is a difference of opinion about whether if we enact this legislation it will mean there are fewer trials by judge alone than there are at the present time. No-one can predict what will happen. The fact is that a handful of matters go to trial by judge alone. Counsel will make his or her decision in advising his or her client what will give them the best prospect of ensuring an acquittal. They may still run the gauntlet of trial by judge alone, particularly if the judge deals with it in a way which is fair and reasonable and quite properly in accordance with the law, as opposed to going to a trial by judge and jury, where one throws oneself at the mercy of 12 ordinary men and women. Contrary to what my colleague the Hon. Angus Redford is suggesting, I think there is a real prospect that this will not make any difference.

I want to touch upon several other issues. The Hon. Carolyn Pickles raised the issue of a trial by single judge, an acquittal, an appeal, a retrial, acquittal and appeal—and it goes on indefinitely. I do not think there is any prospect of that occurring. Look at what presently happens even with jury trials. There may be a conviction, it goes on appeal and a retrial is ordered and the matter goes on again. There may be a hung jury and in those circumstances the DPP may just decide that in the circumstances it is not appropriate to continue. It may be that there is a hung jury in the first instance. The matter then comes up for retrial and it may be that there is a conviction and then a retrial is ordered.

All sorts of variations occur at the present time. My experience of the DPP is that the DPP (and his predecessors, as Crown Prosecutors) has always taken a fairly realistic approach to the issue of whether or not there is sufficient evidence on which to proceed. In those circumstances, I do not believe that this will present any greater or lesser difficulty than exists at the present time in relation to jury trials.

The Hon. Carolyn Pickles talks about fresh evidence after an appeal, where a matter has been remitted for a retrial. There is nothing in the law which in any event prevents fresh evidence from being introduced, but if fresh evidence is introduced proper notice has to be given to the defence. We have committal proceedings in which the Crown lays out before the court and before the defence the evidence upon which the Crown is proposing to rely. If there is new evidence which comes to hand after the committal, then there is a requirement for information about that evidence to be made available to defence counsel within an appropriate time frame, and the same will apply here.

The same applies to the defence. If there is a conviction, subsequently a retrial may be ordered on appeal, and in those circumstances both parties can presently introduce new evidence, so it is not a matter of saying, 'You have to go back and have your retrial on the basis of the evidence as it then existed.' You are entitled, whether you are defence or prosecution, to look at it on the basis of what information is now available, and that happens, in both the circumstances to which I have referred and where, for example, a *nolle prosequi* might be tendered by the DPP. Again I do not see that as a problem.

The matter of costs is certainly an issue. It arises now, whether it is a trial by judge or judge and jury, where matters go to the court of criminal appeal. In many instances, those costs are the subject of application to the Legal Services Commission because most of the criminal trials are dealt with on the basis of legal aid. That is not to say we should not be conscious of the costs. The fact is they are presently part of the criminal justice system, even where there is presently no right of appeal against an acquittal by a judge sitting alone. So, the arguments which the Hon. Carolyn Pickles has raised are arguments which do not, with respect, bear close scrutiny and do not provide a justification for the amendment.

The Hon. R.D. LAWSON: I will not repeat what I said in my second reading contribution on this matter, but there are a couple of factual matters with which the Attorney might assist the Council. I think the Attorney indicated there were in the last statistical period only nine trials by judge alone in South Australia. Could he confirm that fact and give the details of the number of trials by judge alone over the last two or three years, because I believe that that will indicate there are not many occasions in which accused persons elect to be tried by judge alone? In those figures, could the Attorney indicate how many acquittals there were and, of those acquittals, could he indicate—and I am not sure whether he has the information—how many would have been appealed by the Director of Public Prosecutions had he had the legal option of pursuing an appeal? In other words, this information is designed to elicit how big is the problem and how significant the issue.

The only other factual matter I would ask the Attorney to answer, if he has the information available, arises out of interjections from members of the Opposition, particularly the Hon. Trevor Crothers, and also from comments made by the Leader of the Opposition concerning double jeopardy and the filing of *nolle prosequi*. Could the Attorney indicate, in each of the last few years, how many *nolle prosequis* have been entered and in respect of which the accused person is later brought to trial on charges in relation to which the *nolle prosequi* was entered?

The Hon. K.T. GRIFFIN: I do not have the information. It will take several days to put it together, particularly in relation to *nolle prosequis*. In relation to the appeals, I did have that information at one stage and my recollection was that, in the last financial year, there were about nine appeals, but I can get that information for the honourable member. If we can get it this afternoon, I will endeavour to do so.

The Hon. T. Crothers: That is only in the present circumstances.

The Hon. K.T. GRIFFIN: Sure. I am not sure that I will be able to get the information in relation to those cases when there was an acquittal where the DPP may have wished to appeal. In fact it may mean that we have to go back through

all the dockets and check that out, but I will endeavour to obtain the information later this afternoon on the basis that hopefully we will be able to continue and dispose of this matter this afternoon, rather than delaying it further. The information is something which we will need to address.

The Hon. R.D. LAWSON: If the information sought is difficult to obtain and not readily available, I certainly would not want the debate deferred pending the necessary research.

The Hon. Carolyn Pickles: Is the Hon. Mr Lawson trying to let the Council know how big the problem might be? This information might be of some interest.

The Hon. R.D. LAWSON: That is true, certainly in relation to the statistics on the trial by judge alone, and I remind the Attorney that he did say in his second reading explanation there were nine cases. However, in relation to the *nolle prosequi*, it seems to me that that is something of a side issue which has arisen in the course of debate. I would not want matters to be delayed pending receipt of that information.

The Hon. K.T. GRIFFIN: I thank the honourable member for that indication because I think the *nolle prosequi* information will be more time consuming to obtain. I will undertake to obtain that information. In terms of the question about trials by judge alone, I will see whether information is readily available which I can put on the record when we resume consideration of this Bill later this afternoon.

The Hon. CAROLYN PICKLES: If the Crown successfully appeals against an acquittal and a retrial is ordered, the Crown can redouble its efforts to re-proof witnesses and get further evidence, having full benefit of hindsight whether the defence has fully disclosed its hand at the first trial. I am sure the Attorney would agree that this improves the DPP's tactical advantage at the second trial. Would he comment on that?

The Hon. K.T. GRIFFIN: I talked about the issue of fresh evidence and indicated that it is open to either party, even in the present situation, to introduce new evidence if there is a conviction and that is the subject of a successful appeal by the defendant and it goes back for retrial. The point I was trying to make is that the prosecution in particular has a duty and is required by the rules of court to make available new evidence which it will seek to lead in the course of the retrial.

It means, even in the present circumstances, that there are occasions when the police or the prosecution will seek to reproof witnesses, but one has to recognise that, in the conduct of a criminal trial, the responsibility of the DPP is to put to the court both the good evidence that supports the case as well as that which may not and it is a matter to lay objectively before the court the information and evidence available. The duty is not to attempt to distort the evidence of witnesses for the prosecution. Sometimes when witnesses have been proofed they do not always tell the same story in court. That is a matter with which the DPP has to live with in the course of exercising or complying with the responsibility placed upon the DPP. I would not have thought that it was a particular difficulty.

The Hon. CAROLYN PICKLES: The Opposition intends to pursue its amendment. The Australian Democrats are not here and I understand that we will be moving to adjourn this until later in the afternoon. The Opposition has received a lengthy submission from the South Australian Bar Association, which is clearly in opposition to this section of the Bill and from other lawyers we have certainly received some serious opposition to this. We intend to proceed with our amendment.

The Hon. K.T. GRIFFIN: The Hon. Mr Elliott has an interest in this but is out at the moment.

Progress reported; Committee to sit again.

SECURITY AND INVESTIGATION AGENTS BILL

Adjourned debate on second reading.

(Continued from 25 October. Page 358.)

The Hon. K.T. GRIFFIN (Attorney-General): I thank the Hon. Ron Roberts for his contribution on this Bill and for his indication of support. He raised one issue relating to a proposal by him to have crowd controllers (I thought at the time of his contribution that he included security agents generally) wear some identifying insignia—whether it be a name or number badge—and uniform. It is open to some further consideration.

If the honourable member looks at clause 20(2), it can be seen that it requires that a natural person, who is an agent of a class required by the regulations to wear identification, must comply with the regulations about the wearing of the identification. I hope that the Hon. Ron Roberts will note that the Government does have already a provision in the Bill that enables us to prescribe by regulation the wearing of some form of identification and the way in which it will be worn. We are not at odds about the principle, but I think we will be at odds about how we achieve it.

The industry submissions have highlighted situations where it would be inappropriate for agents to wear identification, including store detectives and undercover investigation agents, and situations where the wearing of identification may create situations where the bearer could be traced to their place of domicile and thus place themselves or their families in danger of retribution.

As a consequence of the industry representations, we are giving consideration to alternative identification—it may be the number system utilised by police officers, taxi drivers and bus drivers—as we look at developing the regulations. It had been intended that once the Bill was passed we would be consulting with industry about this issue of appropriate identification. I draw the attention of the Hon. Ron Roberts to the fact that those regulations will ultimately be tabled and be the subject of disallowance or even, not going so far as that, the provision of evidence before the Legislative Review Committee, so that there will be an opportunity to further scrutinise the detail of the application of this principle.

I ask the honourable member, who has indicated that he will be moving amendments but which are not yet on file, to consider whether he really wants to proceed with those amendments, particularly in light of my intimation that it is a matter we intended to discuss further with industry and a matter that will be covered in the regulations.

Bill read a second time.

OPAL MINING BILL

Adjourned debate on second reading.

(Continued from 26 October. Page 382.)

The Hon. SANDRA KANCK: Opal mining is unlike other forms of mining. For the purposes of those in the industry, it has been argued that it would make it easier for them to know where they stand in operating their mining

businesses if those aspects of the Mining Act which cover opal mining are all together in one Act. I am told that opal miners themselves asked for this Bill and, although when I looked at the Mining Act it seemed that all the relevant parts were together in the one Act, I have no real problem with pulling them out and putting them together in the Opal Mining Act if it is to make things administratively easier.

I have actually not been presented with any evidence that this will occur, so this Bill is interesting in terms of the agenda that are being run. After talking with numerous people about the Bill, it seems to me that some miners may have requested a separate Act. The miners I spoke to at a meeting in Coober Pedy told me that they did not see the need for a separate Act, that all that was needed was to make sure that the existing provisions in the Mining Act were properly applied. A few weeks ago in this place I tabled a petition containing almost 700 signatures from people in Coober Pedy opposing the most significant changes that this Bill would impose, so the Government's claim that this Bill is what the miners want is somewhat audacious.

However, I know that the Opposition has accepted the argument that a separate Act is what the opal miners want, so it is clear that this Bill will get through. Sadly, there will be no opportunity to exercise the balance of power with this Bill, because it can be exercised only if the Opposition decides to oppose it. I am certain that, even if Opposition members accept the argument that the opal miners want a separate Act, they must realise that they did not ask for corporations to be included in the new legislation. Make no mistake about it, this Bill is designed to provide more than convenience to opal miners so that they can more easily see and understand their legal responsibilities. It is about the Government's agenda to help the big guys into the game, and the Opposition is an accomplice in this.

