LEGISLATIVE COUNCIL

Tuesday 19 March 1996

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

ASSENT TO BILLS

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

Local Government Finance Authority (Review) Amendment,

Workers Rehabilitation and Compensation (SGIC) Amendment.

QUESTIONS ON NOTICE

The PRESIDENT: I direct that written answers to the following questions on notice be distributed and printed in *Hansard*: Nos. 5, 46, 56, 58, 60, 62 and 65.

MEAT CONTAMINATION

5. **The Hon. R.R. ROBERTS:** What was the estimated cost to the South Australian economy of the E-Coli food poisoning outbreak in terms of—

1. Job losses?

2. Cost to the smallgoods industry through reduced sales of smallgoods?

The Hon. R.I. LUCAS: A survey conducted by the Meat and Allied Trades Federation of Australia, SA Division in October 1995 provides some indication of the cost of the E-Coli epidemic in terms of job and sale losses to the smallgood manufacturing industry. Excluding Garibaldi, the number of job losses appears to be marginal over the longer term.

The survey reveals that the people who lost their jobs early in the outbreak have been re-employed as demand picked up later in 1995. While only 10 of the 23 companies surveyed responded three indicated that they had laid off staff (a total of 24 were laid off) but two firms later re-employed staff (20 people were re-employed). The 10 respondents are believed to be representative of the industry. Ninety people were employed at Garibaldi when it closed. The estimated job loss is expected to be between 90 to 100 people.

In terms of sales the survey results, as at 30/9/95 compared to 1/2/95, indicate that of the 10 companies (excluding Garibaldi) which responded, six suffered a decline in sales, two had no change and two companies had an increase in sales.

BOARDS AND COMMITTEES

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

1. Who are currently the Chair and Members of each of the following Boards or Committees—

(a) Art Gallery Board
(b) SA Museum Board
(c) History Trust
(d) Libraries Board
(e) Carrick Hill Trust
(f) Adelaide Festival Centre Trust
(g) Adelaide Festival Board
(h) Writers Week Committee
(i) SA Film Corporation Board
(j) SA Youth Arts Board
(k) SA Country Arts Trust
(l) Northern Country Arts Board
(m) Eyre Peninsula Country Arts Board
(n) Riverland Country Arts Board
(o) South-East Country Arts Board
(p) Central Region Country Arts Board
(q) Tandanya
(r) State Theatre Board
(s) State Opera Board
(t) Merryl Tankard Australian Dance Theatre
(u) Performing Arts Advisory Committee and its Music, Dance and Theatre Panels
(v) Visual Arts Advisory Committee
(w) Literature Arts Advisory Committee
(x) Aboriginal Arts Advisory Committee
(y) Community Arts Advisory Committee
(z) Performing Arts Collection Committee?

2. For each person, when was he/she first appointed and when will his/her term expire?

3. Why has this purely factual question, originally asked on 31 May 1995, not been answered in five and a half months?

The Hon. DIANA LAIDLAW: In accordance with the request, I provide the following details of all the Chairs and Members of each of the boards and committees, and for each person, the date of their first appointment and the date their term expires. This information was forwarded to the honourable member on 18 October 1995.

ORGANISATION	First Appt.	Term Expires
ADELAIDE FESTIVAL BOARD (Governor)	12 mems.	ACD CAB 024/94
Andrew John Killey (Chair)	01/10/94	01/10/96
Teresa Crea	01/10/94	30/09/98
Lisa Fahey	01/10/94	30/09/96
Frank Ford	01/10/94	30/09/98
John Stuart Gaden	01/10/94	30/09/96
Llan Horshman (ACC nominee)	01/10/94	30/09/96
Keith Smith	01/10/94	30/09/98
Edward Tweddell (Dr)	01/10/94	30/09/98
William Raymond Cossey (AFCT nominee)	16/02/95	30/09/98
John Potter (Tourism nominee)	03/11/94	30/09/96
John Neil Bishop (Friends of Adelaide Festival Inc nominee)	03/11/94	30/09/96
Janet Ingleby Worth	16/02/95	30/09/96
ADELAIDE FESTIVAL CENTRE TRUST (Gov.)	8 mems.	ACD CAB 002/94
James Robert Porter (Chair)	31/03/94	12/01/98
Ian Alexander Scobie (Festival nominee)	10/08/95	30/11/96
Julie Minette Holledge	25/01/90	05/10/96
Justice Catherine Branson	13/01/95	12/01/98
Savvas Christodolou (ACC nominee)	10/08/95	31/05/97
John Bastian	23/12/92	12/01/98
Allen Elliot Bolaffi	07/10/93	30/11/96
Patricia Lange	13/01/95	12/01/98
ART GALLERY OF SOUTH AUSTRALIA (Gov.)	9 members	ACD CAB 001/94
Norman Ross Adler (Chair)	21/07/88	20/07/97
John Lamb	22/07/93	21/07/96
Michael John Maxwell Carter	20/01/95	19/01/98
Judith Kura Adams	14/12/89	31/12/95
John Mansfield	20/01/95	19/01/98
Catherine Lennon	20/01/95	19/01/98
Skye Thyne McGregor	20/01/95	19/01/98
Carol Belinda Morgan	19/11/92	31/12/95
Chrisopher Julian Menz (staff representative)	03/02/94	31/12/95
AUSTRALIAN DANCE THEATRE (Cabinet)	8 mems.	ACD CAB 012/94
Mary Constance Beasley (Chair)	11/07/88	15/04/97
Adam Wynn (elected)	29/05/95	1998
VACANT vice Geoffrey Joseph Sam Nicholas Storer	02/05/94	15/04/97
Anna O'Connor	16/05/95	15/05/97
Robert Brookman (elected)	20/06/94	19/06/97
Julie Meeking	02/05/94	15/04/97
Beverley Brown (elected)	20/06/94	19/06/97
CARRICK HILL TRUST (Governor)	7 mems.	ACD CAB 008/94
Naomi Victoria Williams (Chair)	01/11/89	21/05/97
Jill Thomas	16/05/91	21/05/97
Michael Dean Keelan	02/06/94	21/05/97
Ninette Clarice Florence Dutton (Deputy Chair)	22/05/85	25/05/96
Cheryl Joy Patterson (Mitcham Council rep.)	14/08/95	25/05/98
Lowen Steel	08/06/95	25/05/98
Susan Stanfield	08/06/95	25/05/98
HISTORY TRUST OF SOUTH AUSTRALIA (Gov.)	8 mems.	ACD CAB 010/94
John Richard Steinle (Chair)	05/05/88	26/03/96

Richard Joseph McKay	29/03/90	26/03/96
Charles Murray Hill	29/03/90	26/03/96
Janette Rose Hollister Gaebler	29/05/90	26/03/96
Ian Elliott Davey	06/07/95	30/06/98
Judith Rae Murdoch	06/05/94	02/05/97
Carolyn Jane Barlow	21/10/94	26/09/97
Lynette Ninio	06/07/95	30/06/98
NATIONAL ABORIGINAL CULTURAL INST. (Cab.)	10 mems.	ACD CAB 011/94
Katrina Power (Chair) (elected)	30/11/94	30/11/96
Garnet Wilson (elected)	30/09/91	06/10/95
Margaret Hampton (elected)	06/10/93	06/10/95
Carol Karpany (Mr) (elected)	30/11/94	30/11/96
Colin Bourke (Prof.) (Abor. Affairs) (appointed)	30/09/91	06/10/95
George Tongerei (Abor. Lands Trust) (appointed)	30/09/91	06/10/95
Lesley Wanganeen (appointed)	30/09/91	30/09/95
Lillian Rose Holt (appointed)	19/10/93	30/09/95
VACANCY x 2		
Peter Bertani (Departmental observer)	27/07/93	
SOUTH AUSTRALIAN FILM CORPORATION (Gov.)	10 mems.	ACD CAB 007/94
David Oliver Tonkin (Dr) (Chair)	26/09/94	25/09/96
Jane Scott	07/10/93	30/10/95
Stephen Spence	07/10/93	30/10/95
Robert Bryce Menzies	07/10/93	30/10/95
Kate White	07/10/93	30/10/95
Mark Wesley Coleman	01/12/94	30/11/95
Karen Una Jennings	07/10/93	30/10/95
Rolf de Heer	07/10/93	30/10/95
John Maxwell Ovenden	07/10/93	30/10/95
VACANCY		
Carol Treloar (Departmental observer)	04/10/94	
SOUTH AUSTRALIAN MUSEUM (Governor)	8 mems.	CAB ACD 004/94
Robert James Champion de Crespigny (Chair)	13/06/91	30/06/97
Judith Mary Quigley	15/09/88	30/06/97
Donald Keith Banfield	15/07/93	25/06/96
Joseph Derek Bain (Staff rep.)	11/05/95	30/04/97
Adele Lloyd	05/01/95	04/01/98
Judith Mary Lucas	16/06/94	30/06/97
Gavin Brown	11/05/95	30/04/98
Jill Susan Berry	03/12/92	30/06/98
STATE LIBRARY OF SOUTH AUSTRALIA (Gov.)	9 mems.	ACD CAB 005/94
Peter Floyd Wylie (Chair)	20/02/95	17/02/96
Felicity Jane Gunner	18/02/95	17/02/99
VACANCY (vice Medlin)		
Janice Kaye Nitschke (LGA rep)	22/06/89	17/02/99
Eleanor Anne Bourke	05/08/93	17/02/97
Robert Alfred Angove (LGA rep)	22/06/89	17/02/97
Trevor Milton Starr (LGA rep)	08/04/93	17/02/97
Carol Mary Jane Rowntree (staff representative)	04/02/93	17/02/97
Helen Elizabeth Nicholas (deputy to Rowntree)	04/02/93	17/02/97
Fij Miller (Deputy Chair)	30/05/91	17/02/96
STATE OPERA OF SOUTH AUSTRALIA (Gov.)	8 mems.	ACD CAB 009/94
Timothy William O'Loughlin (Chair)	19/01/90	30/06/98
Colin Dunsford	14/09/95	31/08/98
Paula Nagel Bremner	15/03/90	15/03/96
Doris Amelia Brokensha (Subscriber rep.)	22/08/91	30/06/97
Lillian Scott	30/04/92	30/06/96
Maurice Aldo Crotti	30/04/92	25/03/98
Robert Pontifex	08/12/94	15/03/97
Albert Bensimon (Subscribers' representative)	08/09/94	30/06/96
STATE THEATRE COMPANY (Governor)	8 mems.	ACD CAB 003/94
Robyn Ann Layton—Janet Grieve (from 27/10)	27/10/93	26/10/95
Michael Geoffrey Steele (subscribers' rep.)	30/01/95	26/06/97
Roderick Thomas John Harper	11/05/95	11/05/98
Monica Willis (Staff rep.)	19/12/94	18/12/95
Richard Woodward Hammond	11/05/95	07/07/96
Penelope Mary Stratmann (Subscribers' rep.)	26/06/95	26/06/97
Christopher Desmond White	22/08/91	09/10/95
Jean Mary Matthews	09/06/94	30/06/97
SOUTH AUSTRALIAN COUNTRY ARTS TRUST		ACD 217/95
Fitzgerald, Marjorie (Chair)	01/01/93	31/12/95
Ford, Frank	05/03/94	31/12/95
Andrews, Maureen	01/01/95	31/12/95
Voumard, John	01/01/95	31/12/95
Downer, Nicki (Country Arts Board rep.)	31/03/95	31/12/95
Dohring, Kerry (Country Arts Board rep.)	04/02/93	31/12/95
Ross, Joyce (Country Arts Board rep.)	04/02/93	31/12/95
Johnson, Gordon (Country Arts Board rep.)	04/02/93	31/12/95
Eastick, Andrew (Country Arts Board rep.)	04/02/93	31/12/95
Vowles, Margot	20/3/95	31/12/95
CENTRAL COUNTRY ARTS BOARD		
Downer, Nicki	17/03/95	31/12/95
Alderslade, Robert	17/02/95	31/12/95
Staples, Margeret		31/12/95
Schrapel, Kevin	17/02/95	31/12/95
Willson, Beverly	01/01/93	31/12/95
Fox, Annie Luur	17/02/95	31/12/95
O'Brien, Barbary	01/01/93	31/12/95
Cooper, Elizabeth (LGA rep.)	17/02/95	31/12/95
EYRE PENINSULA COUNTRY ARTS BOARD		
Dohring, Kerry (Chair)	01/01/93	31/12/95
McDermott, Kevin	01/01/93	31/12/95
Prak, Michelle	17/02/95	31/12/95
Clayton, Kym		31/12/95
VACANCY—vice McIntyre, Fiona resigned		
Reid, Alexandra	17/02/95	31/12/95
McLeay, Joanne	17/02/95	31/12/95
Lane, David (LGA Rep.)	17/02/95	31/12/95
NORTHERN COUNTRY ARTS BOARD		
Aughey, Allan (Chair)	01/01/93	31/12/95
Ross, Joyce	01/01/93	31/12/95
Caputa, Vito	01/01/93	31/12/95
Lewis, Mervin	17/02/95	31/12/95
Stefanovic, Steve	17/02/95	31/12/95
Blesing, Dianne	01/01/93	31/12/95
Dal Santo, Jeanette	17/02/95	31/12/95
Cook, Jeffrey (LGA rep.)	17/02/95	31/12/95
RIVERLAND COUNTRY ARTS BOARD		
Johnson, Gordon (Chair)	01/01/93	31/12/95
Hurley, Michael	01/01/93	31/12/95
Lochert, Lyn	01/01/93	31/12/95
James, Emily	17/02/95	31/12/95
Warrington, Gabrielle	17/02/95	31/12/95
Vnuk, Helen	17/02/95	31/12/95
Andrews, Robyn	17/02/95	31/12/95
Cass, Janice (LGA rep.)	17/02/95	31/12/95
SOUTH EAST COUNTRY ARTS BOARD		
Eastick, Andrew (Chair)	01/01/93	31/12/95
Morley, Darryl	17/02/95	31/12/95
Fox, Rowena	01/01/93	31/12/95
Denny, Spence	17/02/05	31/12/95
Puckridge, Beverley	17/02/95	31/12/95
Nitschke, Jan	01/01/93	31/12/95
Hutchinson, Vicki	01/01/93	31/12/95
Grieve, Denise (LGA rep.)	17/02/95	31/12/95
COMMUNITY CULTURAL DEVELOPMENT ADVISORY COMMITTEE	ACD 470/95	
COMMUNITY CULTURAL DEVELOPMENT:	ACD 470/91	
Lambert, Jill	01/08/95	31/07/97
Erickson, Eric	01/08/95	31/07/97
Chance, Sally	01/08/95	31/07/97
Cielens, Veisturs	30/8/93	31/07/97
Vincent, John—Consultant to Committee		
INDIGENOUS ARTS ADVISORY COMMITTEE		