Before I continue, I want to explain my use of the word 'production', if I should use it in this speech in relation to opal mining. Where mining of any sort occurs, very little is actually produced because nature has done the production number and the miners access and exploit what nature has produced over millions of years. As most people use the words 'produce' or 'production', they are the words that I will use because people will understand what I am talking about. The Attorney-General made much of the fact that South Australia's opal production has fallen below that of New South Wales. I am interested to know whether that means that our production has fallen or simply that production in New South Wales has increased. Whatever the reason, the Attorney's speech confirmed the Government's determination to encourage the involvement of corporations on our opal fields.

Under the present regime, corporations cannot get into these areas and the Government and departmental view is that, in this day and age, this is some sort of outrage, that not allowing in the bigger corporations is not helping the industry. In fact, the Government claims that it is discriminatory. I see nothing wrong with being discriminatory in favour of the small miner if it will maintain employment in this State. A letter that I received from one opal miner writing as an individual states, 'The Minister is claiming to revitalise the industry when, in fact, his actions are almost certain to have the opposite effect.'

For some reason there is an assumption that allowing in the bigger corporations will assist the industry. I reject that assumption and any plain old fashioned economist would, too. If we allow in the big corporations with larger and more efficient machinery, and if and when they do come across another major opal deposit, which, I believe, is what the Government is hoping for, we face the prospect of the market being flooded and the price of opal dropping. This will not help the existing opal miners in South Australia, and the Government is fooling itself if it says otherwise.

In Broken Hill as I grew up I learnt very well how market forces worked on my father's pay packet with a payment that was called the lead bonus. This payment was tied to world prices of lead and, when I was a small child, it contributed a significant amount to my family's welfare. As I grew up and as more lead deposits were opened up in Australia and overseas, the lead bonus went down and down until it was worth almost nothing. We were not economists, but we learnt very early in life about the traditional economic theory of the market forces of supply and demand. This Government has unquestioned faith in market forces, so why can it not see the effect of market forces in the opal industry if it is opened up to the big boys, or does it have a one-off theory on market forces that applies just to opals? If so, it should share it with us.

I refer again to the letter from the opal miner who wrote to me, which states:

> When the big companies have pegged the fields and no work is being done and small miners have worked out their small patch, where will they go? Will they have to negotiate with the big companies for a small area to work?

My understanding is that they will have to. The letter continues:

> If everything grinds to a halt, will the department compensate us for our losses?

I was told that the Government wants opals to be a major commodity and, further to this, I was told that, in order for this to occur, opals will need to be marketed with continuity and with a predictability of supply and quality. I had a conversation with an opal dealer to discuss this question of quality and quantity. I was told that, no matter how much is mined, the quality can never be predicted, but the quantity is there now. On any given day in that particular establishment, there are three to five offers of sale of opals either in person or over the telephone. If I could find that out by the simple process of a phone call, why cannot the Government?

Given that more output does not guarantee quality and given that the quantity is there to meet the demand, what is the real agenda? The Government says that it is doing this at the behest of the opal miners themselves. It begs the question of just which opal miners the Government is talking about. If this Bill is what the industry wants, why is the Coober Pedy Miners Association so wary of it? The Queensland company Redfire is one name that keeps cropping up in my consultations about this Bill. I am told that the Director of Redfire, Geoff Oliver, is a former Mines Department employee. I should like the Attorney to find out whether the department has negotiated with him in regard to this Bill? If so, what does he stand to gain out of it?

If the Government wants to do something useful in the opal industry and if it wants to increase employment, it should look at the issue of opal cutters. Much of the opal that is mined in this State goes offshore in an uncut form, in other words, with no value adding. What is the Government doing about this?

I note clause 13 of the Bill, which the Opposition was successful in adding to the Bill in the other place. I have gone on the public record with my concerns for the miners of Coober Pedy and I indicated that, if necessary, I would seek

a exemption from the legislation for the Coober Pedy field. In allowing the creation of a concept of a major working area, the Opposition has gone some way to alleviating some of my concerns but it really just puts the inevitable day of judgment on hold for perhaps three years. I was told at my briefing on the Bill that, in regard to clause 13, the Coober Pedy major working area will have a 500 metre buffer zone. In his explanation of the clauses the Minister has said that the regulations will identify various areas of Coober Pedy as major working areas but no mention was made of the buffer zone, so I ask the Attorney whether this buffer zone will be included in the regulations? This is an important question and I look forward to the Attorney's reply before we proceed to the Committee stage. I hope that the Government is not going to say 'Trust us.'

On the same issue of the buffer zone, why was 500 metres chosen as the magic figure and not either a larger or smaller one? The Coober Pedy Miners Association believes that a more appropriate buffer would be two kilometres. If it is the miners who want the Act, why not take up their suggestion? From my briefing, I also gained the understanding that opal development areas will not be imposed on the Coober Pedy precious stones field for at least three years and that this would not happen until a review of the Act was conducted. I seek clarification as to when that three years begins. Will it be within three years of the proclamation of the Act?

I was told at the briefing that the intention was to get the Act proclaimed as soon as possible after it is passed, that is, within a few weeks, but that the Coober Pedy major working area would take more consultation. Will the Act be proclaimed minus section 13, with that section being proclaimed later? The regulations pertaining to that section will not be ready in the next few weeks, so if it is not proclaimed at the same time as the rest of the Act, I seek reassurance from the Government that the three years will not start until that section is proclaimed.

I also seek some explanation regarding clause 17(7). Am I correct in interpreting that 'may refuse' means that the mining registrar would automatically refuse to register the tenement or is there some leeway here? If there is, under what circumstances might that be exercised? In my briefing on the Bill, I was told that the big companies seeking exploration licences are not interested in opals, anyway, and that they would be able to make an arrangement with an opal miner if the appropriate mineralisation is found to be present. I presume that this would be some informal arrangement of the gentleman's agreement type as the Bill does not appear to address such an arrangement.

If the department assumes that such an informal arrangement could occur, why is it necessary for the mining registrar to refuse the application to register the tenement under these circumstances? If they are looking for different minerals, as I was told in my briefing, would there be any conflict, for instance, for a large company looking for diamonds and a small miner looking for opals in the same area?

I understand that BHP already holds large exploration licences within the Coober Pedy precious stones field. How will clause 20(7) affect access to opals for the opal miners in that area? Clause 13 does not appear to me to provide protection for them but I am willing to stand corrected on this. But, given the exploration licences which BHP and, to some extent, CRA already hold in the Coober Pedy area and given the undertaking to hold off on imposing opal development areas on the Coober Pedy proclaimed precious stones field for three years, is there an argument for a similar stay of proceedings on this clause?

I am concerned, too, about the use of the term 'approved association'. At my briefing on the Bill I was given to understand that these are organisations which represent and cover for their members in areas outside proclaimed fields where bonds are not lodged. Would this mean that the Coober Pedy Miners' Association would not be regarded as an approved association? If it appears that they might be excluded, I indicate that I am considering an amendment to ensure that they are definitely included. Clause 29 refers to the removal of machinery from land when a tenement has expired. The Government proposes that the owner of such machinery must remove it within 14 days. A draft version of the Bill from earlier this year gave the time period as three months. Could the Attorney indicate why it was reduced to 14 days? From representations that have been made to me, I think this clause is unreasonably harsh as it may, for instance, take up to three months to get a part from overseas for some machines. Can the Government indicate the circumstances it sees that would require such a rapid vacation of a tenement?

I will be amending the Bill to increase the period of time available in which such machinery or goods would have to be removed. I do not imagine that extended periods of time would often be needed. I am sure that miners would get their equipment off the expired tenement as quickly as possible to reduce the risk of its being used or damaged by the incoming tenement holder but, on compassionate grounds, I believe that the three months could be needed on occasion.

I also indicate that I will be setting out some time agendas regarding the selling off of such machinery or goods by the chief inspector. This will probably be along the lines of what we put in the Residential Tenancies Act earlier this year to deal with disposal of abandoned goods.

The Opposition has indicated its support for the Bill, and I am saddened that it cannot see that no long-term advantage accrues to South Australia by increasing the rate of exploitation of any non-renewable resource. Given that it apparently cannot understand that concept, the Democrats' concerns are likely to go largely unheeded.

In concluding, I reiterate my concerns about the entry of corporations into our opal industry. This involvement will result in the opal being exploited faster and at a reduced rate of return for the miners involved. Those larger corporations which the Government is keen to have involved will be short-term beneficiaries because they will have the equipment that will allow them to pull more out of the ground than the existing miners and they will be able to cope with the reduced price which will inevitably follow. But it will not result in increased employment, if that is what the Government hopes for, because it will make the small individual opal miner, best typified in the public mind by those at Coober Pedy, less and less viable and will probably force many of them out of the industry.

I have not been able to find out what are the real agendas in this issue but, make no mistake, the corporations that the Government wants involved ultimately will be the only beneficiaries of this move. I am in the process of having amendments drawn up to the Bill to attempt to ensure that the damage to small miners will not be as bad as it might be with the Bill in its current form. I cannot say exactly what form those amendments will take because it will, to some extent, depend on the answers I receive to questions I have posed in this speech, but I indicate that the Democrats will support the

second reading and see what happens in the Committee stage of the Bill.

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

CRIMINAL LAW CONSOLIDATION (APPEALS) AMENDMENT BILL

Adjourned debate in Committee (resumed on motion).

(Continued from page 403.)

Clause 6—'Right of appeal in criminal cases.'

The Hon. M.J. ELLIOTT: I did not speak during the second reading stage and I do not intend to make a lengthy contribution at this point, either. I indicate that I am not supporting clause 6 as it stands and am therefore supporting the Opposition.

I have also received correspondence from a number of groups, including the Law Society, and there is not much point in covering again the ground that has already been covered by other members. I have some concerns about the way clause 6 amends new section 352(1)(b) and the consequences of that. It simply produces a broad right of appeal for the DPP. There is no limitation whatsoever, so any case can be appealed.

While I understand that it is very difficult to limit the grounds of appeal, in this case it is totally wide open and, to me, it does seem to be creating too wide a discretion for the DPP. I have no doubt that it will eventually lead to appeals in circumstances that I would not have supported. It is always one of those problems when we have legislation which has the ability to be applied more widely than perhaps intended.

I recall many occasions on which the Attorney-General, when in Opposition, sought very narrowly to define what would happen in certain circumstances by saying that the law should do exactly what it is meant to do—nothing more and nothing less. In this case this clause is too wide open. I am not saying that there are not legitimate reasons for wanting to seek the ability to appeal, but it is the breadth of the potential for appeal that causes me concern and why I am not supporting it.

The Hon. K.T. GRIFFIN: I am disappointed to hear the honourable member say that but, hopefully, I can persuade him when we get to a deadlock conference, if it needs that, that this is an issue where the amendment ought to be rejected.