Thornhill, Marie	22/01/90	31/12/95
Shearer, Heather	19/10/93	19/10/95
Crompton, Robert	10/03/94	31/12/95
LITERATURE ADVISORY COMMITTEE	ACH 200/91	
Covernton, Helen (Chair)	06/01/95	31/12/95
Nilsson, Eleanor	01/01/95	31/12/97
Glenn, Diana Cavuoto	01/10/93	30/09/95
Ladd, Mike	06/01/95	31/12/95
PERFORMING ARTS ADVISORY COMMITTEE		
MUSIC PANEL:		
Harris, Diana	11/01/93	30/09/95
Polglase, John	04/03/94	30/09/95
Eads, Steve	11/10/93	30/09/95
Dowse, Phil	10/08/95	31/12/95
THEATRE PANEL:		
Morley, Michael (Prof.)	19/08/92	30/09/95
Raupach, Elizabeth	11/01/93	30/09/95
Darley, Eileen	20/01/92	30/09/95
Mastrantone, Lucia	06/12/93	30/09/95
DANCE PANEL:		
Donaldson, Anita (Chair)	13/03/91	30/09/95
Craig, Sandra	11/03/91	30/09/95
Havelberg, Jennifer	11/01/93	30/09/95
Zhang, Xiao-Xiong (Mr)	06/12/93	30/09/95
CONTEMPORARY MUSIC PANEL:		
Tini, Jane (to be apptd.)		
Grace, Julie	19/04/95	31/12/96
Kraus, Mark	19/04/95	31/12/96
VISUAL ARTS, CRAFTS AND DESIGN ADVISORY COMMITTEE	ACD 328/95	
Jones, David	25/10/94	31/12/95
Kluvanek, Michal	25/10/94	31/12/95
Valamanesh, Angela	06/01/95	31/12/95
Andrae, Craig	24/10/93	31/12/95
ART FOR PUBLIC PLACES COMMITTEE	ACD 328/95	ART 136/84 PT 3
Wohlstadt, Michael (Chair)	30/06/91	30/06/97
Kinber, Mark	01/05/95	30/06/97
Harrison, Denis	01/07/90	30/06/96
Hore, Ian	01/05/95	30/06/97
Hylton, Jane	01/07/94	30/06/96
Truman, Catherine	11/08/95	30/08/97
Lavery, Kerrie	11/08/95	30/06/97
Lennon, Michael	11/08/95	30/06/97
SA YOUTH ARTS BOARD	ACD 213/95	
Mary Mitchell (Chair)	01/06/95	30/05/97
Sbizzirri, Maria (Departmental rep.)	01/08/93	30/05/97
Dearden, Marsha	02/04/90	03/04/96
Hyam, Virginia	23/03/92	03/04/96
Keightley, Dr Janet (Educ. Rep.) (Deputy Chair)	28/04/94	03/04/96
Rann, Jane (Chair, Come Out)	01/01/95	30/09/95
Lavery, Kerrie	06/04/94	03/04/96
Brookman, Anne	06/04/94	03/04/96
Talbot, Tyrell	06/04/94	03/04/96
Cheatle, Warwick	06/04/94	03/04/96
1996 WRITERS WEEK ADVISORY COMMITTEE	ACD 128/94	
Rose Wight (Executive Officer)		
Kathy Athanassakis		
Fran Awcock		
Prof. Denise Bradley		
Prof. Paul Davies		
Penelope Curtin		
Angela Dawcs		
Barbara McFadyen		
David Malouf		
Michael Meehan		
Drusilla Modjeska		
Amanda Nettelbeck		
Matt Rubinstein		
Kate Veitch		

ROAD CONTRACTS

56. **The Hon. T.G. CAMERON:**

1. Will the Minister advise on the success of the Department of Transport's ability to successfully tender for contracts?

2. Where the Department of Transport does tender for such projects, who are the independent sources engaged to assess and award those contracts?

The Hon. DIANA LAIDLAW:

1. The Department of Transport only tenders for road construction or road maintenance contracts and I submit the following information.

Road Construction Contracts (does not include bridge projects, rehabilitation works or minor works projects).

Over the last five financial years, the Department of Transport has called 23 major road construction contracts. The department tendered for ten of these of which it won seven.

Road Maintenance Contracts

As at 19 February 1996 the Department of Transport has called 10 road maintenance contracts of which seven have closed. The department submitted tenders for six of these contracts. As at 19 February 1996 the department has been awarded one contract while two have been awarded to the private sector.

2. Road Construction Contracts

Where the department proposes to tender for a contract it seeks offers from the three consultancy firms of Connell Wagner, Maunsell Pty Ltd and Acer Wargon Chapman to facilitate the tendering process, and a selection is made from one of those three based on specific criteria, including price. If the department is the successful tenderer, the present practice is to engage one of the other two consultants mentioned above to conduct quality audits on the site operations.

Road Maintenance Contracts

The assessment of all road maintenance contracts called by the Department of Transport is undertaken by an independent Tender Evaluation Committee, comprising accountants from Deloitte Touche Tohmatsu, consulting engineers from Connell Wagner and one departmental representative as Executive Officer of the committee. This committee makes recommendations to the Minister for Transport or to the department's Chief Executive dependent upon the value of the contract.

BRIGHTON JETTY

58. **The Hon. T.G. CAMERON:** Will the Minister indicate why she allowed a general contract to be negotiated with the contractor for the reconstruction of the Brighton jetty, instead of a lump sum contract?

The Hon. DIANA LAIDLAW: A Design and Construct Lump Sum Contract was negotiated. However, after tenders had closed, Council, Telstra and the principal contractor indicated additional requirements and these were included as variations to the contract.

JETTIES

60. **The Hon. T.G. CAMERON:** Will the Minister confirm that local government, through the Local Government Association, has expressed its concern that the Liberal Government is proposing to downgrade the 80/20 split to a 50/50 split of the maintenance of the recreational jetties to local government?

The Hon. DIANA LAIDLAW: I have formed a working party to consider the future of the State's recreational jetties.

The working party consists of metropolitan and country council representatives as well as State Government representatives. Part of the terms of reference for this group is to investigate and report on issues and management of the State's jetties, including their proposed transfer to local government.

The current arrangement for those jetties leased to local councils is for structural upgrading works to be funded 80 per cent from State sources and 20 per cent from local government—in the event of storm damage, the State Government is obliged to cover 100 per cent of the costs. Local councils cover the cost for minor maintenance.

This arrangement and alternatives form part of the working party's considerations.

TRANSPORT DEPARTMENT ASSET SALE

62. **The Hon. T.G. CAMERON:**

1. Can the Minister confirm that the sale of the Department of Transport's entire plant, fleet and workshops at Northfield includes the sign shop?

2. If so, can the Minister confirm that the sign shop will not be sold as part of the overall sale?

The Hon. DIANA LAIDLAW:

1. Yes.

2. Yes. The sign shop is being sold as a separate enterprise.

SEATON LAND

65. **The Hon. CAROLYN PICKLES:**

1. Has any Department for Education land on or adjacent to the Seaton High School site been sold recently or are there any current proposals to sell any such land?

2. Has the sale of such land ever been the subject of a commitment (whether formally or informally) to the school, parents of students, or the local community, to the effect that part of the land will be set aside for children's recreation (such as a playground) in the event that such land be sold off?

3. If there is a commitment of this nature in relation to children's recreation facilities on that site, will the commitment be met in the event of sale of the land?

The Hon. R.I. LUCAS: Land adjacent to Seaton High School, (formerly the school oval of Seaton North Primary School—closed) is for sale. Tenders have been sought and received. Currently an assessment of those tenders is being undertaken. The disposal is being coordinated by the Department of Environment and Natural Resources .

Associated with the disposal is a commitment that the Department for Education and Children's Services will assist with the development of an area of land to provide a local playground. The initial details were resolved some time ago. The commitment involves the provision of land, the provision of salvaged playground equipment and the provision of funds to assist with the establishment.

The actioning of the provision of the playground will be finalised once the disposal of the site has been resolved.

PAPERS TABLED

The following papers were laid on the table:

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

- IOOF Friendly Society (SA)—Rules
- Response by the Minister for Education and Children's Services to the Report of the Social Development Committee—Rural Poverty in South Australia

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

- Supreme Court Act 1935—Report from Judges to the Attorney-General pursuant to Section 16—Year ending 31 December 1995
- Regulations under the following Acts—
  - Meat Hygiene Act 1994—Marking of Meat
  - Summary Offences Act 1953—Recording of Interview Fees
  - WorkCover Corporation Act 1994—Statutory Reserve and Insurance
  - Workers Rehabilitation and Compensation Act 1986—Claims and Registration
- Rules of Court—Magistrates Court—Magistrates Court Act 1991—Building Works Contractors
- South Australian State Electoral Office— Statistical Returns for General Elections, 11 December 1993 and By-Election

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

- Outback Areas Community Development Trust—Report, 1994-95
- City of Henley and Grange 'Heritage Plan Amendment Report'—Report
- Regulations under the following Acts—
  - Development Act 1993—Various
  - Family and Community Services Act 1982—Principal
  - Food Act 1985—Amendment to Code
  - Harbors and Navigation Act 1993—Restricted Areas—Thistle Island
  - Occupational Therapists Act 1974—Fees
  - Passenger Transport Act 1994—
    - Conduct of Passengers—Disability Provisions
    - Prescribed Licences—Fares
  - Road Traffic Act 1961—Clearways and Bus Lanes
  - South Australian Co-operative and Community Housing Act 1991—
    - Electoral Procedures
    - General Amendments
    - Housing Associations
  - South Australian Health Commission Act 1976—Fees for Medicare Patients
- Corporation By-laws—
  - Brighton—No. 2—Foreshore
- District Council By-laws—
  - Elliston—No. 4—Moveable Signs
  - Murray Bridge—
    - No. 4—Moveable Signs
    - No. 5—Garbage Disposal
  - Willunga—
    - No. 1—Permits and Penalties
    - No. 2—Streets and Public Places
    - No. 3—Street Traders
    - No. 4—Moveable Signs
    - No. 5—Waste Management
    - No. 6—Height of Fences, Hedges, etc.
    - No. 7—Parklands
    - No. 8—Caravans, Tents and Camping
    - No. 9—Animals, Birds and Poultry
    - No. 10—Bees
    - No. 11—Nuisances
    - No. 12—Dogs
    - No. 13—Foreshore
    - No. 14—Vehicles kept or let for Hire
    - No. 15—STED Schemes
    - No. 16—Driving Cattle/Horses through Streets
    - No. 17—Dug-Outs, Caves, etc.