The Law Society letter responds, I think, to an earlier draft of the Bill. It is important to recognise that the Law Society considers that the right of appeal conferred on the DPP is ambiguous. The ambiguity has, in fact, been removed in the Bill as introduced, so that the criticism of the ambiguity is no longer relevant, although the criticism of the principle may still be relevant. However, I would disagree with it. Proposed section 352(1)(b) provides that the DPP may appeal against the acquittal on any ground with the leave of the Full Court.

So, we have the safeguard of leave and we have it clear that it is on any ground. I would not have thought that that was a problem. If the Hon. Mr Elliott has a proposition to put that might address the sort of observation that he has made, I am happy to consider it. But the Bill, since the Law Society had it and as it is now introduced, does amend that provision and addresses the issue of ambiguity.

The Hon. M.J. Elliott: It gives no grounds or instruction to the Full Court as to when it may grant leave.

The Hon. K.T. GRIFFIN: It doesn't, because there are many instances where one can appeal by leave. It is scattered throughout the statute book. The leave is really at the discretion of the court to determine whether it is meritorious. We cannot crystallise that in the written word. If the honourable member wants to make some proposition, as I said earlier, I am happy to listen to it, but reference to an appeal by leave is quite common and, if the honourable member needs some information about those occasions on which leave is required or the circumstances in which leave may be granted, certainly I will obtain some more comprehensive information about that. I cannot off the top of my head identify all the circumstances in which leave is required to be sought or the circumstances in which leave may be granted but, if it will be helpful to the honourable member, I am prepared to provide some further information. That really addresses that issue, I suggest.

I did undertake to endeavour to find out some information about the number of trials by judge alone. At such short notice I can only reiterate what I indicated during the second reading stage, and that is that for the 1994-95 financial year there were eight trials by judge alone. One of those related to two co-accused, so that is where you get the nine defendants; four were guilty verdicts; one trial was vacated; and there were two pleas of guilty. Of the trial involving two co-accused, one pleaded guilty and the other was acquitted. So, it is a very small but nevertheless important area. We cannot get quickly the information for previous years, but I will endeavour to do so in the interim period whilst the matter is being considered in another place.

The Hon. CAROLYN PICKLES: In the correspondence that the Opposition received the Law Society actually opposed the principle, so the ambiguity, I believe, is a red herring. It was the principle of this clause in the Bill that the Law Society opposed most strongly, as did the South Australian Bar Association.

The Committee divided on the amendment:

AYES (11)

Cameron, T. G.	Crothers, T.
Elliott, M. J.	Holloway, P.
Kanck, S. M.	Levy, J. A. W.
Nocella, P.	Pickles, C. A. (teller)
Roberts, R. R.	Roberts, T. G.
Weatherill, G.	

NOES (10)

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

Majority of 1 for the Ayes.

Amendment thus carried; clause as amended passed.

Clause 7—'Determination of appeals in ordinary cases.'

The Hon. CAROLYN PICKLES: I move:

Page 4, lines 3 to 9—Leave out all words in these lines.

This amendment is consequential on a previously successful amendment.

The Hon. K.T. GRIFFIN: I do not agree with it, but I have no option.

Amendment carried; clause as amended passed.

Clauses 8 to 10 passed.

New clause 10A—'References by Attorney-General.'

The Hon. CAROLYN PICKLES: I move:

Page 4, after line 26—Insert new clause as follows:

10A. Section 369 of the principal Act is amended by striking out 'if he thinks fit, at any time,' and substituting 'at any time, if the petition raises a question of law or discloses evidence relevant to the conviction or sentence that was not considered at the trial or sentencing of the person or on an appeal,'.

The purpose of this amendment is to restrict somewhat the Attorney-General's discretion to refer petitions for mercy to the Full Court to be dealt with as an appeal by the person convicted. It is important to note that the Attorney-General's discretion remains. I thank the Attorney for the information provided in relation to referrals to the Supreme Court. The conclusion which can be drawn from that is that not many people will be affected by the amendment. We are saying that the Attorney should refer the matter to the Full Court to deal with it as an appeal or seek the opinion of Supreme Court judges only in cases where a question of law is raised or where there is relevant evidence that was not raised at trial or on an appeal of that trial.

With regard to paragraph (b) of section 369, I suggest that it is obvious that there would be no need to seek the opinion of Supreme Court judges unless a question of law was raised. A question of law, by virtue of this amending Bill, includes a question about how judicial discretion should have been exercised. In relation to paragraph (a) of section 369, the Opposition argues that the referral to the Full Court for the petition to be determined as if it were an appeal should be made only in the circumstances envisaged by our amendment. This makes more sense when one takes into account the historical reasons for this section of the Criminal Law Consolidation Act. Section 369 was lifted from the Criminal Appeals Act of South Australia which was enacted in 1924 and which copied earlier English legislation.

The reason for the creation of an appeal mechanism as a response to petitions of mercy arose in the following way. For as long as there have been chiefs, kings or emperors in human history, there have been mechanisms for convicted criminals to appeal for mercy or clemency to the supreme ruler of the relevant society. From at least medieval times in England, a formal mechanism was developed for convicted people to petition the English monarch for mercy. Occasionally pardons were granted. The right to petition was incorporated into the 1688 English Bill of Rights. The difficulty that has occurred, right up to this century, has been that a royal pardon did not expunge the crime for which the person was convicted: the pardon only served to release the person from further punishment.

The Criminal Appeals Bill and its English predecessor sought to remedy this problem by effectively remitting the petitioner's grievance to the appellate court. Since the matter was heard as if it were an appeal the court had the power to quash the conviction if the grievance was well founded. In the usual case, one would expect that the convicted person (the petitioner) would have recourse to the Full Court immediately following conviction at trial unless the petitioner was out of time for such an appeal and was refused leave to appeal. Where the Full Court has not previously entertained an appeal from a convicted person it may be that a question of law will be argued for the first time following a reference to the Full Court by the Attorney-General.

In cases where the convicted person has already unsuccessfully appealed before petitioning the Governor, it is difficult to conceive of a case which would not involve fresh evidence or a question of law on the basis that the original appellate court had got it wrong. The point of all this is that a reference to the Full Court following a petition of mercy would generally be useless unless there is either a question of law or fresh evidence to consider. In these circumstances it would be appropriate for the Full Court either to dismiss the petition, quash the conviction and enter a verdict of acquittal, or set aside the conviction and order a retrial. That is the present situation.

Certainly, it would be useless to refer the matter to the Full Court to be dealt with as an appeal if the basis of the petition is that the crime was committed but there are reasons for a response of mercy by the State. Generally, one would imagine a petition of this nature would focus on the peculiar personal circumstances of the convicted person, whether those circumstances pre-existed or whether they arose after a conviction. One could imagine that all kinds of pitiable circumstances might arise which would mean absolutely no change to the legal situation regarding conviction and sentence. They may possibly elicit a response of mercy.

We are saying that it should be an honest, straightforward process. If the petitioner puts forward these pitiable circumstances and seeks release from prison it is up to the Governor, on the Attorney's advice, to say that the case is not deserving of mercy. It is a subjective assessment: it is not a legal assessment as such.

As an example, I will discuss the facts of the case of Ramsden. A decision of the Criminal Court of Appeal was handed down on 21 April 1995 (judgment No. S5058)—and I am only discussing here the facts which are in the public domain. Mr Ramsden was convicted of armed robbery in 1993. The offence concerned Ramsden robbing a service station with a small axe. The service station attendant was not injured. The crime appeared to have been carried out on a sudden urge, without much planning. A small amount of money was taken from the service station and almost all of it was recovered.

At the time of the offence Ramsden was aged 24. He had a history of juvenile offending but had not offended as an adult. He was unemployed. Six weeks prior to the armed robbery he had the shock of a phone call from his mother, with whom he normally resided, telling him that she had just been imprisoned with a non-parole period of nine months. Submissions were made to the sentencing judge that Ramsden had been shocked and depressed at discovering that his mother had been imprisoned.

Ramsden did not commit the robbery in disguise and, after buying some beer, he simply drove home and waited for the police to arrest him, which they did shortly thereafter. He pleaded guilty when the matter came before the District Court. He had spent 3½ months in custody before the date of sentencing. The sentencing judge sentenced him to prison for three years with a non-parole period of just one month. The Crown appealed. Meanwhile, Ramsden spent his one month in prison, got out of prison and got a job, and behaved without getting into any further trouble. The problem was that the Court of Appeal took a different view about sentencing and imposed a sentence of five years and eight months, with a minimum of three years' non-parole period. They had to find Ramsden, tell him that his job was finished and that he would be going inside for three years.

Ramsden petitioned the Governor for mercy. The Governor referred the matter to the Attorney who, in turn, referred it to the Court of Appeal to deal with as an appeal. Not surprisingly, the Court of Appeal decided that it would not revisit any matter which previously had been canvassed before the sentencing judge or the Full Court. The only new bit of information was a typographical error in the printed

judgment of the Full Court which was held to be insignificant.

I have gone into that example in some detail not to criticise the Attorney but to demonstrate that this is the sort of case which should not be decided on a subjective basis as to whether or not the mercy of a pardon is warranted. It turned out to be pointless to have the Full Court reconsider the sentencing remarks of a Full Court which consisted of three different judges of the Supreme Court.

Having said all that, I cannot understand why the Attorney has criticised the amendment for having wording which is wide. Again I stress that the purpose of the amendment is to limit the categories of cases which the Attorney can refer to the Full Court to be dealt with as an appeal. The Attorney's remarks seem to overlook the fact that it is by no means necessary that the Attorney remit matters to the Full Court. One would not expect the Attorney to waste the Full Court's time with matters which have no merit, perhaps because the fresh evidence adduced is obviously of insignificant weight or for whatever reason.

I cannot believe that this amendment will encourage petitions which have no chance of success. All the amendment does is to ensure that the Executive will make a subjective assessment of whether or not to exercise mercy, where that is appropriate. In those matters where consideration by the Full Court of a petition, dealing with it as an appeal, could make a real difference from a legal point of view, that process can take place at the discretion of the Attorney, just as things are at present. I thank the Attorney for responding to the comments I made in my second reading contribution.

The Hon. K.T. GRIFFIN: I strenuously oppose the amendment. I see no reason at all in the Leader of the Opposition's proposal to limit the discretion of the Attorney-General on a petition for mercy to refer a matter to the Full Supreme Court. If she is relying on Ramsden's case in trying to protect the revenue, she has her facts wrong. In Ramsden's case there was an error and in the petition for mercy Ramsden claimed that there was a problem in the information which had gone to the bench and to the trial judge and that when the trial judge had made his decision he inappropriately relied upon information which was inaccurate. In those circumstances the matter came to me and I sat on it for a couple of months, because I was not quite sure what we ought to do. I referred it to the Solicitor-General. The former Solicitor-General, now Chief Justice, recommended that the matter should be considered by the Court of Criminal Appeal. I thought that was fair and reasonable, because Ramsden felt that he had been hard done by by the trial judge and that an error had been made against him.