PUBLIC TRANSPORT REFORM

The Hon. DIANA LAIDLAW (Minister for Transport): I seek leave to make a ministerial statement about public transport reform.

Leave granted.

The Hon. DIANA LAIDLAW: The Government's public transport reform agenda, based on the competitive tendering of services and service improvements generally, was framed against a background of escalating operating costs and declining patronage. In the 10 years between 1981-82 and 1991-92 the State lost nearly 30 million passenger journeys—one-third of all passenger journeys—and cost taxpayers a phenomenal $1 billion—one-third of the State Bank debt—plus a further $225 million on concession fares. In 1990 the Bannon Government's own planning review acknowledged:

> No environmental, social or political generality can disguise the fact that conventional public transport is a costly way to service a small minority of metropolitan trips.

In 1992 Labor abandoned its approach of managed deterioration of our public transport system, opting instead to cut costs by cutting services. Members may well recall various measures taken by former Ministers of Transport, the Hon. Frank Blevins and the Hon. Barbara Wiese, including the elimination of night and weekend services and the majority of services in the Hills, the imposition of a 10 p.m. curfew and the removal of guards from railcars. Hardly surprisingly, the Secretary of the Public Transport Union, Mr John Crossing, protested. In a statement to the *Sunday Mail* on 29 June 1993 he called for a major overhaul of public transport, including the commercialisation of routes and services, saying 'or the system will haemorrhage to death'. He also went on to say:

> . . . if nothing is done, reductions will continue until the whole thing comes down in a screaming heap.

Earlier in the same year, the Liberal Party had released the Passenger Transport Strategy, which outlined a bold new vision for public transport based on customer service concepts. Specifically, the strategy stated:

Our goal, in partnership with the industry, will be to attract customers to public transport—and to generate repeat business.

To achieve this objective, the strategy highlighted in part that a Liberal Government would expand the recommendations of the 1988 Fielding report entitled 'Public Transport in Metropolitan Adelaide in the 1990s' to:

1. Challenge the monopoly of the STA by implementing a system of controlled competitive tendering for the right to operate services, with savings generated being used to help implement new improved services; and

2. Create TransAdelaide from the old STA as a revitalised publicly owned operating agency by empowering employees at work sites to determine work practices and services based on local knowledge and experience.

By any objective standard, the Liberal Party and Government has faithfully pursued this strategy for the benefit of our customers and the future of the public transport sector as a whole. In the December quarter last year (that is, for the months of October, November and December 1995) public transport patronage increased for the first time in five years—with the biggest increase being recorded in bus travel, the area now subject to competitive tendering. And, Mr President, if members discounted the increase in patronage in 1991 due to the introduction of free travel for students—which Labor withdrew eight months later—this increase represents the first increase in public transport patronage since the rot set in, in the late 1970s.

This long awaited patronage increase is a credit to an extraordinary effort over the past two years by a countless number of people working at all levels within TransAdelaide, the Passenger Transport Board (PTB), the Office of Public Sector Reform, the Commissioner for Public Employment, and the departments of Industrial Affairs, Treasury and Finance and Premier and Cabinet—plus the Public Transport Union (PTU), and other unions which have members employed by TransAdelaide. Until now, the Government and TransAdelaide have worked constructively with the PTU.

Indeed, the PTU participated in the consultations in relation to the preparation and passage through this Parliament of the Passenger Transport Bill, as it participated subsequently in the complex arrangements associated with the establishment of TransAdelaide and the Passenger Transport Board. The PTU signed a Memorandum of Understanding with TransAdelaide on 13 February 1995, which empowered TransAdelaide employees at all work sites to negotiate conditions of employment and service in preparation for tender bids called by the PTB.

Further, the PTU has worked with TransAdelaide to develop the successful bid by Lonsdale employees for the operation of services in the outer south and the successfully negotiated contract to establish Hills Transit, the first public and private sector partnership in Australia to win the right to operate metropolitan bus services. As the PTU is a respondent to a Federal award, it would not be possible for either the Lonsdale or Hills Transit initiatives to operate unless the PTU had earlier agreed, at both the State and national level, to endorse the respective agreements for registration with the Industrial Commission last year.

Meanwhile, in the past eight weeks the Federal Industrial Commission has granted the PTU the right to represent the work force employed by Serco, the private sector operator of services in the outer north. Also, the work forces at both TransAdelaide's Mile End and Port Adelaide depots have voted in favour of adopting work-site agreements, and yesterday the work force at St Agnes depot commenced a secret ballot over five days for the same purpose. For the past two years the PTU in South Australia has worked well with TransAdelaide to ensure each depot is willing and able to be awarded contracts as let by the PTB, and they have been awarded two out of three contracts let to date, and that is a pretty good record.

Yet tomorrow—coincidentally only 2½ weeks after the Federal election on 2 March—the South Australian public faces the prospect of a 24-hour stoppage, and the threat of continuing industrial action by the PTU. The Government maintains that there is no rational reason why the PTU is calling the stoppage and threatening to cause so much trauma to passengers. The PTU action has come out of left field! At no time over the past two years has the Government ever required TransAdelaide to participate in the competitive tendering process. And the PTU knows that it is the Government's intention to review progress on the competitive tendering process in June/July this year. At this time, 50 per cent of bus services in the metropolitan area will have new contract arrangements.

For all the above reasons, TransAdelaide today sought a hearing before the Industrial Commission seeking to call off the stoppage. This move follows an offer I put to the PTU yesterday to discuss its new concerns, on the understanding that the PTU call off its proposed action. The PTU has rejected this proposal. The Commissioner was hearing the matter at 2 p.m. I have not yet heard what he has ruled.

The Hon. R.R. Roberts: So all this is *sub judice*.

The Hon. DIANA LAIDLAW: It is not *sub judice*: it is fact. In the meantime, I consider it is worth recording that the Government's reform agenda for public transport has to date not only realised increased patronage for the first time in five years and encouraged TransAdelaide to participate in the tendering process if it so chooses and on terms that it chooses, but savings generated have been invested by the Government in a number of new initiatives: the employment of passenger service attendants on trains; the installation of ticket vending machines on railcars; the new look/easy to use printed timetables; information at bus stops about routes and timetables; plus the introduction of both the fully accessible free City Loop service and the NightMoves service to the outer south and north-eastern suburbs on Saturday nights—new innovative services in response to customer demand.

I am not now willing to compromise the progress made to re-energise the public transport system in South Australia by abandoning the Government's reform agenda in relation to the PTU's demand that the competitive tendering process stop immediately. I am not prepared to compromise this progress, especially as the PTU's current demands in relation to terms and conditions can all be negotiated and accommodated, as they have been most satisfactorily in the past, as part of the Memorandum of Understanding signed by the PTU in February 1995.

The Government's agenda has not changed over the two years that it has been in office. However, the PTU's call for industrial action has the potential to compromise TransAdelaide's ability to lodge competitive bids in future, if it chooses to do so, and will certainly encourage customers to abandon public transport to an even greater dependence on the motor car.

I should also record that, notwithstanding the resolution passed by the PTU last Thursday saying that all public transport services will be out at all depots, including Lonsdale, Elizabeth and the Hills, PTU members at Lonsdale,

Elizabeth and the Hills have voted and passed resolutions determining that services from those three depots will be operating tomorrow. Incidentally, these are the same areas for which services are operating under contract with the Passenger Transport Board.

QUESTION TIME

PARKS HIGH SCHOOL

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about the Parks High School and the consultation process.

Leave granted.

The Hon. CAROLYN PICKLES: The announcement of the closure of the Parks High School is another example of the Minister's total lack of concern to implement a proper and adequate process of consultation and advice when dealing with the closure of schools in South Australia. Last year a review was conducted of the school involving all interest groups and the school community. The school thought that it had performed well during the review and that it had a future. Unfortunately, this was not so. Without warning, the Minister unilaterally decided that the school would close.

I should like to read to the Council a short letter written by one of the teachers at the school and forwarded to me yesterday. It reads as follows:

> At 1 pm Friday 15 March the staff of the Parks High School were told of its impending closure. Between the time of the staff being informed and the students being told, the messenger from the Department for Education and Children's Services hastily prepared a six-sentence notice to parents and care givers. How would you like to receive this as a parent or care giver as your child returned home from school one Friday afternoon?. . . No warning!
>
> Why Friday afternoon, a day after the strongly supported teacher industrial action? Why not Monday morning, when necessary services could be provided, such as counselling of students; information to parents/caregivers; support for students, staff and caregivers? Is the timing of your announcement a measure of your concern for the welfare of students, Mr Lucas, or merely calculated opportunism?

The letter is signed by a teacher from The Parks High School. Incidentally, the notice that was sent to parents, caregivers and students by the Department of Education and Children's Services, which was the only notification that anyone had of the closure of the school, was worded thus:

> As you may be aware, a review into the future of The Parks High School was conducted during 1995. The Minister for Education and Children's Services has carefully considered the review report and has now decided to close The Parks High School at the end of 1996. At this point you will have a number of concerns about your future education or that of your student. A group will be formed to oversee the closure and to ensure a smooth transition of students for their future education. It is important you understand that all current educational programs will be maintained until the end of 1996. Information on these changes will be provided through circulars and information meetings.

That was the only notification that parents, caregivers and teachers had about the closure of this school. Will the Minister visit The Parks High School as a matter of urgency to explain to the school community his decision to close the school and seek their views before taking any further action?

The Hon. R.I. LUCAS: I am always very happy to visit schools to explain the reasons for taking the decisions that I have taken. I have already indicated publicly that in the next few weeks I will be delighted to speak to a group of students, staff, parents, friends and acquaintances of The Parks High School about this issue. In relation to whether that is possible in the next seven days, I have indicated that it will not be. If required, I will be able to meet with a delegation in the next five, six or seven days but it will not be possible to attend a protest meeting in the next seven days. I am very happy to attend meetings, as I have done on all occasions. I can recall the instances of Port Adelaide Girls High School, Fremont High School and a number of others where, when invited to attend a protest meeting with representatives of the school communities, I did so. I would be delighted to do so again. However, in relation to the second part of the honourable member's question, it will not be as a prelude to changing the decision: it will be to explain the reasons for the decision and to indicate that the decision will not be changed.

The Hon. T. CROTHERS: As a supplementary question, will the Minister for Education and Children's Services indicate that, where numbers have declined in private schools, the Government will currently reduce any funding to the mix in private schools in respect of that matter?

The Hon. R.I. LUCAS: That is a natural corollary of the current funding arrangements. Everything is done according to enrolments. If the numbers in the school decline then the amount of funding declines as well.

VIRGINIA PIPELINE

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Leader of the Government in the Council, representing the Premier, a question about funding of the pipeline to Virginia.

Leave granted.

The Hon. R.R. ROBERTS: In 1992 the then Minister for Primary Industries, the Hon. Terry Groom, after visiting Virginia and, indeed, confirming his thoughts in Israel, proposed the building of a pipeline to carry treatable water to Virginia and to the Adelaide Plains. The construction of the Bolivar Pipeline to transport reclaimed water to horticultural areas in the northern Adelaide Plains region was a vital and forward thinking initiative by the previous Labor Government. I am pleased to say that this initiative is supported by the present conservative State Government. The previous Labor Government developed the proposal for inclusion in the concept of the multifunction polis and sought national funding for the pipeline as part of the MFP project.

This project has achieved substantial environmental remediation whilst providing for the growth and development of a vital South Australian industry. The pipeline is the basic infrastructure for a clean export industry showcasing South Australian agriculture and the value-adding process. Now, however, the election of the Howard conservative Government seems to have placed at risk this component of the MFP and the development of the entire concept. As part of their attempt to disguise the fact that Howard and Costello have made promises which they knew could not be afforded, they have treated the Australian public to a ritualised and somewhat shallow 'shock-horror' show on the proposed Federal deficit.