In those circumstances it was not appropriate for me as Attorney-General to recommend to the Governor that she exercise favourably her discretion of mercy and remit three, five or six months; it was appropriate to go back to the Court of Criminal Appeal. That was the reason it went there: I wanted to ensure that the thing was dealt with fairly and could be seen to be dealt with fairly and that Ramsden, who was in gaol in the circumstances to which the Leader of the Opposition referred, got a fair go. In those circumstances why should the courts not be asked to deal with the issue of the error from which Ramsden perceived he had suffered? That was the circumstance in which I recommended that Her Excellency refer the matter to the Full Court. I would have thought that that was quite a proper circumstance in which it should be done.

I strenuously oppose this amendment. No reason is given for restricting the discretion of an Attorney-General to somewhat limited circumstances. The discretion is there, but it is not a wide discretion. You can never tell what the circumstances may be where you may have to refer the matter to the Full Court on a petition for mercy. Every citizen has the right to petition Her Majesty's representative, the Governor, for the exercise of the prerogative of mercy. I do not agree with many which are referred to me by the Governor, and my recommendation is not to grant the prayer of the petition. But there are quite diverse circumstances—and you can never anticipate what they will be; they never fall into any particular category—where you have to recommend that in these circumstances and in the interests of justice the matter be referred to the Court of Criminal Appeal.

In one case recently, a person serving a long period of disqualification and in personal circumstances of terminal illness needed access to a car for the balance of about five months. In those circumstances my recommendation was that the Governor exercise her prerogative of mercy without the matter going up to the Court of Criminal Appeal or any other circumstances, and that was quite appropriate. My predecessor, the Hon. Mr Sumner, did that on occasions. I think there have been very few such occasions. The prerogative is there to deal with those circumstances in which no-one could have anticipated that there may have been a miscarriage of justice or some other difficulty. I would not agree that the Ramsden case was an appropriate case on which the Leader of the Opposition should determine that the power and discretion of the Attorney-General should be curtailed.

The amendment is very wide. It refers to a question of law or evidence relevant to the conviction or sentence that was not considered at the trail or sentencing or on appeal. Relevant evidence that was not considered at the trial or sentencing may have no effect on the outcome. Not all relevant evidence is of the same weight, and some relevant evidence may be of very little weight. The wording of the amendment could raise false expectations about the success of a petition of mercy and could encourage the lodging of petitions that have no chance of success. Neither of these results is desirable from the point of view of either the convicted person or the Government, which must process petitions which have no hope of success. Those are a range of reasons why I would urge members to reject the amendment.

The Hon. M.J. ELLIOTT: The Democrats will not support the amendment. I do not believe that the Hon. Ms Pickles has made a case for the existence of problems with the law as it stands. I do not think she has made a case that there has been abuse of the law as it stands, and I must say that the concept of mercy having rules put around it seems almost to be a contradiction in terms. She has sought here to narrow it down too much. There can be circumstances which are not adequately covered by the amendment. If there is not a problem—and I do not think there is any hint of a problem at this stage—I cannot understand why somebody would seek to amend the law.

The Hon. CAROLYN PICKLES: I am disappointed that the Hon. Michael Elliott cannot support the Opposition amendment. The Opposition will not divide on the issue.

New clause negatived.

Clause 11 passed.

Title.

The Hon. A.J. REDFORD: There was no opportunity earlier during the Committee stage to discuss the issue which

was raised by the Hon. Robert Lawson and which was touched upon by the Leader of the Opposition concerning the Crown or the Director of Public Prosecutions having a right to appeal on issues antecedent, as opposed to the defence having to secure leave, and the apparent difference between the position that the defence was in as opposed to the Director of Public Prosecutions. I have had the opportunity of both listening to and considering the Attorney's response to my concerns and those expressed by the Hon. Robert Lawson, and at this juncture I am disposed to accept them. Assuming that this Bill comes into law, I would invite the Attorney to approach the Director of Public Prosecutions to ensure that information regarding applications for leave to appeal by defence, the number of occasions on which the Director of Public Prosecutions appeals as of right on issues of antecedents and any comments that he may have are included in his annual report. In that way we as a Parliament can consider how the measure is working in the future and revisit it. As a matter of principle I have some concerns, but I understand and accept the Attorney's response to them.

The Hon. K.T. GRIFFIN: I give an undertaking that I will refer the matter to the DPP. I would not expect any difficulty with the request made by the Hon. Mr Redford, but I must at least put some qualification on it that it will be subject to appropriate procedures being put in place to enable that to be measured. I think it is a good idea, and I will pursue it.

Title passed.

Bill read a third time and passed.

STATUTES AMENDMENT (SUNDAY AUCTIONS AND INDEMNITY FUND) BILL

Adjourned debate on second reading.

(Continued from 26 October. Page 383.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The Opposition supports the second reading of this Bill. The issue of Sunday auctions is a delicate matter because there are still many who believe in the sanctity of the Christian sabbath. However, in the real estate industry, it must be recognised that public inspections of properties and negotiated sales can and do take place practically every Sunday. In these circumstances, it is difficult to logically justify the continuing ban on Sunday real estate auctions. Accordingly, the Opposition can accommodate the Government's move to allow such auctions.

The Opposition appreciates the problem that appears to have arisen in relation to the indemnity fund as identified in the advice of Crown Solicitor recently. The Opposition will not take issue with payment of the indemnity fund for the costs of auditing land agents' accounts or conveyance trust accounts. The same applies in relation to the cost of conducting disciplinary actions against agents or conveyancers. I understand that the Australian Democrats will be placing an amendment on file and we will consider that in Committee. We support the second reading.

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

GAS (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 26 October. Page 380.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): In supporting the second reading, the Opposition sees this as a mopping up Bill. A Bill such as this became inevitable after the sale of the Pipelines Authority of South Australia which itself followed the earlier sale of Government interests in SAGASCO Holdings Limited in October 1993. The Labor Party has been through its own internal debate in relation to these matters. In the end, the Party as a whole has taken a most responsible attitude towards these particular Government assets. We believe that our position in relation to the SAGASCO shareholding and the Pipelines Authority underlines the point that the modern Labor Party is not afraid to sell public assets in the interests of the people, but we do draw the line so much closer to the interests of the people than does this Government. We cannot even see where it draws the line: it is beyond the horizon.

We will continue to fight the battle against the desertion of public interests that is manifested in the selling off of all kinds of public infrastructure. We will continue to oppose the manner in which the Government goes about selling off schools and parts of schools and giving away control of the management of our water supply and our hospital system. But this particular Bill is not really the appropriate venue for that battle. It is a technical mopping up Bill in relation to the Gas Act, and we have no objection to it as such. We support the second reading.

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

STATUTES AMENDMENT (COURTS ADMINISTRATION STAFF) BILL

Adjourned debate on second reading.

(Continued from 26 October. Page 378.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The Opposition supports the second reading of this Bill. The Attorney has clearly explained the need for the Bill so as to remove any doubt about application of the Public Sector Management Act to various court staff. The Opposition takes the view that the Bill contains appropriate provisions as to employment of staff, disciplinary action and termination in relation to staff, superannuation for staff and so on. I do not think there is any doubt in the ordinary person's mind that court staff are public servants of some kind. This Bill puts the matter legally beyond doubt.

The specific provisions in relation to senior staff, tipstaves, judges' associates and youth justice coordinator are accepted by the Opposition. The Opposition is satisfied that the principle of maintaining the appropriate distance between Ministers and support staff is maintained in the provisions of the Bill. We support the second reading.

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

TOBACCO PRODUCTS (LICENSING)(MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 October. Page 309.)

The Hon. T.G. CAMERON: The Opposition is supporting this legislation. The budget papers stated:

An expected $25 million shortfall in tobacco tax receipts reflects reduced consumption and the adverse impact upon revenue of wholesale price discounting. The impact of progressive increases in Commonwealth tobacco excise on the price of tobacco products is having an impact on the level of tobacco consumption.

The Treasurer in his second reading explanation refined this figure down to $21.8 million. The Treasurer then stated on 24 October that discounting has cost approximately $14 million here in South Australia in lost tax revenue and that lower consumption accounted for an additional $8 million. The tobacco companies engaged in a discounting war in an attempt to maintain market share for their brand leaders. They also attempted to put a dent in State tax revenues as a result of the tax hikes that have been introduced in recent years. It would appear that they succeeded to the tune of $14 million.

It is not precisely clear which of these two reasons was the most important, but what is clear is the high level of taxation that State and Federal Governments are slugging smokers. On a pack of 30 smokes retailing at $6.23, the break-up of tax and so on is as follows: State Governments, 41.7 per cent ($2.60); Federal Government, 24.7 per cent ($1.54); manufacturers, 17.1 per cent ($1.06); and, retailers, 16.5 per cent ($1.03). The combined tax on a packet of cigarettes retailing for $6.23 is 66.4 per cent, that is, more than two thirds of the retail price.

Governments of all persuasions have in recent years jumped on the bandwagon of taxing smokers under the guise of being concerned about their health and their desire to cut cigarette smoking. One could imagine the panic among Treasurers across the nation if everybody immediately gave up cigarette smoking. Cigarette consumption is falling by about 4 per cent per year. Is this decline due to higher prices or the anti-smoking campaigns being run by Governments all over Australia? No-one is sure. If the Government was serious about its determination to cut smoking—and I guess this also applies to our Government when in office—particularly amongst young people, why will it not commit more funds to anti-smoking campaigns? The answer is self-evident: we want more taxes but we do not necessarily want people to give up cigarette smoking.

If the decline in cigarette smoking accelerated, would it mean that Governments would then increase the taxes in order to recoup lost revenue? It would appear that that process has already been set in train. As the price goes up, people give up cigarette smoking and Governments put up the tax even more to recoup the lost revenue perhaps created by the last tax hike.

The Government changed the tax arrangements on cigarettes to minimise discounting. However, it left a loophole. That is, wholesalers could say to retailers, 'Buy one now and get one free.' In other words, for every carton they paid for they would get one free. It meant that a combination of poor drafting and ingenuity on the part of the wholesalers resulted in a substantial loss of tax revenue to the Government. It would appear from the Treasurer's own statement that that was somewhere in the vicinity of $14 million. The cigarette companies recently announced disastrous profit results for the year. The only winners in the discounting war were the smokers, although they were short-term winners.

I do not support the high level of tax on cigarettes and believe that smokers, who are in a declining minority, are singled out for special attention; that is, no-one who is not a smoker—approximately 70 per cent of the population—has any sympathy for the other 30 per cent and are quite happy for them to be taxed inordinate amounts because it means that the 70 per cent do not pay taxes elsewhere. The Treasurer is correct when he says that it is a loophole. However, it is one he created when the Government made its $20 million tax grab in June. That tax grab was also done without the opportunity of parliamentary debate and was mysteriously not referred to in the budget. Notwithstanding this, we will support this measure. To not do so would be tantamount to sanctioning the cigarette companies flagrant exploitation of a loophole created by the Government.

The bonanza for smokers is over. It would be interesting to know if consumption rose during the discount period. However, I believe that it would probably be too difficult to ascertain. The Opposition supports the amendments set out in Division III of the Act. On the evidence put forward it would appear that it is necessary for these additional inspectorial powers to be introduced. The Opposition supports this Bill.