What is actually behind this so-called deficit is a story for another day, not necessarily for this moment, but we know from all the press reports that under threat is State funding for schools, hospitals, public housing, labour market programs and, last but not least, the Better Cities program. This program has been the main source of Federal funding for the development of the multifunction polis. My questions are:

1. Has the Premier sought assurances to continue Federal funding for the MFP/Better Cities project?

2. What undertakings, if any, have been provided by the Federal Coalition Government for continued funding in this area?

3. Will the Premier guarantee the funding of this pipeline even if the John Howard funding cuts to the Better Cities programs take place?

The PRESIDENT: Order! Before the Minister answers the question, I remind the honourable member to read very carefully Standing Order 109, particularly the first sentence. The Minister for Education and Children's Services.

The Hon. R.I. LUCAS: I will refer the honourable member's questions to the Premier and bring back a reply.

KOALAS

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

Leave granted.

Members interjecting:

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: On 26 October, I asked a question of the Minister for Transport, who dutifully referred it to the Minister for the Environment and Natural Resources, who dutifully replied to me.

The Hon. Diana Laidlaw interjecting:

The Hon. T.G. ROBERTS: You thought I was going to criticise the reply. The timing of the reply was fine, but the answer raised some doubts in my mind as to what would be the Government's final intention. Correspondence which crossed my desk recently and which raised my first question led me to believe that a program was not being put in place to look at koala management in this State. However, the reply satisfied my curiosity and requirement for an action program to be put together by the Government because it stated that a report was being drafted for the Minister and that the National Parks and Wildlife Service was working on the problem.

There have been some successful relocation programs. In fact, while we were in government I was involved in one such program at the Millicent Golf Course. I declare at this stage that I have an interest in the Millicent Golf Course, which is also a sanctuary.

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: I can't remember that. As the program was being developed, the Millicent Golf Course received about four pairs of breeding koalas from Kangaroo Island.

The Hon. M.J. Elliott interjecting:

The Hon. T.G. ROBERTS: No. I am coming to that. They took four pairs of koalas to the Millicent Golf Course after it was assessed that there were appropriate manna gums, that there was a path for the koalas to work their way through, and that they would survive in that environment. It took about four years from its presentation to the National Parks and Wildlife Service for that relocation application to be successful. I have some doubts as to whether the current proposal, with the 2 000 excess koalas on Kangaroo Island—if they are to be looked after—can be completed within the required timeframe. If you, Mr President, read the *Advertiser*, you would probably get the impression that a koala shoot was about to take place tomorrow and that all is not well with the management process and program that the Government has put in place. My questions are:

1. Will the Minister as a matter of urgency publicly examine options for the survival of excess koalas on Kangaroo Island because the four year timeframe between application and settlement is not appropriate?

2. Will the Minister rule out culling as an option for the sound management of the defenceless, docile, unique animal?

3. Will the Government develop a manna gum revegetation program as part of greening Australia in appropriate reserves and sanctuaries, without putting pressure on the existing environment?

The Hon. DIANA LAIDLAW: My understanding in terms of the first question is that the Minister already has the matter under control. In terms of the reference to the koala's being docile, it has not been my experience that they are gentle animals. John Brown, a former Federal Minister of Tourism, did not have much affection for these animals, although I know that that view is not universally held. The Minister will be keen to respond promptly to the honourable member's question.

SOUTHERN DISTRICTS WAR MEMORIAL HOSPITAL

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister For Transport, representing the Minister for Health, a question about the Southern Districts War Memorial Hospital.

Leave granted.

The Hon. SANDRA KANCK: Last year it became public knowledge that the Southern Districts War Memorial Hospital at McLaren Vale was in financial difficulty. This hospital is very close to the electorate of Finniss, the member for which is the Premier (Mr Dean Brown), and most members are well aware that the adjacent electorates of Mawson and Kaurna, currently held by the Liberal Party, are likely to be marginal at the next election. The Health Commission has been paying $100 000 per month of taxpayers' funds to keep the hospital afloat and I have been informed that the decision has now been made to continue paying that amount for the next 12 to 18 months. The reason given publicly for the hospital's financial problems is that people are not taking out private health insurance to the extent that the hospital has been unable to attract a minimum of 13 private patients per day in order to remain viable.

I know that the Opposition has suggested that the reason for the difficulties is that casemix funding has restricted the number of public patients whom the hospital can assist. Whatever the reason, even if private patients were using the Southern Districts Hospital and it was to close, those private patients would have the alternatives of using the Vales Private Hospital or private beds at Noarlunga Health Services. My questions to the Minister are:

1. For how many more months will the Health Commission continue to fund the Southern Districts War Memorial Hospital to the tune of $100 000 per month?

2. What role did the Premier of South Australia play in ensuring that those funds would continue to be available? Was any pressure placed on either the Minister for Health or Health Commission officers?

3. Was the decision to continue this funding based on the fact that the hospital is located in the marginal electorate of Mawson, is adjacent to the marginal electorate of Kaurna, and adjacent to the Premier's electorate of Finniss? If this is not

the case, how has money been found in the health budget to shore up the Southern Districts Hospital when it was not able to be found for the Le Fevre and Port Adelaide Community Hospital?

An honourable member: A Labor electorate.

The Hon. SANDRA KANCK: Exactly: that is probably the truth—it is a Labor electorate. If that same $100 000 per month was allocated to Noarlunga Health Services, is it true that it would have been able to increase its workload by more than 30 per cent?

The Hon. DIANA LAIDLAW: I suspect that there is no basis at all to the suggestions that the honourable member has made in her questions. Nevertheless, I will provide an opportunity for the Minister to respond.

OLYMPIC DAM

In reply to **Hon. M.J. ELLIOTT** (7 February).

The Hon. DIANA LAIDLAW: The Minister for Mines and Energy has provided the following information.

1. Yes. A Special Water Licence for Borefield B was granted on November 30, 1995. Notice was placed in the Gazette of January 25, 1996. Environmental assessment, including a public process, has been undertaken to the satisfaction of both the State and Federal Governments, for that water licence.

2. No.

3. There are no outstanding approvals. However, the Survey and Assessment Report for the Borefield B development was placed on public exhibition from 21 August to 13 October, 1995 for the purpose of receiving public comment. This fact was advertised nationally.

4. Yes. The Kinhill base data report for the Borefield B study is available for scrutiny in the Department of Housing and Urban Development library.

5. Recycling of water is under constant evaluation by Western Mining Corporation and Government agencies.

There have been a number of water conservation investigations and the opportunity has been taken to incorporate improved technology to optimise water utilisation. Western Mining Corporation are continuing further investigations in order to identify further opportunities for process water conservation.

COOPER CREEK

In reply to **Hon. M.J. ELLIOTT** (13 February).

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

1. The South Australian Government is committed to integrated catchment management, which includes consideration of social, environmental and economic aspects together in the management of catchments. Accordingly, the Government will cooperate with the Queensland Government in achieving this goal for the Cooper Creek catchment.

The Department of Environment and Natural Resources has approached the Queensland Department of Primary Industries to gain an assurance that the hydrological modelling study will extend into South Australia. This will provide a consistent basis for impact assessment.

2. Yes. The South Australian Government is committed to integrated catchment management of the Lake Eyre Basin. An example of this commitment is that over $1 million is being expended on protection of important areas in the Coongie Lakes area and on other related initiatives.

3. The South Australian Government agrees that the time-frame for allocation policy development is short. Concerns on deficiencies in the study which might arise from this time constraint have been raised by the Department of Environment and Natural Resources both in writing and in meetings of the advisory party to the Queensland Department of Primary Industries.

4. The Minister for the Environment and Natural Resources will contact his counterpart in Queensland in the new Government. The briefing will emphasise the importance of Cooper Creek to South Australia, highlighting the range of South Australia's concerns over irrigation development in that area.

The Department of Environment and Natural Resources will continue its involvement in the policy development process through the advisory party to the Queensland Department of Primary Industries.

5. The South Australian Government will continue to cooperate with the Queensland Government on integrated catchment management of the Lake Eyre Basin, including the Cooper Creek catchment and, in so doing, will ensure South Australia's interests are taken into account.

LOCAL GOVERNMENT REFORM

In reply to **Hon. A.J. REDFORD** (8 February) and answered by letter on 29 February.

The Hon. DIANA LAIDLAW: The Office of the Commissioner for Equal Opportunity contacted the Corporation of St Peters to ascertain the status of its request that the Equal Opportunity Commission ('the Commission') conduct an inquiry into the rejection of female nominees by the Local Government Association.

On 23 February 1996 the Commissioner for Equal Opportunity received a facsimile from Mr D.J. Williams, Town Clerk, Corporation of St Peters, requesting that an inquiry be conducted into the rejection of female nominees for positions available on the Local Government Boundary Reform Board.

The information provided by Mr Williams will now be assessed by a solicitor of the Commission to ascertain whether it falls within the scope of the Equal Opportunity Act 1984 (SA).

SOUTH NEPTUNE ISLAND

In reply to **Hon. T.G. ROBERTS** (14 February).

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

1. Yes, the result of the selection process will be announced shortly.

An applicant has been selected and final negotiations on the details of the lease conditions are under way.

The delay has been caused by a request for further detailed information from the short listed applicants through the Crown Solicitor's office.

There has not been any consideration of other options, such as sale of the island.

The Department of Environment and Natural Resources wishes to ensure the heritage listed buildings on the island are appropriately maintained and encourages the lessee to establish an eco-tourism venture so that visitors can appreciate the spectacular scenery and wildlife that inhabits this remote part of South Australia.

SAND REPLENISHMENT

In reply to **Hon. T.G. ROBERTS** (15 February).

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

1. The Department of Environment and Natural Resources has investigated the question of dredging proximity to shore at Port Stanvac and is confident that the dredging has no effect on sand volumes at the Christies and O'Sullivan Beaches.

The Department has recommended that dredging be no closer to shore than 10m water depth (at low tide), and dredging did not occur landward of this. The dredge does move outside the defined dredge area while it is manoeuvring, but records from the dredge's positioning system show that it did not approach closer than approx. 500m from the shore. Position fixing of the dredge head is to an accuracy of better than 10m, and there was always a departmental representative on board. So the Minister for the Environment and Natural Resources can assure the honourable member with some confidence that dredging did not occur inshore of the 10m depth limit.

The 10m water depth limit, which includes a margin for uncertainty, was determined using established coastal engineering methods and having regard to experience from nearshore dredging in the eastern States and overseas. For example a frequently accepted open ocean nearshore depth limit of 20 to 25m translates to approx. 10m for the wave climate and seabed sediments at Port Stanvac. This is supported by local surveys which indicate that storm and seasonal sand movement at Christies Beach do not extend seaward of 6 to 7m water depth, and by sediment sampling, which indicates different sediments in the nearshore and dredge areas.

Sounding and diver surveys confirm that there is no significant sediment interchange between the active beach and nearshore zone and the dredging site. They show that sediment volume changes due to dredging have been confined to the dredge site and a zone 100m around it. The surveys also show that there has been no loss of sand

from the beach or nearshore zone inshore of the—8m contour between January 1991 and February 1995, a period encompassing two of the biennial replenishment/dredging projects. The third contract has only recently concluded and the post dredging survey has yet to be done.

The City of Noarlunga has been informed of the findings of the Department's investigation, and Departmental officers have addressed the Council's Foreshore Working Party and the local sailing and surf life saving clubs. While the Minister for the Environment and Natural Resources is aware that there has been some misunderstanding and public concern about dredging in past years and prior to the present project, the Minister has been advised that the Department received only one telephone call during the recent contract. The City of Noarlunga has also queried the dredge's proximity to the shore.

The Minister for the Environment and Natural Resources appointed a Reference Group in August 1995 to carry out an independent review of protection strategy for the Adelaide beaches, and the Minister expects its final report toward the middle of this year. The coast south to Christies Beach was included in the review study area so that the dredging and beach loss issues would be addressed. The reference group will be convening a public meeting at Noarlunga.

While it seems unlikely that a working model would be an appropriate way to investigate the reported claims or the Department's assessment, the Minister for the Environment and Natural Resources will be awaiting the Reference Group's recommendations on this.

2. The Department's investigation has not been able to identify any persistent loss of sand from Christies or O'Sullivan beaches. However, this part of the coast is receding slowly and some beach loss would be expected. This is most likely to have occurred since the rock seawall was built in the mid-1960s to prevent further erosion of the clay cliff behind the beach. The beach loss due to arresting the coastal recession would be very small—of the order of a few centimetres—and it will be many more years before it can be detected by survey, given the much larger short term variations in beach level.

The surveys do confirm that there are large seasonal and storm changes as sand moves on and off-shore between the beach and the nearshore bar and as varying wind and sea conditions cause sand to move to and fro along the beach between the headland at Witton Bluff and the breakwater at O'Sullivan Beach.

Members of the Christies Beach Sailing Club have participated in a program of beach pole measurement for a period of nearly two years since the dredging. This has confirmed and demonstrated to those involved that the beach changes are natural occurrences which are not caused by the dredging.

The Minister for the Environment and Natural Resources has been advised that the beach could be improved by containing the sand within smaller segments, for example by using groynes, and by also bringing in replenishment sand. The Minister understands that further investigation would be required before a sand retention strategy could be designed with confidence or costed with any reliability. The Minister will be awaiting the Reference Group's recommendations before inviting further discussion between the Coast Protection Board and the City of Noarlunga.

HILLS LAND

In reply to **Hon. T.G. ROBERTS** (8 February).

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

The Government will continue to review its land assets in order to identify property that is surplus to its needs. Sale of this surplus land provides much needed capital to assist the Government to deal with the legacy of the State's debt.

Each agency has the responsibility for managing its assets, and the identification of its surplus land. Once a parcel of land is identified, a thorough analysis is conducted before deciding whether to proceed with sale.

This process is no different to that undertaken by previous Governments.

In relation to the land at Mylor, a thorough analysis of the site's significance has yet to be completed and a decision whether or not to proceed with the sale has yet to be made.

LAND, URBAN

In reply to **Hon. T.G. ROBERTS** (7 February) and answered by letter on 27 February.

The Hon. DIANA LAIDLAW: The Minister for Housing, Urban Development and Local Government Relations has provided the following information.

1. The parcel of land at Walkley Heights is part of a larger site of approximately 110 hectares of land zoned residential, which was offered for sale by tender by the Urban Projects Authority in March 1995.

The property was advertised nationally and tenders closed in May 1995. No buyer was found from this process. A 'For Sale' sign was placed on the site, clearly visible from Grand Junction Road, from May 1995. The sale was eventually negotiated through the agents for a price which satisfied the Valuer-General's valuation for residential land. The 11.7 hectares of land in question would not have been relevant for Salisbury Council community use as it is situated in the Enfield council area.

The UPA is however making available an area of land to the Salisbury council on the remaining two parcels on Wright Road for the development of a Neighbourhood House facility. This agreement arose from the consultation processes which were implemented with both the Salisbury and Enfield Councils for the Walkley Heights land release. Apart from the Neighbourhood House land which the UPA is continuing to hold for later release, the Salisbury council has also been given access to 33 hectares of Dry Creek Reserve as a community reserve.

2. The purchaser took an option to purchase the 11.7 hectare site with the option expiring on 22 December 1995. The Minister for Housing, Urban Development and Local Government Relations understands that during the option period the purchaser investigated rezoning of the land with the council, and a PAR was initiated by Enfield Council.

The purchaser took full risk in acquiring the land at residential value and affecting a rezoning. The steps taken to ensure a separation between the decision by the purchaser to obtain the property, the release of the DPAC recommendation and the approval by the Minister for Housing, Urban Development and Local Government Relations has been documented in a ministerial statement made to the Parliament by the Minister on 7 February 1996.

With regard to whether the purchaser will make a 'huge windfall' from a rezoning, the Minister must stress that the purchaser has taken a risk in acquiring the property without any 'subject to' clauses. A rezoning of the property is not guaranteed. Costs will be incurred in holding the land and time spent dealing with issues of rezoning. The end result remains an open question. In this case the community has received a good price for the land as zoned after some considerable difficulty in achieving a sale. The developer may or may not get the rezoning and this is his risk.

With regard to the merits of this use, the Minister will be taking advice from DPAC and the Enfield council. The public will have the opportunity to comment on the PAR during the public exhibition phase which will be completed by 11 March 1996. Council will then hold public hearings and submit the PAR together with its response to submissions and any amendment to the delegated Minister—in this instance Minister Wotton.

3. With regard to the issue of access by local government and community groups to purchase surplus Government land, I am advised by the Minister for Housing, Urban Development and Local Government Relations that in relation to land disposals by the SA Urban Projects Authority (custodian of the former SA Urban Land Trust land bank), there is an orderly process of local government consultation. During the community planning process which precedes large scale land releases, specific community needs are identified and land set aside for the purpose, e.g., community centres, schools, childcare centres.

The Salisbury council was closely involved with the UPA over the last few years in preparing appropriate planning regulations and design guidelines for the disposal of the Walkley Heights land north of Dry Creek. Council was obviously aware of the proposed sale of all three parcels at Walkley Heights, including the parcel which has been sold which is in the Enfield council area. Agreement was reached between the UPA and Salisbury council that a portion of the land north of Dry Creek be reserved for a Neighbourhood House, and that 33 hectares along Dry Creek be developed for a community reserve. The land will be transferred to the Salisbury Council at no cost and the Salisbury Council and UPA are jointly funding the reserve development expenditure.

NEEDLE EXCHANGE PROGRAM

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Health, a question about needle exchange.

Leave granted.

The Hon. A.J. REDFORD: Last night I was approached by a number of residents of Mt Gambier who provided me with a needle exchange kit obtained in that town. For the benefit of members, I advise that a needle exchange kit is available free of charge to drug users. No doubt they are often used for illicit or illegal drugs. The kit comprises some 10 needles, water for injections, four condoms, 10 pre-injection swabs, bleach, a brochure on the needle exchange program, a brochure on AIDS testing, an information sheet on Hepatitis C and some instructions on needle and syringe cleaning with bleach. I understand that the needles and information are issued by the South Australian Drug and Alcohol Services Council.

In addition, there is a brochure entitled 'Speed', seeking information from drug users. According to the brochure, research has been conducted into speed use in South Australia, and the researchers are seeking to talk to people who use speed. The brochure continues:

> If you talk to us about your use of speed, the information that you give will be completely confidential. A contribution of $20 will be made for the time you spend in the interview.

The giving of money to drug users for the sole purpose of participating in a survey surprises me. In this context I would be grateful if the Minister for Health could provide the following information:

1. How much money has been paid by the Drug and Alcohol Services Council of South Australia in relation to this speed survey?

2. Will the Minister advise this place of the number of needles that have been given out free of charge over the past three years and advise whether there has been any increase in the number of needles exchanged under this program?

3. Over this period, how many needles have been returned by participants in this program as an exchange and how many needles or syringes have not been returned? Could this information be supplied showing a monthly breakdown for the past three years?

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

TRANSPORT DISPUTE

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Transport a question about tomorrow's public transport strike.

Leave granted.

The Hon. T.G. CAMERON: As shadow Minister for Transport I have received a number of telephone calls from employers and workers expressing concern about tomorrow's public transport strike. Will the Minister explain to the Council what steps she has taken to prevent this strike from taking place?

The Hon. DIANA LAIDLAW: The Government sees no rational reason for the strike, as I outlined in the ministerial statement that I issued at the start of Question Time. We have worked constructively with the Public Transport Union over two years in government and some excellent results have arisen in terms of new innovative services and, in particular, increased patronage numbers, which all of us in South Australia have been seeking for many years but have not secured until this new reform agenda based on competitive tendering was developed. I acknowledge that the union demand is based on the resolution passed last Thursday, as follows:

> This meeting demands the tendering process for TransAdelaide bus services be immediately stopped.

This is a demand to which the Government has no intention of responding, other than to reject it. The tendering process has continued to date because we have had the cooperation of the union movement. Otherwise, we would not have been able to register in the Federal Industrial Commission the Lonsdale and Hills transit awards. So, the very matters about which the union now seeks to protest and strike are matters that it has been able to accommodate until now. One must ask why there has been this change of heart. I think it would be fair to say that one response to that question would be a new national strategy by the Public Transport Union following the recent Federal election.

I am also advised that another reason could be falling PTU membership numbers in South Australia and a power struggle within the paid officer positions, which, it has been suggested, will be reduced from five to three. Similarly, the AWU is putting people off at present.

Members interjecting:

The Hon. DIANA LAIDLAW: You say it is the issue of wages, yet I have indicated that wages and conditions have never been the sole criteria for the PTB to award tenders. Also, I understand that service delivery, safety and whole of Government costs have all been factors. In addition, TransAdelaide and other bidders will tell you that terms and conditions of employment are matters that were addressed in lodging their bids. Certainly, service improvement is given equal weighting.

Further, it is important to consider that, with all this new zeal for strike action, I indicated to the Public Transport Union yesterday that I would be prepared to meet with it—and I still am—but not on the basis of a threatened strike proceeding tomorrow. The union rejected that call, and I remain firmly of the view that, if the PTU so wished, there is every reason why it could call off tomorrow's action. As I said, the union rejected that call, so TransAdelaide took the matter to the Industrial Commission, with the case being heard at 2 p.m. today, and I still have not been advised of the outcome of the Commissioner's ruling.

In terms of meeting with the union, on the basis that there is no strike action and TransAdelaide's having taken the matter to the Industrial Commission seeking the immediate withdrawal of this action, I can assure the honourable member that I have been diligent in trying to encourage the union to desist from this action, which is negative, for which there is no reason and which I would argue has the potential to compromise TransAdelaide's capacity to bid successfully for future tenders. Certainly, it will disrupt passengers, whether it be school children, commuters or casual users, in terms of their commitments tomorrow.. Such action is extraordinarily disappointing at a time when we have just recorded the first increase in public transport usage for many years. Likewise, in terms of the argument that there is no reason for this strike, I have kept the public informed about the need to make alternative arrangements if the union does not call off the strike or if the Industrial Commissioner

believes that because of late notice or other factors it cannot be called of at this stage. I think that is sufficient.

SCHOOL ENROLMENTS

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 school enrolments.

Leave granted.

The Hon. P. HOLLOWAY: For the past four successive years the number of students in our public schools has fallen from 186 000 in 1992 to 184 000 in 1993, 182 000 in 1994 and 178 000 in 1995. The fall in enrolment of 4 000 students last year led to large cuts in the number of teachers employed by the department. First, will the Minister say how many primary and secondary students have enrolled this year in public schools? Will he say how these numbers compare to the 1995 figures? Secondly, have retention rates at secondary schools altered, and how does the number of students in years 12 and 13 compare with the number last year? Finally, what are the implications of the level of public school enrolments for teacher and school service officer numbers?

The Hon. R.I. LUCAS: I will have to take those questions on notice and bring back a reply.

INTENSIVE CARE BEDS

The Hon. T. CROTHERS: I seek leave to make a statement before asking the Minister for Transport, representing the Minister for Health, a question about a shortage of intensive care beds in South Australia's hospitals.

Leave granted.

The Hon. T. CROTHERS: In the sittings of the previous Parliament in this State many questions in this Council were directed to the then Labor Government by the Opposition about hospital waiting lists. Investigations by the Government of the day revealed that most, if not all, of those on waiting lists at the time were waiting for elective surgery, that is, for operations for complaints that were perceived to be non life threatening. The people who administer and operate the South Australian hospital system must be appalled by various reports that the new Federal Liberal Howard Government is about to start cutting Federal health moneys granted to State Governments. While this is bad enough, more alarming still are reports that Adelaide's hospitals are in crisis with an alarming shortage of intensive care beds in the South Australian hospital system.

I refer to an *Advertiser* article (page 2, 4 March 1996) concerning this matter and suggest that all members read it. The Royal Adelaide Hospital reported through its Intensive Care Director, Dr Peter Thomas, that because of overflow some intensive care patients had to be moved into other wards. He said this practice was undesirable, and the Director of Critical Care at Flinders Medical Centre, Dr Al Vedig, stated that his critical care unit had 'overflowed 35 to 40 times in the past 12 months'. Likewise, there are adverse reports from the Women's and Children's Hospital, and overflows have also occurred at Whyalla, which is, as I have said, the only country hospital in this State to have an adequate intensive care unit. Some of the many questions that flow from these press and other reports I will now direct to the Minister for Transport, representing the Minister for Health:

1. What steps, if any, will the Minister take in order to relieve this critical shortage of intensive care beds in our hospitals?

2. Is the Minister concerned in respect of the reports circulating that the new Howard-led Federal Government intends to further slash health funding to all States?

3. What representations will the present Minister for Health in this State make to his Federal colleagues on behalf of all South Australians, and yet again to his Federal Liberal ministerial colleague relative to not reducing further any health funding to South Australia?

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

WORKCOVER

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Industrial Affairs, a question about WorkCover and its unfunded liability.

Leave granted.