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I thank the honourable member for his support of the second reading of the Bill. My colleague the Hon. Diana Laidlaw wanted me to make a sympathetic response on behalf of smokers in South Australia in relation to the comments made by the Hon. Mr Cameron. I am sure that the Hons Ms Laidlaw, Mr Cameron, Ms Levy, Mr Crothers, Mr Irwin, Mr Redford, and others, have a list of their fellow smokers and meet outside often. 'I thank you for your contribution to the State economy' I think is what the Hon. Diana Laidlaw would have wished me to say. I thank the honourable member for his and his Party's support of the second reading.

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

CONSUMER TRANSACTIONS (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 26 October. Page 379.)

The Hon. ANNE LEVY: The Opposition supports this Bill, which is a is a tidying up Bill required by previous legislation that has already been passed by the Council. As with the Bill we had a week or so ago, it removes references to the Commercial Tribunal and transfers matters which previously went to the Commercial Tribunal to the Consumer and Business Division of the Magistrates Court.

I believe that we have to deal with one or two more such Bills, which the Attorney has foreshadowed will come to us soon. The Commercial Tribunal will then have no jurisdiction left at all and, when these Bills are proclaimed, the tribunal will be abolished. The one Bill for which the Attorney has not indicated a timetable is the travel agents legislation, which also refers to the Commercial Tribunal and which will have to be dealt with by this Parliament before that tribunal can finally be abolished.

The Hon. K.T. Griffin: Hopefully, it will be before Christmas but possibly the next session—not to be passed but merely to be introduced.

The Hon. ANNE LEVY: I understand from what the Attorney has said that it will be introduced and debated in February. The other matter with which this Bill deals is a change to consumer credit laws, which is a necessary

prerequisite to the introduction of the uniform consumer credit code and which has already been agreed to by this Parliament. Again, it is in the nature of tidying up, and it is necessary because of other legislation with which Parliament has agreed.

As I understand it, the uniform credit code is supposed to come into operation early next year, and I wonder whether it is still on track in terms of the time when it will become operative. This Bill cannot be proclaimed until the Commercial Tribunal is empty, but it will need to be proclaimed when the uniform credit code becomes operative. I hope that the two will coincide, although only certain clauses of the Bill, rather than the whole Bill, could be proclaimed.

The one change that the Bill makes is that consumer contracts affected by the consumer credit legislation are being lifted from $20 000 to $40 000. The $20 000 limit was imposed many years ago and it is appropriate that it be doubled but, while the level to which it is to be raised will cover many car purchases, it will not cover much in the way of real property, which will largely remain quite separate from this legislation. The Opposition supports the Bill which, as I say, can be regarded as a tidying up matter, and we are happy to expedite it through the Parliament.

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

SOUTH AUSTRALIAN COUNTRY ARTS TRUST (REVIEW) AMENDMENT BILL

Returned from the House of Assembly without amendment.

HOUSING CO-OPERATIVES (HOUSING ASSOCIATIONS) AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

The purpose of this Bill is to amend the *Housing Co-operatives Act, 1991* and extend its coverage to community housing associations. The intention is to create an enabling mechanism to establish a consolidated community housing program in South Australia.

The introduction of the Bill will extend the provisions and benefits of the *Housing Co-operatives Act,* which already works successfully for housing co-operatives, to community housing associations and to their tenants, some of whom represent very disadvantaged groups within our community.

The *Housing Co-operatives Act* currently provides for the registration, incorporation and regulation of tenant managed housing co-operatives. The Bill seeks to amend the Act through the provision of a separate schedule that will be responsive to the distinctive housing management needs of community housing associations, their tenants and members whilst leaving the Act substantially unchanged as it relates to housing co-operatives.

A key objective of the amendments is to secure the government's interest in the capital assets held by community housing associations. This will be achieved through the application of a statutory charge that will be affixed to the title of all program properties.

The statutory charge will enable housing associations to retain title over their properties and at the same time ensure the security of the substantial public investment in the program.

Community housing associations and housing co-operatives originally were both a part of the Rental Housing Co-operatives Program. In 1989 a review of the program was instigated.

Tenant managed housing co-operatives subsequently became involved in a restructure which culminated in the development and enactment of the *Housing Co-operatives Act, 1991,* and the establishment of the South Australian Co-operative Housing Authority.

Whilst the management of the Community Housing Associations Program became the responsibility of the South Australian Housing Trust, however, the day to day administration of the program, along with the Housing Co-operatives Program and the federally funded Community Housing Program, became the responsibility of the South Australian Co-operative Housing Authority.

Capital funds to community housing associations which had enabled them to purchase and build properties were frozen during 1990, pending a restructure, due to the fact that the program was heavily reliant on government subsidies.

An advisory committee was established to decide on the legal and financial arrangements for the new program, with representation from government, housing associations and the peak body for housing associations, the Community Housing Associations Forum.

Legal and financial propositions for new program arrangements were contained in a series of issue papers which were released for consultation with the community housing sector during 1991.

A final restructure report was presented to the previous Minister, during 1992.

The need for an effective management framework is important given that housing associations serve the housing needs of disadvantaged people within our community, including people with intellectual and physical disabilities, refugees, survivors of domestic violence and people on statutory incomes.

In the past 18 months there has been a concerted effort to develop a viable legal and financial framework for the program. In September 1994 the South Australian Co-operative Housing Authority (SACHA) assumed responsibility for community housing associations.

Under the guidance of the Community Housing Associations Program Advisory Committee, reporting to SACHA, amendments to the *Housing Co-operatives Act* have been developed along with new Funding Agreements to reflect the restructured program.

A new rent structure has been developed in consultation with housing associations and has recently been introduced to reduce the reliance on government subsidies and increase the potential for the future growth and sustainability of the program.

The new rent structure will better utilise income derived from rent, providing housing associations with the opportunity to exercise more financial control over their day to day management, promote the benefits of best practise and establish accountable program reporting to the South Australian Community Housing Authority.

The Bill to amend the *Housing Co-operatives Act* will integrate the activities of housing associations and co-operatives and prescribe the financial and management arrangements of the community housing programs, which will be administered by a reconstituted statutory authority, the South Australian Community Housing Authority.

Accountability for program policy and performance will be the responsibility of the South Australian Community Housing Authority.

The membership of the Authority will be retained at its current level of seven members.

Five members will be Ministerial appointments. In order to provide for community housing associations one of these will be selected from a panel of three persons nominated by the peak body for housing associations, the Community Housing Associations Forum.

The remaining four Ministerial appointments will have expertise in finance, the housing industry or community housing.

Two members with expertise from the housing co-operatives sector will be selected from the housing co-operatives sector in the existing manner.

Housing associations are currently incorporated under the Associations Incorporation Act, 1985. This enables them to operate as incorporated bodies in areas of business activity not related to housing.

The Bill will enable them to remain as incorporated bodies under the Associations Incorporation Act, whilst registering under provisions of the amended *Housing Co-operatives Act,* which will be renamed the South Australian Co-operative and Community Housing Act. The benefit for housing associations in retaining formal

links with both Acts will be that they are able to maintain their distinctive organisational character without the restriction of being confined to housing activities only.

For the purposes of registration a housing association will be required to comply with the following principles. That the housing association:

- is a 'not for profit' organisation
- is formed principally for the purpose of housing people
- provides services without artificial restriction
- provides a copy of their constitution to the Authority
- manages on the basis of natural justice
- applies any surplus obtained by the association to the provision of housing services.

A further key objective of the Bill is to provide the financial mechanism to pool the assets of the community housing program and to enable them to appear on the balance sheet of the South Australian Community Housing Authority.

The pooling of assets across the community housing program will effectively serve to create economies of scale and provide security for borrowings which will, in turn, result in greater security for the program and improved housing opportunities for housing associations and their tenants.

Through the introduction of appropriate legal and financial instruments contained in the Bill, the assets of the community housing program can be used to create sustainable growth across the sector.

Any net capital growth, realised through improved management of the community housing program assets, can be utilised to generate increased program funds to meet the demand for housing and can be applied towards servicing the program debt, representing improvements and efficiencies in financial practise.

The financial arrangements will allow for separate program reporting within the community housing program. This will enable program needs, costs, community service obligations and government subsidies to be individually identified.

We will not allow the community housing entity to become debt burdened as has happened with the Housing Trust. Most properties receive rebated rent and this subsidy must be identifiable and sustainable in the long term.

The application of appropriate financial regulations for the community housing program will ensure program accountability.

The Authority will require regulatory powers including the ability to restrict the borrowings of a registered housing association so that at any time the total borrowings do not exceed an amount equal to the current value of its properties.

Regulatory powers will enable the Authority to order amendments to the constitution of an association, as required, to ensure proper accountability and administration standards are set in place.

The Bill will provide the Authority with powers of investigation under appropriate circumstances.

It will provide the Government with the ability to protect the rights and interests of community housing members and tenants who have a disability by enabling them to be represented by a guardian or other nominated person.

The Bill will extend the provisions to appeal, available to housing co-operatives under the current Act, to housing associations. These provisions will make it possible for appeals to be made against decisions of a housing association as well as against decisions of the South Australian Community Housing Authority.

The amendments contained in the Bill provide for full accountability to the Minister through adequate reporting of the activities of the community housing program by the South Australian Community Housing Authority.

In view of the Commission for Audit's recommendations, and those of the Treasurer, the Bill contains provisions for dividends and tax equivalence payments similar to those contained in the *Housing and Urban Development (Administrative Arrangements) Act 1995*, reflecting a consolidated housing portfolio.

Performance agreements, across the portfolio, will specify the tax equivalents and dividends in reflection of an integrated budgeting and resource allocation process.

Capital adequacy and asset to debt ratios are already in operation under the *Housing Co-operatives Act* and will be extended to community housing associations under the provisions of the Bill.

The restructure of community housing in South Australia, reflected in the amendments, will meet the objectives of ensuring a more accountable, financially viable and stable community housing sector by providing the necessary legal structure to regulate the activities of housing associations.

The Bill will provide a structure to establish fair and equitable access to the program's housing resources, equity in rent setting across the program and improvements in the area of asset management through improved program reporting and accountability measures.

Finally the Bill to amend the existing *Housing Co-operatives Act* will provide the appropriate mechanism to establish, regulate and sustain a viable community housing program that is responsive to the needs of both community and government.

I commend the Bill to Honourable Members.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Substitution of s. 1

This clause substitutes a new short title in the principal Act to reflect the inclusion of housing associations.

Clause 4: Amendment of s. 3—Interpretation

This clause amends various definitions contained in the principal Act and inserts some new definitions necessitated by the proposed amendments.

Clause 5: Amendment of s. 8—The Authority

This clause substitutes a new section 8(1) which provides that the South Australian Co-operative Housing Authority is continued in existence as the *South Australian Community Housing Authority.*

Clause 6: Amendment of s. 9—Membership of the Authority

This clause amends section 9 of the principal Act by substituting a new subsection (1) dealing with the constitution of the Authority. Under the new provision the Authority will consist of seven members of which—

- five are appointed by the Governor (four being persons with appropriate expertise nominated by the Minister and one being chosen from a panel of three submitted by the Community Housing Associations Forum Incorporated); and
- two are elected, in accordance with the regulations, by the members of registered housing co-operatives.