The Hon. A.J. REDFORD: In a contribution I made to this place on 30 November 1995, I drew the attention of members to a comment in the annual report of WorkCover for 1994-95 of the Chief Executive Officer, Mr Lew Owens, where he stated:

> With the delays of proclamation, and the major disruption associated with outsourcing all claims management activities to private agents from 1 August, it was not possible to apply the new provisions in time for the actuarial assessment at 30 June. The actuary has quite correctly declined to incorporate benefits of the legislative changes in this year's assessment, preferring to wait until the benefits are reflected in the numbers once the changes are applied. This is expected to occur over the next 12 months.

In the light of that statement, my questions are:

1. To what extent have the changes been applied?

2. Does the Minister or the corporation have any updated information on the extent of the unfunded liability as at 30 June last year?

3. Is the corporation prepared to release any updated information regarding the WorkCover Corporation's unfunded liability for the 1994-95 year?

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

GRAIN CROPS

In reply to **Hon. T. CROTHERS** (7 February).

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

1. Diversification in farming activities is well known to enhance the survival rates of farmers in general, and South Australian farmers are no exception. SA farmers are very reliant on the sale of their product into overseas markets, and these markets are very sensitive to the supply and demand for each product. The ability to diversify across a range of crops provides some insurance to the farmer if the price received for any particular grain is low, while prices received for other grains are high, or at least favourable.

The South Australian Government strongly supports the development and promotion of new pulse and oilseed crops such as canola, chickpeas and lentils and believes these crops are contributors to improved profitability and hence farm viability.

These crops offer rotational advantages by decreasing cereal disease levels enabling higher yields of following cereal crops. Pulse crops improve the available soil nitrogen as they gain most of their nitrogen needs from fixation rather than depleting soil nitrogen as with a cereal crop. In addition pulse and oilseed crops are profitable cash crops in their own right. The skills to enable farmers to grow canola and chickpeas successfully are being provided through Canola Check and Lentil Check programs facilitated by PISA agronomists.

These crops are best suited to our more favoured cropping districts. Current research is focused on developing more broadly adapted pulse and oilseed crops suitable for our lower rainfall districts.

2. South Australia has a competitive advantage over most other pulse producers due mainly to the low input cost of marginal and semi-marginal land, and hence in the production of processed pulses. Further competitive advantages are SA's ability to meet consumer demands, a clean growing environment, flexibility in range of crops, consistent quality, and industry commitment. Australia's close proximity to Asia is an advantage for our pulse crop industries. It allows us a freight and timing advantage over Canada, our major competitor. We are able to transport grain $5-10/tonne cheaper and can ship into Asia immediately after harvest, through our summer when poor weather conditions reduce or prevent grain movement from Canadian ports.

Around 70% of pulses are consumed as food, and the main use of pulses for human consumption is concentrated in the developing countries, while use for stock feed is predominantly in industrialised countries. The diversification process is definitely helped by opportunities that are arising from the combination of rising incomes in the Indian sub-continent and Asian markets. Asia is a big consumer of pulses, and particularly value added pulse products. Furthermore, the increasing affluence of Asia is leading them to more westernised diets and particularly increased meat consumption, thus opening opportunities for export of feed grade pulses.

3. The State Government is contributing approximately $383 000 per annum directly to the breeding, evaluation and disease management of alternative crops (mainly pulses) in SA. In addition to this, there is a share of the overall infrastructure costs of maintaining the necessary laboratories and other research centre facilities used for field crop R&D within SA.

AQUACULTURE

In reply to **Hon. M.J. ELLIOTT** (8 February).

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

1. Yes.

2. Aquaculture Management Plans are prepared along the same lines as development plans. The development plan process provides a legislative basis for public scrutiny and comment and the Department of Primary Industries (PISA) ensures that a broad range of community and industry groups and individuals are consulted during the drafting of the plans and again during the public consultation phase.

Scientific input is provided by the South Australian Research and Development Institute (SARDI) which has the expertise and is arguably best resourced of any institution in the State to provide the most up to date information on the marine biogeography of SA waters and to identify areas of particular marine environmental significance. SARDI is also best equipped to advise on possible interactions of aquaculture with established uses such as capture fisheries.

3. The Government has not set a date for the completion of Codes of Practice and industry groups are working with the EPA to meet the agency's requirements.

4. The SARDI reports are not included in each management plan simply because they are bulky and would double the cost of printing. To ensure an open and transparent process, each management plan is printed twice, once as a draft for consultation and later as the final version. The reports are available to the public on request.

ABALONE

In reply to **Hon. BERNICE PFITZNER** (14 February).

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

1. The incident in question was not dealt with by way of expiation. Indeed, the matter went to court and the two persons involved were convicted of offences under the Fisheries Act. The details are as follows—

- On 12 March 1993 a Panorama man and a Largs Bay man were reported by fisheries compliance officers for being in possession of 1 296 illegally taken abalone. This followed a large scale surveillance operation in the metropolitan area.
- Charges were laid against the two men which resulted in convictions and fines being handed down in the Adelaide Magistrates' Court on 31 August 1994 by Mr G. Gumpl SM. The Panorama man was fined $4 000 with a further $641 costs with 12 months to pay. The abalone seized (valued at $14 000) was also forfeited to the Crown. The Largs Bay man was also fined $4 000 with a further $641 costs with 24 months to pay. On the same day this man was sentenced to six months imprisonment (suspended) for similar offences that occurred on 4 April 1994.

2. Expiation notices would only be issued to offenders who take a small number of abalone (or other fish) over the bag limit or under the legal minimum length, ie at the lower end of the scale. Where it is clear that the offence is not trivial, prosecution action would be initiated, as evidenced by the circumstances outlined above.

LOCAL GOVERNMENT ELECTIONS

In reply to **Hon. A.J. REDFORD** (14 February).

The Hon. K.T. GRIFFIN:

1. It is inevitable that Chief Executives, as principal officers of Council, will get involved in Council 'politics'. However, it is not axiomatic that they are partisan as Returning Officers and I am unaware of any in South Australia being challenged on the issue.

Nevertheless, the matter has been raised on a number of occasions over the years, but in each of those the concern has been about the amount of pressure some councillors have applied to the Returning Officer whose career may be dependent on the Council.

When last brought to the attention of a previous Local Government Minister (Hon. Anne Levy), she wrote to all councils informing them that the Electoral Commissioner would be prepared to act as Returning Officer should they feel that the position was or could be compromised. The Electoral Commissioner's Office now assists eleven local government authorities and expects to pick up a few more before the end of this year.

2. I do not believe that legislation would be of any assistance if all it says is 'Chief Executives will not compromise the position of Returning Officer if the latter is an employee of Council'.

In New South Wales, the Electoral Commissioner is responsible (by statute) for the proper conduct of Local Government elections. However, in many cases the Chief Executive is the person who actually runs the elections. However, he/she must comply with the Commissioner's directions. Given the problems they have had in New South Wales in the past (some 15 to 20 years ago), the current arrangement works well.

I must admit I prefer the voluntary arrangement whereby Councils choose to seek the services of the Electoral Commissioner's Office rather than have them foisted upon them.

SAMCOR

In reply to **Hon. R.R. ROBERTS** (13 February).

The Hon. K.T. GRIFFIN: The Deputy Premier and the Minister for Primary Industries have provided the following response:

The Government's intention is to sell SAMCOR as a going concern aiming to provide ongoing employment to existing SAMCOR employees.

The honourable member refers to the Commissioner for Public Employment's definition of public sector in his direction to chief executive officers titled 'Targeted voluntary separation package schemes'. He also cites the Commissioner's statement that this is the only scheme available to assist agencies in reducing workforce levels. This is a crucial point because the sale of SAMCOR is not about reducing workforce levels. Rather, one of the objectives of the sale is to maximise employment opportunities. Hence, the Commissioner for Public Employment's direction is not relevant in the case of SAMCOR.

Redundancies are a last resort option for the Government, and redundancy payouts are not an option if jobs are available. The Government is doing its best to preserve and create jobs. The sale is not an opportunity to seek large payouts at taxpayers' expense.

The majority of SAMCOR employees have never been subject to conditions available to public servants, but rather have been subject to meat industry award conditions. This position was confirmed by a 1984 Labor Government decision. In restructuring SAMCOR to make it profitable in 1984, the then Labor Government, decided SAMCOR employees were considered to not fall within the Government's no retrenchment policy. SAMCOR employees are not public servants, but, as stated in the Honourable Members statement of 7 February and 13 February employees are members of the "public sector". Over time SAMCOR has retrenched people under this arrangement within the award.

The redundancy offers put to SAMCOR unions are consistent with commercial arrangements and are far better than the redundancy entitlements set out in the awards negotiated by unions and SAMCOR in 1991. Awards provide for a maximum payment of 12 weeks, whereas the Government has offered up to 52 weeks. If this offer is not accepted by the union the Government will resort to the award provisions although at this stage negotiations with the union are continuing in order to attempt to reach an amicable solution.

The sale of SAMCOR is not expected to be able to fund large redundancy payments. Any additional payments would have to come from other Government revenue, meaning taxpayers would be subsidising excessive and non-commercial redundancies to employees.

ABALONE

In reply to **Hon. CAROLINE SCHAEFER** (7 February).

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

In addition to the intertidal reef closure introduced on 1 January 1996, fisheries compliance officers from Primary Industries have made the general and local communities more aware of this problem (the continual plundering of these fragile reefs) through a number of mediums.

This has been achieved through the conduct of Operation 'Nightshift' which included a letterbox campaign of all residents located along the southern metropolitan coast from Kingston Park through to Sellicks Beach. This campaign was aimed at drawing the attention of the local community to the problem and what they can do about it by contacting fisheries personnel on the 24 hour tollfree FISHWATCH line.

Press releases to all Adelaide ethnic newspapers regarding the shellfish closure were published during February to inform these communities of the closure. It is intended to follow these measures up with a signposting exercise in those areas most prone to over exploitation.

Offenders caught taking abalone from these areas are dealt with severely through high fines, seizure and forfeiture of gear and vehicles and possible imprisonment if guilty of taking the abalone for sale.

It is expected that, in time, these reef areas will recover from years of plundering by organised and ignorant persons willing to exploit these resources.

COLLEX WASTE MANAGEMENT

In reply to **Hon. M.J. ELLIOTT** (15 February).

The Hon. K.T. GRIFFIN: The Minister for Housing, Urban Development and Local Government Relations has provided the following response:

The proposed Collex plant at Kilburn has received planning approval from the Development Assessment Commission and the appropriate environmental licences from the Environment Protection Authority. The City of Enfield has initiated judicial review proceedings against the approvals. The matter has been heard in the Supreme Court, and judgment is awaited.

WATER FILTRATION

In reply to **Hon. T. CROTHERS** (22 November 1995).

The Hon. R.I. LUCAS: The Minister for Industry, Manufacturing, Small Business and Regional Development has provided the following response.

1. There is no Federal Government funding toward the BOO project.

By definition, BOO stands for Build Own and Operate by the private sector. SA Water will pay a tariff to the successful plant operator for the provision of treated water by those plants.

Costs of ancillary infrastructure needed to transfer water to and from these plants will be met through SA Water's Capital Works Budget.

2. For the Period 1974/75 to 1994/95:

		$ m
Commonwealth	Grants	45.8
	Loans	50.7
Sub-total		96.5
SA Government		133.3
Total Funds		229.8

AUDITOR-GENERAL'S REPORT

In reply to **Hon. CAROLYN PICKLES** (11 October 1995).

The Hon. R.I. LUCAS: A detailed response was submitted on 26 June 1995 to the Auditor-General in relation to the First Phase 1994/95 Interim Audit. In that response information was provided regarding instances that occurred which did not comply with Treasurer's Instruction 336. The information provided included details of why the transaction occurred and action taken by the Department.

In most cases whilst it is recognised that Treasurer's Instruction 336 was not adhered to, it was considered that the cardholders have not consistently abused the Credit Card Policy and each cardholder mentioned in the Audit Report has been counselled regarding use of their card. Further, Senior Executive Management, Local Credit Card Administrators and cardholders have been alerted to ensure that DECS Corporate Credit Card Policy and Treasurer's Instruction 336 are adhered to.

There is prima facie evidence that one particular employee has abused the use of the credit card and this matter has been referred to the Anti Corruption Branch, SA Police Department for criminal proceedings.

Control over use of Credit Cards has been strengthened through workshops for Local Credit Card Administrators, formation of a working group to improve awareness, controls and processing requirements and the new Audit Committee established by the Chief Executive will ensure that effective internal audit processes are implemented which will include Credit Card usage. A current strategy is already being actioned to achieve this with the following being undertaken:

- Further workshops to be convened for Local Credit Card Administrators
- A memorandum to all cardholders and Local Credit Card Administrators raising the Auditor-General's and Under-Treasurer's concerns and that non-adherence will automatically deny them use of credit cards.
- A temporary appointment to undertake a comprehensive compliance check of all credit card transactions and processing from 1 July 1995 to date. This check will identify whether improvements have been made in adherence to policy and recommend immediate cancellation of credit cards if officers have not adhered to policy and procedures.
- Establishment of a Credit Card Control Group which will review processes and policy.
- Provide regular updates to the Auditor-General and Chief Executive regarding review, action taken and improvements

The Chief Executive has advised that in future the internal audit function of the Department will conduct random checks to ensure the internal controls are being adhered to and that authorisation for individual officers to use corporate credit cards will be withdrawn, and disciplinary action will be taken, where necessary.

In reply to **Hon. CAROLYN PICKLES** (17 October 1995).

The Hon. R.I. LUCAS: The following funds are owed to the Government from non-Government agencies sharing facilities with the Department for Education and Children's Services:

Capital ($)	Recurrent ($)
323 000	132 970

Some of these funds refer to agreed repayment of loan schedules by non-Government schools where the funds 'owed' simply indicate future repayment amounts. Other examples relate to unpaid shares of electricity and water accounts dating back to 1982.

The department is seeking to ensure repayment of all overdue accounts as soon as possible.

In reply to **Hon. CAROLYN PICKLES** (17 October 1995).

The Hon. R.I. LUCAS: The Department for Education and Children's Services (DECS) has created a position, (Senior Manager, Internal Audit, MAS3), which will be responsible for the Department's internal audit function as part of the Quality Assurance processes of DECS. This position will be required to lead the audit process and to develop and manage the DECS Audit Plan.

Through the leadership of 12 audit staff and through the use of out-sourced expertise, the Senior Manager, Internal Audit, will ensure that the internal audit requirements of the Department are met, as well as ensuring an independent appraisal and reporting function including audits of divisions, school and preschool sites, and programs. It is expected that this position will result in and support the continuous improvement of effective utilisation of resources and

enhance compliance with government financial management, budgeting and accounting practices.

The audit findings with respect to weaknesses in procedures and internal controls did not highlight significant control weaknesses. The investigations of the Audit staff revealed instances of one or two staff not following procedures or where procedures or technology had not kept up with new control requirements. The non performance of these controls bears no relationship to staff cuts.

It was agreed however, that the detailed audit findings disclosed an unsatisfactory situation in relation to weaknesses in procedures and internal controls.

The comments made by the Auditor-General relating to the Internal Audit function of the Department were noted. It was recognised that there is a need to review the extent of the operation of Internal Audit within DECS with the objective of extending Internal Audit activity to the examination of Departmental financial operations. This has been implemented.

A consultancy was undertaken by Deloitte, Touche, Tohmatsu who prepared two reports for consideration by the Chief Executive, and a comprehensive proposal to implement a new and improved internal audit function was prepared. The Department's Senior Executive agreed on 15 June 1995 to the establishment of an Audit Committee which the Chief Executive chairs and which meets on a monthly basis. This committee will ensure that effective internal audit processes are implemented and will be extended to the examination of Departmental financial operations.

The audit comment with respect to accounts payable and salaries and wages did not highlight significant control weaknesses. The investigations of the Audit staff revealed instances of one or two staff. not following procedures. In all instances these staff and their team supervisors have been counselled and advised of the audit findings to ensure that reports are actioned correctly in the future.

The Auditor-General raised concerns about the non performance of input/output checks for Family Day Care Fee Relief. A specific officer has been delegated the responsibility of performing input and output checks on a random basis. The non performance of this control in the past bears no relationship to staff cuts and the advice of the Audit staff was agreed to and adopted as recommended.

The Auditor-General also raised concerns in relation to the delay in performing the disbursement account reconciliations and that the reconciliations were not being reviewed by an independent officer. The Finance Officer Grants has ensured that all future reconciliations are performed in a more timely manner and reviewed by an independent officer. It should be noted that the delay in performing the disbursement account reconciliations during March and April was attributable to some unusual Reserve Bank charges. The charges took sometime to investigate with the Reserve Bank and regional staff.

The need for an integrated claims management system for workers compensation is acknowledged. The Whole of Government, Human Resource Management System (HRMS), is being investigated for its potential to provide and integrated claims management system. However, the implementation of this system is not anticipated to occur before July 1996 and the development of a claims management module would require an even longer wait. Therefore, a working group is currently investigating the purchase of an upgrade (to Version 10) of the Fig Tree system. This would provide the Department with a reasonably system as an interim, until the HRMS system becomes available.

In reply to **Hon. A.J. REDFORD** (17 October 1995).

The Hon. R.I. LUCAS: The audit findings revealed a number of instances where travel claims were not checked for compliance with the Commissioner's Determination No. 9 (excess expenditure above the recommended allowances). However, it is noted that the Commissioner's Determination 9 is a guideline only and the Chief Executive (or delegate) has authority to approve more or less expenditure which is necessarily incurred.

All instances where travel claims were not checked for compliance with the Commissioner's Determination No. 9 have been checked by the delegated officer. There is no question that the travel was taken, and the expenditure was incurred, for work related purposes.

In reply to **Hon. A.J. REDFORD** (17 October 1995).

The Hon. R.I. LUCAS: In relation to specific instances where substantial telephone expenses were noted, the expenditure has subsequently been authorised. Delegated officers sought information to gain assurance that the expenditure was incurred for legitimate purposes, arising from Departmental business and was deemed to be reasonable under the individual circumstances.

The two officers involved have been made aware of the need for the Chief Executive (or delegate) to authorise telephone expenditure in relation to travel.

The audit findings with respect to weaknesses in procedures and internal controls did not highlight significant control weaknesses. The investigations of the Audit staff revealed instances of one or two staff were not following procedures or where procedures or technology had not kept up with new control requirements.

APPEARANCE MONEY

In reply to **Hon. G. WEATHERILL** (8 February).

The Hon. R.I. LUCAS: The Minister for Recreation, Sport and Racing has provided the following response.

Australian Major Events has been established by the South Australian Government to bid for, secure and develop major and strategic events that develop significant economic and tourism promotion opportunities for the State.

In respect to the Ford Open Golf Championship, Australian Major Events agreed to support the tournament through a sponsorship package presented by the South Australian Golf Association and event promoter, Tuohy Associates. The object of the sponsorship was to ensure the tournament was lifted to the status of a truly international golf event. The appearance of some of the world's leading golfers ensured that unprecedented public attendance and national and international television exposure was achieved.

The payment of appearance money to Greg Norman and a number of the other high profile players who competed in the tournament was negotiated by commercial arrangements between the players and the tournament promoters. The Government, as with the other sponsors had no involvement in the negotiations over player appearance money, which remains confidential between promoter and player.

MULTICULTURAL FORUM

In reply to **Hon. P. NOCELLA** (8 February).

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

1. Yes.

2. The South Australian Multicultural Forum does not have a charter. The objectives of the Forum have not been changed since 1988.

3. Members of the Forum have not requested to be told in advance about who attends Forum meetings that are convened by the South Australian Multicultural and Ethnic Affairs Commission.

SCHOOL RETENTION RATES

In reply to **Hon. CAROLYN PICKLES** (7 February).

The Hon. R.I. LUCAS: As part of a commitment to continuous improvement, the Senior Secondary Assessment Board of South Australia has commenced a SACE Improvement Strategy.

One of the projects of the Strategy which will be conducted in 1996 is to focus on SACE completion and, by implication, on retention in the senior secondary years.

The terms of reference for the project include an analysis of completion trends since the introduction of the SACE, the identification of factors which influence students to not complete the SACE and to make recommendations for improvement which do not result in a compromising of the quality and standard of the SACE.

TORRENS ISLAND POWER STATION

In reply to **Hon. SANDRA KANCK** (6 February).

The Hon. R.I. LUCAS: The Minister for Infrastructure has provided the following response.

1. All transformers which to date have been cooled by seawater flowing to Angas Inlet are PCB free, including the transformer which leaked on 3 December 1995. This was the first such leak of a seawater cooled transformer since Torrens Island Power Station's construction in 1967. (Nevertheless the system of cooling is under investigation for redesign with the aim of ensuring that such a spill can not occur in future.) Given these facts it is extremely improbable that insulating oils used in transformers at Torrens Island Power Station would have made any contribution at all to the contaminant loading of the Port River Estuary.

Since the 1930's PCBs had been used widely for a number of purposes in insulating oils for electrical equipment, in paints adhesives, flame retardants and plastics.

The Australian New Zealand Conservation Council has recently endorsed a PCB Management Plan as part of the National Strategy for the Management of Scheduled Waste. The plan was prepared by the National Advisory Body on Scheduled waste, and involved very extensive consultation with the scientific and broader community. The National PCB Management Plan has been approved by the South Australian Cabinet, and provides the basis for regulation on PCB management in South Australia.

Under the National Management Plan, oils containing less than 2 mg/kg PCB are classed as PCB free. Polychlorinated naphthalene (PCN), including dichloronaphthalene (DCN) and chloronaphthalene (CN) may be found in trace levels in pure PCB. In oils without PCB (or even in oils defined as PCB free) such aromatics would be at undetectable levels.

At a more general level, ETSA Corporation has been, historically, active in testing oil filled equipment for PCBs and removing, for disposal by approved methods, both oils and equipment with PCB levels which would be considered scheduled waste under the National PCB Management Plan. Current management of the issue by ETSA is consistent with the approved management plan, and conducted in liaison with the South Australian Environment Protection Authority.

PBBs are polybrominated biphenyls. They were primarily used as fire retardants and are not a known contaminant of transformer oils.

2. Since the 1970s, there have been concerns about PCBs, including their possible environmental effects, a number of which have been suggested. PCBs have a tendency to concentrate in micro organisms, plants, invertebrates and mammals. This may have contributed to effects such as decline in some bird populations, and reduced reproduction in sea mammals.

3. The oil discharge from Torrens Island Power Station on 3 December 1995 resulted from a tube leak (caused by a corrosion pit) in one of the three oil coolers of the unit B2 step up transformer.

The actions taken as a result of this incident are:

- the transformer alarm and trip circuits have been reviewed and improved,
- vacuum tests are being conducted on all similar coolers,
- improved non-destructive test procedures are being investigated and will be applied, if successful,
- engineering options to eliminate the possibility of oil discharges have been determined, engineering consultants are being engaged to investigate and cost these engineering options.

ELECTRICITY TRUST OF SOUTH AUSTRALIA

In reply to **Hon. R.R. ROBERTS** (25 July 1995).

The Hon. R.I. LUCAS: The following information has been provided by the Minister for Industry, Manufacturing, Small Business and Regional Development.

The relocation of the ETSA service centre at Port Pirie is being undertaken because ETSA Corporation is in the process of restructuring to meet the expected highly competitive National Electricity Market due to commence in October 1996.

South Australia has physical constraints in terms of electricity operations, and to overcome these natural disadvantages, there is need to operate as efficiently as possible. The consolidation of work locations for ETSA Corporation staff is one of the strategies being adopted.

No one is being forced to move but two staff had been asked to consider moving. However, if they decide not to move alternative duties will be found for them at Port Pirie.

The Minister has been advised that offices at Clare comply with all relevant OH&S and DIA requirements and therefore there is no need to upgrade. However, as with all ETSA work locations, continuous maintenance and refurbishment will take place.

CHILDREN'S CENTRES

In reply to **Hon. CAROLYN PICKLES** (14 November 1995).

The Hon. R.I. LUCAS: The honourable member raised concerns in relation to the possible impact on total amount of funding, numbers of staff, standards and fees.

The State contribution towards the provision of child care at Greyward, Keith Sheridan and Margaret Ives integrated services is estimated to be $140 000 per annum. ($81 000 in agreed State contributions and $59 000 of shortfall funding.)

It is estimated that Child Care Act funding from the Commonwealth for the three services would provide $110 000 of operational funding and $500 000 to $600 000 of Child Care Assistance funding.

Preliminary budgets utilising Child Care Act funding have been determined for the three centres. The budgets have been based on current centre costings and existing or improved staff/child ratios. DECS has no plans to reduce the number of child care staff at these services.