Subsection (4) is deleted as a consequential amendment.

Clause 7: Amendment of s. 10—Conditions of Office

This clause consequentially amends section 10 of the principal Act so that it refers to the "Community Housing Associations Forum Incorporated".

Clause 8: Amendment of s. 16—Functions and powers of the Authority

This clause makes various amendments of a consequential nature to section 16 of the principal Act. It also amends subsection (4)*(a)* so that, consistently with the *Housing and Urban Development (Administrative Arrangements) Act 1995*, it refers to the Minister rather than the Treasurer.

Clause 9: Amendment of s. 18—Staff and use of facilities

Section 18 of the principal Act is amended so as to be consistent with the *Housing and Urban Development (Administrative Arrangements) Act 1995*.

Clause 10: Substitution of heading

This clause renames Division V of Part II "Operational, Property and Financial Matters" to more accurately reflect the contents of that Part as amended by this Bill.

Clause 11: Insertion of ss. 18A, 18B, and 18C

This clause inserts the following sections in Division V of Part II:

18A. Transfer of property, etc.

This provision allows the Minister, with the concurrence of the Treasurer, to transfer an asset, right or liability of the Minister to the Authority or to transfer an asset, right or liability of the Authority to the Minister, another statutory corporation (ie. a corporation constituted under the *Housing and Urban Development (Administrative Arrangements) Act 1995*), the South Australian Housing Trust, the Crown or an agent or instrumentality of the Crown or, in prescribed circumstances and conditions, to some other consenting person or body.

18B. Tax and other liabilities

Under this provision the Treasurer may require the Authority to pay, for the credit of the Consolidated Account, amounts the Treasurer determines to be equivalent to income tax and any other taxes or imposts that the Authority would be liable to pay under Commonwealth law if it were constituted and organised in a manner the Treasurer determines appropriate for the purposes of this subsection as a public company.

The Treasurer will determine the time and manner of payment of such amounts.

18B. Dividends

This provision provides that the Authority must, if required by the Minister, recommend to the Minister that a specified dividend or dividends be paid by the Authority for that financial year, or that no dividend or dividends be paid by the Authority, as the Authority considers appropriate.

The Minister may, in consultation with the Treasurer, approve a recommendation of the Authority or determine that a dividend or dividends specified by the Minister be paid, or that no dividend be paid.

If a dividend is to be paid, the Minister, in consultation with the Treasurer, will determine the time and manner of payment.

The Minister may allocate an amount (or part of an amount) received under this section in a manner determined by the Minister or may pay that amount (or part of it) for the credit of the Consolidated Account.

The Authority may not delegate the task of making a recommendation under this provision.

Clause 12: Amendment of s. 21—Registers and inspection

Section 21 of the principal Act is consequentially amended to include a duty to maintain a register of housing associations registered under the Act.

Clause 13: Amendment of s. 63—The Fund

Section 63 of the principal Act is consequentially amended to include registered housing associations. Subsection (4)*(f)* and subsection (5) are also amended so that, consistently with the *Housing and Urban Development (Administrative Arrangements) Act 1995*, they refer to a decision being made by the Minister after consultation with the Treasurer.

Clause 14: Substitution of heading

This clause substitutes the heading "Appeals" for Part XI of the Act.

Clause 15: Amendment of s. 84—Appeals

Section 84 of the principal Act provides a mechanism for the resolution of disputes between members of a housing co-operative or between a member and the co-operative.

Currently members of housing co-operatives may apply to a Review Officer for relief and if the Review Officer is unable to resolve the dispute within a reasonable time through conciliation, the matter is referred to either the Authority or the Minister, depending on the nature of the dispute, for a final decision.

Under the proposed amendments the same categories of disputes will be dealt with, but the applicant will appeal directly to the "relevant appeal authority" (which is defined to mean the Authority or the Minister, depending on the nature of the dispute). The relevant appeal authority may, however, only hear and determine an appeal if it is satisfied that the appellant has previously made a genuine attempt to have the dispute resolved through a prescribed mediation or conciliation process and that mediation or conciliation process has failed to resolve the dispute or has failed to resolve the dispute within a reasonable period of time.

The other amendments which it is proposed be made to this section are consequential to this change and ensure that the relevant appeal authority has the same powers as the current review and appeal bodies have.

Clause 16: Amendment of s. 107—Regulations

Section 107 of the principal Act is amended to include the power for regulations to make different provision according to the persons, things or circumstances to which they are expressed to apply.

Clause 17: Substitution of schedule

This clause substitutes a new schedule (contained in schedule 1 of this Act) into the principal Act.

Clause 18: Revision of penalties

This clause provides that the principal Act is further amended as set out in schedule 2.

SCHEDULE 1: Schedule Substituted in Principal Act

This new schedule specifically deals with housing associations and the application of various provisions of the Act to them.

SCHEDULE 2: Revision of Penalties

This schedule increases the monetary penalties currently provided under the Act and removes all references to divisional penalties.

SCHEDULE 3: Transitional Provisions—Registered Housing Associations

This schedule provides for the making of proclamations deeming certain existing associations to be registered housing associations on the commencement of the schedule. A proclamation made under the schedule may be made subject to conditions contained in the proclamation.

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

TELECOMMUNICATIONS (INTERCEPTION)(MISCELLANEOUS) AMENDMENT BILL

Returned from the House of Assembly without amendment.

STAMP DUTIES (VALUATIONS—OBJECTIONS AND APPEALS) AMENDMENT BILL

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

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I move:

That this Bill be now read a second time.

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

Leave granted.

This Bill seeks to amend the Objection and Appeals provision of the *Stamp Duties Act* to take into account the correctness of valuation in the conveyancing of any property.

The *Stamp Duties Act* currently does not provide the taxpayer with a means to object or appeal on the grounds of the correctness of a valuation undertaken by the Valuer-General on behalf of the Commissioner of Stamps.

The Crown Solicitor raised his concerns on this issue stipulating that the subject provisions do not offer the taxpayer any opportunity to dispute the correctness of the Valuer-General's valuation nor provide any remedy as there is no appeal under the *Valuation of Land Tax Act 1971*.

The Bill therefore seeks to amend the *Stamp Duties Act* to enable taxpayers to object or appeal against the correctness of a valuation sought by the Commissioner of Stamps. However, an objection or appeal will not be available if the consideration for sale has been used for the purposes of the assessment of duty (as this is the amount determined by the parties to be the value of the relevant property). The Court will also be able to dismiss or determine an appeal (with costs) if it appears that the proceedings are frivolous, or if there is no significant issue in dispute.

Consultation has taken place with a wide group of professional bodies with an interest in this area.

As a result of representations made, the draft Bill was amended to deal with a specific concern raised.

The Government is very appreciative of the input made into this Bill by these bodies.

I commend this Bill to Honourable Members.

EXPLANATION OF CLAUSES

Clause 1: Short title

This clause is formal

Clause 2: Amendment of s. 24—Objections and appeals

This amendment will provide for an objection or appeal on the ground that there has been an incorrect determination of market value of property for the purposes of the assessment of duty (other than where the consideration on a sale has been treated as the market value of the relevant property). If an objection is lodged, the Treasurer will be able to receive a report on the matter or request or consider a new valuation. The Treasurer or the Court will be able to alter an assessment if it is found that there has in fact been an incorrect determination of market value. However, an objection or appeal will not be available if the consideration for sale has been used for the purposes of the assessment of duty. The Court will also be able to dismiss or determine proceedings (with costs against the appellant) if it appears that the proceedings are frivolous, or that there is no significant issue on which to dispute the determination of market value. A finding that there has been an incorrect determination of value will not affect any valuation of the Valuer-General under another Act.

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

SUPERANNUATION (CONTRACTING OUT) AMENDMENT BILL

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

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I move:

That this Bill be now read a second time.

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

Leave granted.

The Government is continuing the process of reviewing public sector functions and services with a view to contracting out these functions and services where appropriate.

As a consequence of the contracting out of functions and services, public sector employees are provided with offers of employment with the successful contractor.

The Government supports as many public sector employees moving to the contract employer as possible. To facilitate this, the Government provides incentive payments to persons and requires the contract employer to recognise public sector service and provide a minimum period of two years employment.

The acceptance of any offer of employment with the contract employer is voluntary.

The Government therefore deems it inappropriate that employees who have voluntarily accepted an offer of employment with the contract employer, and as such have received an incentive payment together with a period of employment, be able to access their retirement pension whilst still employed with the contract employer.

The provisions of the superannuation act 1988 as they currently exist do not allow for the preservation of superannuation entitlements for persons who resign having attained age 55. Furthermore, there is no requirement to preserve beyond age 55 for persons who resign prior to having attained age 55, elect to preserve their accrued entitlement at that time and request payment upon attaining age 55.

This bill which the Government now introduces is a positive step to address these issues.

The bill seeks to preserve the superannuation entitlements of a person aged 55 or over at the time of acceptance of an offer of employment with the contract employer until such time as his or her employment with the contractor ceases.

The bill also provides that where a person aged under 55 years at the time of acceptance of an offer of employment elects to preserve his or her accrued entitlement in the scheme, preservation will apply until employment with the contractor ceases and he or she has attained age 55.

The bill does, however, provide for persons accepting an offer of employment with the contractor, as an alternative, to access an immediate lump sum entitlement.

This bill incorporates within the superannuation act 1988 superannuation provisions which are consistent with those passed by this parliament in respect of the sgic (sale) act and the pipelines authority (sale of pipelines) amendment act.

EXPLANATION OF CLAUSES

The provisions of the Bill are as follows:

Clause 1: Short title

Clause 2: Commencement

Clauses 1 and 2 are formal.

Clause 3: Amendment of s. 4—Interpretation

Clause 3 inserts three new definitions for the purposes of amendments made by the Bill.

Clause 4: Amendment of s. 27—Retirement

Clause 4 amends section 27 of the principal Act to make it clear than an outplaced employee over 55 only receives a retirement benefit under section 27 if he or she elects to do so.

Clause 5: Amendment of s. 28—Resignation and preservation of benefits

Clause 5 makes a similar amendment in relation to section 28 of the principal Act.

Clause 6: Insertion of ss. 28B and 28C

Clause 6 inserts new sections 28B and 28C. Section 28B provides benefits to outplaced employees over 55 and section 28C provides benefits to outplaced employees under 55.

Clause 7: Amendment of s. 34—Retirement

Clause 7 makes it clear that retirement benefits in the old scheme do not apply for the benefit of an outplaced employee who is over 55.

Clause 8: Amendment of s. 39—Resignation and preservation of benefits

Clause 8 inserts a provision into the old scheme that corresponds to section 28(8) inserted by clause 5 in the new scheme.

Clause 9: Insertion of ss. 39B and 39C

Clause 9 inserts new sections 39B and 39C. These sections correspond with sections 28B and 28C in the new scheme. Subsection (4)*(a)* of section 38B provides that a contributor with less than 10 years membership of the old scheme will receive the pension benefit provided for contributors whose membership is over 10 years. Entry to the old scheme was closed in May 1986 and it is unlikely that any one will fall into this category.

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

FRIENDLY SOCIETIES (MISCELLANEOUS) AMENDMENT BILL

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

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I move:

That this Bill be now read a second time.

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

Leave granted.

The purpose of this Bill is to amend the *Friendly Societies Act 1919* in order to provide Government with improved abilities to regulate and monitor the activities of friendly societies in this State.

There are 7 friendly societies registered in South Australia. The combined members' funds controlled by these societies is in excess of $800 million and the societies are a significant force in the non-bank financial institution sector.

Friendly societies are facing increasing competition from other types of financial organisations that offer similar products. Additionally, the Federal Government is reviewing the proposed introduction of extended deeming for social security means test purposes, which could remove a competitive advantage friendly society investment products have enjoyed over other forms of investment.

The *Friendly Societies Act* is dated and no longer provides a comprehensive and relevant framework for the industry to rely on.

In addition to these competitive issues, the Australian Financial Institutions Commission (AFIC), is currently working together with representatives of all States and the friendly societies to introduce a national uniform approach for the monitoring of friendly societies. Such work has already successfully occurred with credit unions and building societies.

The basis for AFIC's supervisory scheme for friendly societies is the *Financial Institutions Code* (FI Code) which currently applies to all building societies and credit unions and was made law in South Australia in 1992.

The Government had hoped the AFIC scheme would have been ready for implementation from 1 January 1996, but our latest advice is that implementation will now occur on 1 July 1996 at the earliest.

In view of this delay in the introduction of the national supervisory scheme and the increasing competitive pressures being experienced by friendly societies, the Government is not prepared to rely on the inadequate powers in the current Act to regulate and monitor the activities of friendly societies, or for friendly societies in this State to be disadvantaged by obsolete legislation compared to their interstate counterparts. Accordingly, the Amendment Bill has been prepared to incorporate relevant sections of the FI Code and the recently reviewed Friendly Societies Acts of Victoria and Queensland as an interim measure until the AFIC scheme takes effect.

Monitoring of these societies is important as it provides an information base to analyse their performance. In the unlikely event that difficulties come to light, an opportunity is provided for early remedial action. Unless such action is taken in a timely and responsible manner there is a risk not only to the friendly society concerned, but to the credibility of the industry as a whole.

The amendments before you provide considerable powers to the responsible Minister to intervene in the activities of friendly societies. While these powers are substantial, they will only be called

on in exceptional circumstances. The industry is supportive of the need for intervention in such circumstances.

In addition, the Bill has brought the previously antiquated penalties that were applicable to various breaches of the *Friendly Societies Act* into line with the current penalties applying to similar financial institutions. Similarly, the duties applicable to the officers of a society have been updated to reflect the expectations required by the public of officers of financial organisations.

The industry has indicated to the Government that it has not been served well in the past with respect to timely processing of rule changes. The amendments seek to streamline some of the administrative and reporting processes, thereby providing the industry with a better service.

The introduction of these responsible and prudent changes to the Act should enable members of these societies to have additional confidence in the operations and actions of the societies.

The FI Code and the Acts of Queensland and Victoria, which have been recently brought up to date through amendments, have been drawn on extensively when preparing these amendments to the *Friendly Societies Act*. Much of what is contained in this Amendment Bill is already law with respect to other non-bank financial institutions in this State or in other parts of Australia.

The amendments contained in the Bill are of an interim nature. Further changes to the Act could have been proposed in this Bill, but, on balance, those other changes were not considered essential in view of the nationwide regulation and monitoring of friendly societies expected to commence on 1 July 1996. It is hoped to bring new legislation before the House next year to implement the AFIC co-ordinated monitoring of these societies.

I commend the Bill to Honourable Members.

EXPLANATION OF CLAUSES

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 3—Interpretation

This clause inserts a modern definition of building society and refers the reader to new section 30 for the definition of a review of a society.

Clause 4: Amendment of s. 7—Objects for which funds may be maintained

These amendments update the references to Acts and other matters referred to in the list of objects for which funds may be maintained. A number of other objects for which funds may be maintained have also been included so as to accurately reflect the funds that societies are actually establishing and maintaining. The requirement that a society must keep separate funds in relation to sub-objects has been deleted as it appears to be an unreasonable and unwieldy requirement.

Clause 5: Amendment of s. 10—Societies may make general laws or rules

At present, the Crown Solicitor is required to certify that the general laws or rules of a society (or rescission of, or changes to, laws or rules) are valid. The Minister is then required to register the laws or rules. The changes proposed will enable a society to send laws or rules to a legal practitioner (who must not be an officer of the society) for certification of validity. The Minister will register the laws or rules after receiving—

- copies of the general laws or rules; and
- the certificate of validity (if any); and
- a statement in writing from the committee of management of the society (signed by the secretary of the society) that the laws or rules do not adversely affect the financial soundness of any fund of the society; and
- any other information that the Minister may require.

The Minister may, if a general law or rule made is of an insignificant nature, waive the requirement for a certificate of validity.

Clause 6: Substitution of s. 11

11. Funds to be deposited in bank until invested

New section 11 provides that funds of a society must, until invested, be deposited in a bank and funds may only be withdrawn from a bank by cheques signed by two persons authorised to do so by the committee of management of the society.

The requirement under the current section 11 is too cumbersome.

Clause 7: Amendment of s. 12—Mode of investment of funds

This amendment strikes out subsections (4), (5) and (6). Subsection (5) is no longer required due to the insertion of the definition of building society in section 3 (see clause 3 above). Subsections (4) and (6) cause some conflict with the role of the South Australian Office of Financial Supervision (the proper body to specify the terms and amounts of deposits made at building societies by others). Also, the Minister has a broad power under section 12(1)*(g)* to approve other forms of investment. Subsections (4) and (6) are no longer required.

Clause 8: Amendment of s. 14—Trustees not to accept certain securities

Clause 9: Amendment of s. 19—Trustees to be personally liable to see that security is given

These amendments are consequential on the passage of clause 36 which proposes to insert new section 52 (General offences and penalties).

Clause 10: Repeal of s. 20

It is proposed to repeal this section as it is considered preferable to leave offences dealing with fraud to the general criminal law.

Clause 11: Substitution of s. 22A

22A. Deferral of payments

New section 22A provides that the Minister may (on application by the society, or at the Minister's own initiative) if of the opinion that payments of benefits to members of a society would be prejudicial to the financial stability of the society or the interests of members, direct the society to defer the payment of benefits for such period and on such conditions as the Minister thinks fit. Such a direction continues in operation until it expires or is withdrawn by the Minister. By further written direction, the Minister may—

- extend the period for which such a direction is to operate; or
- amend the terms of the direction; or
- withdraw the direction.

If a society fails to comply with a direction under this proposed section, the society and any officer who is in default are each guilty of an offence and liable to a maximum penalty of $20 000.

New section 22A gives the Minister the power to direct a society to defer payments to members whereas the previous section 22A only gave the Minister the authority, on application by the society, to defer such payments.

Clause 12: Substitution of s. 27

27. Separation of funds and accounts

New section 27 provides that subject to this Act, a society must keep separate accounts in respect of each of the society's funds and that money belonging to one fund of a society must not be used in any manner for the advantage or otherwise of any other fund of the society.

However, the Minister may, on application by a society, authorise the transfer of money from one fund to another fund of the society or the making of a rule by the society in general meeting to provide for the amalgamation of two or more funds of the society. The Minister may only give such an authorisation if satisfied (on the written recommendation of an actuary) that such a transfer or amalgamation would not prejudice the interests of the members of the relevant funds.

If a society contravenes this section, the society and any officer of the society who is in default are each guilty of an offence and liable to a maximum penalty of $20 000.

New section 27 makes it clear that the Minister may authorise the amalgamation of funds whereas it was not altogether clear prior to this amendment whether societies could amalgamate funds. The ability to amalgamate funds in certain circumstances is desirable.

Clause 13: Amendment of s. 27A—Appropriation and transfer of surplus funds

The proposed amendments to section 27A are consequential on the passage of clause 16 (which provides for new section 30) and clause 12 (which provides for new section 27).

Clause 14: Amendment of s. 28—Audit of accounts

This proposed amendment replaces the requirement for societies to conduct 6 monthly audits with the requirement for annual audits.

Clause 15: Amendment of s. 29—Annual returns

This proposed amendment provides that the annual returns for a society must be forwarded to the Minister on or before 31 October each year (or such later date as the Minister may allow) instead of 1 September as is the current position. The October date is in line with the *Corporations Law*. Paragraphs *(d), (d1)* and *(d2)* of subsection (1) are to be struck out as the information contained in those paragraphs was only required by the Public Actuary when the actuarial work for societies was performed by the holder of that office (which no longer exists). This information is not required by the Minister. In addition, a society must, if so required by the Minister, forward within a specified time to the Minister further

returns (which may or may not be periodic) containing specified information.

Clause 16: Substitution of s. 30

30. Reviews

New section 30 provides that a society must, at least once every two years, appoint an actuary to carry out a review of the affairs of the society, including—

- an investigation of the financial position of the society; and
- a valuation of the assets and liabilities of the society.

However, a society must cause a review of its affairs to be carried out whenever required by the Minister to do so (whether or not a review is due).

Some of the matters that an actuary carrying out and reporting on the review of a society's affairs must have regard to are—

- the benefits offered by the society;
- the society's assets and investment policies;
- the ratio of the society's assets to its liabilities;
- the adequacy of the society's contribution rates;
- the current and likely future expenses of the society;
- the extent of the society's free reserves;
- the society's insurance arrangements;
- the adequacy and accuracy of data supplied by the society;
- whether any members have been exposed to risk and a full description of that risk;
- whether there has been a contravention of or failure to comply with this proposed Act or the society's laws or rules;
- any other matter prescribed by regulation.

The actuary must provide the society with the written report and the Minister with a copy of the report. The Minister may exempt (conditionally or unconditionally) a society from complying with this proposed section. If a society contravenes this section, the society and any officer of the society who is in default are each guilty of an offence and liable to a maximum penalty of $20 000.

The current section 30 only requires a review (currently termed a "valuation") every 5 years. New section 30 lists the matters to which an actuary carrying out a review must have regard and will enable the Minister to keep more up-to-date with the state of a society's affairs.

Clause 17: Amendment of s. 30A—Minister's power to require submission of proposals

These proposed amendments are consequential on the passage of clause 16 (insertion of new section 30) and clause 36 (insertion of new section 52).

Clause 18: Amendment of s. 33—Certain documents to be exhibited

This proposed amendment is consequential on the passage of clause 16 (insertion of new section 30).

Clause 19: Substitution of s. 34

34. Branches to be included in returns

Clause 20: Amendment of s. 35—Branches to supply information to principal secretary

These proposed amendments are consequential on the passage of clause 16 (insertion of new section 30).

Clause 21: Amendment of s. 35A—Minister may require withdrawal of certain advertisements

These proposed amendments are consequential on the passage of clause 36 (insertion of new section 52).

Clause 22: Amendment of s. 37-Application by society of certain surplus assets

Clause 23: Amendment of s. 38—Returns to be prepared and published

These proposed amendments are consequential on the passage of clause 16 (insertion of new section 30).

Clause 24: Substitution of ss. 39 and 40

39. Production and inspection of accounts, etc. of society

New section 39 provides that a society must, at the request of the Minister or of any person authorised by the Minister, produce all books in the society's possession or power. The maximum penalty for failure to comply with this proposed section is $20 000. The books may be inspected and extracts taken from or copies made of those books.

Concerns about the inadequacies of current section 39 had been expressed (particularly in relation to the apparent inability of the Minister to demand production of the books of a society so as to enable a proper inspection to take place) and new section 39 addresses these concerns.

Clause 25: Amendment of s. 44A—Amalgamation

The proposed amendments are consequential on the passage of clause 12 (insertion of new section 27) and clause 26 (in particular, the insertion of new section 44AC).

Clause 26: Insertion of ss. 44AB and 44AC

44AB. Minister may direct transfer of engagements

New section 44AB provides that the Minister may direct a society to transfer the whole of its engagements, or the engagements of a specified fund or funds of the society, to another society (which may be a foreign friendly society) if the committee of management of the other society has, by resolution, consented to the proposed transfer.

The Minister must not direct a society to transfer its undertakings under this proposed section unless the Minister is of the opinion that—

- the society has been notified by the Minister of a contravention by it of this Act or the society's laws or rules and has failed to remedy the contravention within the time allowed by the Minister; or
- the affairs of the society are being conducted in an improper or financially unsound way; or
- the transfer of engagements would be in the best interests of the members or creditors of the society.

A society may, within seven days after receiving a direction under this new section, make a submission to the Minister in relation to the direction and after giving consideration to the submission, the Minister must confirm the order for a transfer or revoke the order.

44AC. Consequences of amalgamations and transfers of engagements

New section 44AC provides that on an amalgamation under new section 44A or a transfer of the whole of the engagements of a society under new section 44AB—

- the members of the divesting society become members of the acquiring society; and
- the property of the divesting society becomes the property of the acquiring society; and
- the rights and liabilities of the divesting society become rights and liabilities of the acquiring society.

On a transfer of engagements of a specified fund under new section 44AB—

- the members of the divesting society's fund become members of the acquiring society; and
- the fund becomes the property of the acquiring society; and
- the rights and liabilities of the divesting society in relation to the fund become rights and liabilities of the acquiring society.

Acquiring society and divesting society are defined for the purposes of this proposed section.

These new sections are adapted from provisions of the *Financial Institutions Code* and are similar to those contained in the *Friendly Societies Act 1991* of Queensland—the most recently revised State Act dealing with friendly societies.

Clause 27: Insertion of s. 45AA

45AA. Application of Corporations Law in relation to dissolution of societies

New section 45AA provides for the application of Parts 5.4 to 5.8 of the *Corporations Law* (with such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed) as if a society were a company and as if those Parts were incorporated into the principal Act.

Those particular Parts of the *Corporations Law* provide for the winding up of corporations.

Clause 28: Amendment of s. 45A—Dissolution of societies

These amendments are consequential on the passage of clause 32 (insertion of new section 45F) and clause 27 (insertion of new section 45AA). The reference to the *Corporations Law* in subsection (6) has been subsumed into new section 45AA.

Clause 29: Substitution of s. 45B

45B. Notice of dissolution

New section 45B provides that a society must cause a notice of dissolution to be published in the *Gazette* and in a daily newspaper circulating generally throughout the State within 21 days after the instrument of dissolution has been sent to the Minister. Unless a member (or other person interested in or having any claim on the funds of the society) commences proceedings to set aside the dissolution of the society within three months from the date of the publication of the notice and the dissolution is set

aside, the society will be taken to have been dissolved from the date of the publication of the notice.

These amendments are linked with the passage of clause 32 (insertion of new section 45F).

Clause 30: Repeal of s. 45D

It is proposed to repeal this section as it is considered preferable to leave this matter to the general criminal law.

Clause 31: Amendment of s. 45E—Power to appeal to District Court

Obsolete references to local courts have been struck out and replaced by references to the District Court. Local courts no longer exist, and it is considered appropriate that such matters should be dealt with by the District Court.

Clause 32: Substitution of ss. 45F and 45G

45F. Dissolution by order of Minister

New section 45F provides that the Minister may order that a society be dissolved and its affairs wound up, and appoint a person to be liquidator of the society, if of the opinion that—

- the society has contravened the Act, its laws or rules and, after being given written notice of the contravention by the Minister, has failed to remedy the contravention within the time allowed by the Minister; or
- the affairs of the society are being conducted in an improper or financially unsound way; or
- the society has failed to comply with a direction to transfer its engagements that has taken effect under new section 44AB; or
- it would be in the best interests of the members of the society.

A dissolution by an order under this proposed section takes effect on publication of the order in the *Gazette*.

This new section is adapted from provisions of the *Financial Institutions Code*.

Clause 33: Amendment of s. 47—Jurisdiction of District Court in certain cases

These proposed amendments are similar to those proposed to section 45E (see clause 31) and are made for the same reasons. Obsolete references to local courts have been struck out and replaced by references to the District Court.

Clause 34: Repeal of ss. 48 and 49

These proposed amendments are consequential on the amendments proposed by clauses 31 (Amendment to s. 45E—Power to appeal to District Court) and 33(Amendment of s. 47—Jurisdiction of District Court in certain cases).

Clause 35 : Amendment of s. 50—Expelled members may be reinstated or compensated

These proposed amendments are consequential on the amendments proposed by clause 31 (Amendment to s. 45E—Power to appeal to District Court).

Clause 36: Substitution of ss. 51 to 54

Sections 51 and 53 are no longer required because these matters are dealt with by new section 51 and the general criminal law. Section 52 has been replaced by new section 52. Section 54 is obsolete.

51. Duties of officers, etc.

New section 51 provides for the duties of officers of societies and for the penalties to be imposed in the event that an officer breaches such a duty. (This clause imposes substantially the same duties on officers of societies as those imposed on officers of incorporated associations.)

The maximum penalty for an officer of a society who, in the exercise of his or her powers or the discharge of the duties of his or her office, commits an act with intent to deceive or defraud the society, members or creditors of the society or creditors of any other person or for any fraudulent purpose is $20 000 or imprisonment for 4 years.

An officer or employee of a society (or former officer or employee of a society) who makes improper use of information acquired by virtue of his or her position in the society so as to gain a pecuniary benefit or material advantage for himself or herself or any other person, or so as to cause a detriment to the society is liable to a maximum penalty of $20 000 or imprisonment for 4 years.

An officer or employee of a society who makes improper use of his or her position so as to gain, directly or indirectly, any pecuniary benefit or material advantage for himself or herself or any other person, or so as to cause a detriment to the society is liable to a maximum penalty of $20 000 or imprisonment for 4 years.

An officer of a society must at all times act with reasonable care and diligence in the exercise of his or her powers and the discharge of the duties of his or her office or be liable to a maximum penalty of $20 000.

A person who contravenes a provision of this new section is liable to the society for any profit made by him or her and for any damage suffered by the society as a result of that contravention.

52. General offences and penalties

New section 52 provides that if a person contravenes or fails to comply with a provision of the Act—

- the person is guilty of an offence; and
- if the person is a society—any officer of the society who is in default is also guilty of an offence.

If a person is guilty of an offence for which no penalty is specifically provided, the person is liable to a fine not exceeding $5 000. The proposed section also provides for continuing offences and appropriate penalties.

53. Officers in default

New section 53 provides that if a provision of the Act provides that an officer of a society who is in default is guilty of an offence, the reference to the officer who is in default is, in relation to a contravention or failure to comply with the provision, a reference to an officer of the society who is in any way, by act or omission, directly or indirectly, knowingly concerned in the contravention or failure.

54. Delegation by Minister

New section 54 provides that the Minister may delegate any of the Minister's functions or powers under the Act and that such a delegation must be in writing, may be conditional or unconditional, is revocable at will and does not prevent the delegator from acting in any matter.

New section 54 replaces the current section 56A (Delegation by Minister). New section 54 is expressed in modern terms and in the usual form.

Clause 37: Substitution of ss. 56 to 59

56. Regulations

New section 56 provides for the Governor to make the necessary regulations for the purposes of the Act.

It is proposed to repeal sections 56 to 59. The current section 56 is obsolete, current section 56A has been substituted by new section 54, section 57 has been substituted by new section 56 and sections 58 and 59 are no longer necessary. The matters covered by the current sections 58 and 59 are covered by other legislation.

Clause 38: Substitution of sched. 2—Societies

The substituted schedule 2 accurately reflects the friendly societies incorporated in this State.

Clause 39: Insertion of sched. 7—Other Ministerial Powers Relating to Societies

This schedule contains other Ministerial powers to deal with societies. Clause 1 provides for Ministerial intervention in the affairs of a society if the Minister is of the opinion that—

- a society has contravened the Act, its laws or rules and has failed to remedy the contravention within the time allowed by the Minister; or
- the affairs of a society are being conducted in an improper or financially unsound way; or
- it would be in the best interests of the members of a society,

The Minister may—

- order an audit of the affairs of the society; or
- direct the society to change any practices that in the Minister's opinion are undesirable or unsound; or
- direct the society to cease or limit the borrowing, raising or lending of funds or the exercise of other powers; or
- remove a member, or all the members, of the committee of management of the society from office and appoint another member or members; or
- remove an auditor of the society from office and appoint another auditor; or
- give any other directions as to the way in which the affairs of the society are to be conducted or not conducted.

Clause 2 provides that the Minister may, if of the opinion that it would be in the best interests of the members (or potential members) of a society direct the society not to do any one or more of the following:

- borrow money;
- accept new members;

- without the consent of the Minister—accept a contribution, pay or surrender a benefit or otherwise dispose of or deal with the assets of the society.

Clause 3 provides that the Minister may, if of the opinion that—

- a society has contravened the Act or its laws or rules and has failed to remedy the contravention within the time allowed by the Minister; or
- the affairs of a society are being conducted in an improper or financially unsound way; or
- it is in the interest of members that a society's affairs be conducted by an administrator,

appoint an administrator to conduct the affairs of the society.

On the appointment of an administrator of a society, the members of the committee of management of the society cease to hold office and the administrator takes over the powers and functions of the committee of management of the society. An administrator holds office until the administrator's appointment is revoked by the Minister. Before revoking an administrator's appointment, the Minister must—

- appoint another administrator; or
- appoint a liquidator; or
- appoint a committee of management of the society.

Clause 4 provides that a person aggrieved by an act, omission or decision of an administrator or a liquidator or provisional liquidator of a society may appeal to the Supreme Court in respect of that act, omission or decision.

These clauses are adapted from the *Financial Institutions Code*.

Clause 40: Validation of funds of societies

This transitional clause provides that any funds raised and maintained by a society or branch before the commencement of this proposed amending Act will be regarded as having been lawfully raised and maintained if raised and maintained for an object of a kind referred to in section 7 of the *Friendly Societies Act 1919* as amended by section 4 of this proposed amending Act.

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

ADJOURNMENT

At 5.50 p.m. the Council adjourned until Wednesday 15 November at 2.15 p.m.