Preliminary budget estimates for each centre have been undertaken by the Commonwealth Department of Human Services and Health. The indications are that the transfer to Child Care Act funding together with the addition of places for under 2's care will result in lower or comparable child care fees for parents. Current figures supplied by Commonwealth officers, in January 1996 indicate the following:

- At Grey Ward Children's Centre estimates on the cost of care under Child Care Act funding range between $2.00 less per week to $4.00 more per week.
- At Keith Sheridan Children's Centre it is estimated that the cost of care under Child Care Act funding is likely to decrease by between $5.00 and $10.00 per week.
- At Margaret Ives Children's Centre it is estimated that the cost of care under Child Care Act funding will be approximately $14.00 less than the centre's current cost.

The process to determine each centre's final budget is undertaken by Commonwealth officers and the centre Management Committee and will be affected by the number of staff that the Management Committees decide to employ.

Care for under two year olds will be available at the three centres upon the completion of the building works needed to accommodate the new places. Margaret Ives estimated completion date is mid 1996. Both Grey Ward and Keith Sheridan are scheduled for completion in August/September 1996.

Standards of care do not relate to the source of funding but to quality staff, resources, environment and practices within the centre.

The quality of care and education within a child care service is monitored and continually improved utilising the Quality Improvement and Accreditation System. Each of the three centres has registered for Commonwealth accreditation. Margaret Ives is the first of the centres to be reviewed and has recently been accredited for the full three years.

FORESTS

In reply to **Hon. R.R. ROBERTS** (14 February).

The Hon. R.I. LUCAS: The following information was provided by the Deputy Premier.

The committee established by the Government to review means of maximising the value of State-owned forests will be based on the State Government maintaining a direct role in the future management of the forests so as to protect regional, State and national economic interests.

The terms of reference include:

- Consider the operationally, financially and economically viable options for unlocking the value of the forests, noting the need to maximise processing of roundwood in South Australia;
- Identify issues relevant to the protection and promotion of the economy of the State's South East, including maximising opportunities for sustainable economic development and jobs;
- Identify total land areas with potential for new forest plantings.

1. The steering committee will be chaired by the Department of Premier and Cabinet with Professor Ian Ferguson of the School of Forestry, University of Melbourne, as an adviser to that committee.

As the Honourable Member points out, the committee also includes the Chairman of the Asset Management Task Force, Dr Roger Sexton. Contrary to the Honourable Member's statement, the Task Force was not set up purely to sell the State's assets but rather was deliberately given the title of 'asset management'. The terms of reference of the Task Force require the Task Force to advise the Government on improving the management of the State's assets for the benefit of South Australians. Clearly, this review fits well with the role of the Task Force and its contribution and expertise will be an important part of the review process.

2 and 3. The intention of the review committee is to seek broad consultation and to contact a range of interested parties in the South East region. Any decision to conduct public meetings will be at the discretion of the review committee. The Honourable Member can be assured that the committee will do whatever is necessary to obtain sufficient information on the subject in order to meet its terms of reference.

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

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

1. The Government's review of the means of maximising the value of the State's forests will investigate overseas trends, including the New Zealand experience. It will look at the complete picture in this country rather than any one particular aspect.

2. The review will identify all issues of relevance to the protection and promotion of the economy of the State's South East, including maximising opportunities for sustainable economic development and jobs. In addition, the review will consider the preservation of appropriate conservation uses of, and recreational and education access to, forest reserves.

SUBMARINE CORPORATION

In reply to **Hon. A.J. REDFORD:** (15 November 1995).

The Hon. R.I. LUCAS: The Minister for Industry, Manufacturing, Small Business and Regional Development has provided the following response.

1. A letter has been sent.

2. No. The Leader of the Opposition has already stated publicly that he has approached the Federal Government on this matter.

3. The contract for the construction of six 'Collins' class submarines for the Royal Australian Navy is a commercial arrangement between the Federal Government and Australian Submarine Corporation Pty Ltd. The South Australian Government actively pursued the contenders for the contract and successfully attracted the submarine assembly site to Osborne with its many associated spin-off benefits and subcontract work. It is the Federal Government's prerogative whether or not an additional two submarines will be ordered. The State Government and I am sure all South Australians would welcome such an order being placed but it is an issue over which we have no control. The Minister is aware of the importance of the submarine project and the economic benefits derived through it and other defence projects and activities being undertaken in South Australia. This has been conveyed to the Federal Government.

NATIVE VEGETATION

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 Native Vegetation Act.

Leave granted.

The Hon. M.J. ELLIOTT: My question relates to the failure of the Native Vegetation Act to protect significant native vegetation following the felling of another 14 substantial red gums near Eden Valley last week. The Conservation Council claims that some of the gums that were removed for the planting of vines were irreplaceable. I have been told that not only did the trees contain individual ecosystems in their own right—nesting hollows, etc.—but that several were scar trees, which contained burnt-out hollows at their bases, created as shelter by Aborigines many years ago.

This is the latest in an increasing number of clearance approvals for the planting of vineyards, including the removal of 400 trees in the South-East on a property owned by Tyncole Limited, a company part-owned by a former Minister in the other place; 200 trees felled in the South-East by a company known as Snook; and 68 trees felled by Yalumba in an area directly adjacent to the Kaiser Stuhl Conservation Park. This latest clearance also follows the clearance of more than 1500 trees at Greenways, Reedy Creek, also in the South-East, for a pine plantation. I remind the Chamber of a question I asked in October last year, following a freedom of information request made on this issue.

The statistics I received revealed a steady decline in the number of native vegetation applications being refused and a massive increase in clearance approvals after March 1994, following the change in Government. Ninety per cent of South Australia's native vegetation has already been removed or significantly degraded. Unless we act it will be too late for many native species currently under threat. My questions to the Minister are:

1. Will the Minister undertake an independent audit to check the performance of the Native Vegetation Council compared with its predecessor, the Native Vegetation Authority, administered under the previous Act?

2. Will the Minister review whether the existing Act is adequate to protect native vegetation, particularly in relation to vineyard and other such clearance and, if not, will the Minister seek to amend the Act?

3. Since much of the continuous clearing in recent times has been in relation to vineyard development, will the Minister pursue the development of a code of practice to stop the current wholesale clearance that is occurring?

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

ADVERTISING, MISLEADING

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about misleading advertising.

Leave granted.

The Hon. ANNE LEVY: A constituent has brought to me a pocket-saver book of free coupons, which was put into the constituent's letterbox. I am sure many people have seen such coupons before, where a particular coupon presented at a particular retail or service outlet will provide reduced costs. If the appropriate coupon is presented a person will, for instance, receive a reduced cost for a tune and lube special, for professionally steamed-cleaned carpets, for photo development, for dry cleaning, and so on. We have all had such things placed in our letterboxes. However, one of the coupons states 'revolutionary patch melts away body fat', and is asking people to send money to an address—

Members interjecting:

The PRESIDENT: Order.

The Hon. ANNE LEVY: It asks people to send money to an address in New South Wales to receive these so-called Slender Patches. The coupon states:

> People from around the world are losing unprecedented amounts of body fat simply by wearing an amazing revolutionary small skin-coloured patch without dieting or calorie counting, without exercise, without medication. Slender Patch is now available in Australia. You can lose the weight you need to lose and never put it back on again simply by wearing a patch on the skin each day.
>
> Slender Patch contains fucus, a totally natural ingredient containing a type of seaweed that is rich in iodine and contains numerous vitamins and minerals which have been clinically tested.

So it goes on. I will not read any more of this nonsense. I realise it is an opinion—an opinion which I suggest would be shared by all members in this Council—that this so-called fucus containing iodine, vitamins and minerals in a patch on the skin would have no effect whatsoever on people's weight, but they are asked to send considerable amounts of money.

If they wish to lose two kilos, it will cost $34.95; if they wish to lose seven kilos, it will cost $87.95; and if they wish to lose 16 kilos, it will cost $139.95.

I suggest that this is misleading advertising designed to rip money out of people's pockets. They will send considerable amounts of money and get back nothing worthwhile in return, except a bit of iodine, which could be purchased far more cheaply, if anyone wants iodine, and why that should cause a permanent reduction in weight for anyone is a bit hard to understand. It seems that the Consumer Affairs Department should certainly be dealing with this matter and issuing warnings to people not to be taken in by these totally false and misleading claims which are being made in this book of free coupons.

I stress that I am not complaining about any of the other coupons in the book, which seem to offer something of value to those who wish to use them. However, as I think this particular coupon is designed to rip money off people, at least a warning should be issued immediately by the Consumer Affairs Department and every action possible should be taken to prevent the distribution of such misleading claims throughout South Australia. Will the Attorney-General undertake to do this as a matter of urgency?

The Hon. K.T. GRIFFIN: Obviously I will need to refer this to the Commissioner for Consumer Affairs, which I will do, and bring back a reply.

MULTICULTURAL AND ETHNIC AFFAIRS COMMISSION

The Hon. P. NOCELLA: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services, representing the Minister for Multicultural and Ethnic Affairs, a question regarding the appointment of a Chairperson.

Leave granted.

The Hon. P. NOCELLA: From the South Australian Government *Gazette*, dated Thursday 4 January, we are informed of the appointment of the Chairperson of the South Australian Multicultural and Ethnic Affairs Commission, such appointment being valid from that date until 1 August 1997 on a part-time basis. This is welcome news.

The Hon. R.I. Lucas: A good appointment?

The Hon. P. NOCELLA: A very good appointment, of course. I have on occasions wondered why it was taking such a long time. In fact, by the time the appointment was made it was in excess of four months. This is good news, and equally good news is the choice of the person appointed. However, what is causing some concern is the nature of the appointment. Since the inception of the commission in 1980, the Chairperson has always been appointed on a full-time basis normally for five years. It seems as though something has happened to cause this position, which is normally considered to be a senior position, to be downgraded to part-time for only 19 months.

Many people wonder what has happened to justify this decision as it has normally attracted a lot of commitment, after hours and weekend time. While change is constant—and many of us, including me, are prepared to accept change—no-one has explained what has happened to change the nature and involvement of this particular position by reducing it to such a status. My questions to the Minister are:

1. Will he inform the Council of the full terms of the appointment; in other words, salary level, any other allowances, the provision of a car, secretarial and clerical services and any other relevant information, including the hours or days involved in the appointment?

2. Will the Minister also give us the reasons that have brought about the decision to downgrade what since 1980 has been a very senior position?

The PRESIDENT: Order! There are five conversations going on at the same time. I would ask members to restrict themselves until we finish Question Time.

The Hon. R.I. LUCAS: I shall refer the honourable member's questions to the Premier and bring back a reply.

QUEEN ELIZABETH HOSPITAL

The Hon. G. WEATHERILL: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Health, a question about the emergency ward at the Queen Elizabeth Hospital.

Leave granted.

The Hon. G. WEATHERILL: It has been brought to my attention recently that people have been transferred from the QEH emergency ward at two, three and four o'clock in the morning with broken arms or broken legs (minor things that would normally be set or fixed at the QEH), to the Royal Adelaide Hospital. My information is that it is because of the lack of qualified doctors.

The Hon. Diana Laidlaw interjecting:

The Hon. G. WEATHERILL: They have only juniors there. I understand that many qualified doctors have left the QEH in order to work in private practice and at the RAH. My question to the Minister is: what decline has there been in qualified doctors from the QEH over the past 12 months and will the transfer of patients with injuries that would normally be fixed up in the emergency ward of the QEH continue?

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

FISHERIES (GULF ST VINCENT PRAWN FISHERY RATIONALIZATION) (LICENCE TRANSFER) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 14 February. Page 918.)

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their contribution on this Bill and I propose to deal with any substantive issues which do not relate to the conditions of what the Government is proposing during the Committee consideration of this Bill.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Repeal of s. 4.'

The Hon. M.J. ELLIOTT: I move:

Page 1, line 15—Insert new clause as follows:

2. Section 4 of the principal Act is repealed and the following section is substituted:

Transfer of licences

4. (1) A licence may be transferred with the consent of the Director.

(2) The Director must consent to the transfer of a licence if—

(a) the criteria prescribed by the regulations are satisfied;

and

(b) an amount representing the licensee's accrued liabilities by way of surcharge under this Act is paid to the Director.

(3) If the registration of a boat is endorsed on a licence that is or is to be transferred, that registration may also be transferred.

I shall also speak to my other amendments, all of which are consequential. This issue is one that continues to revisit this place with Governments and departments battling to fix up a problem and, I would suggest, seemingly getting no closer to a solution. The essence of the difficulties that we face this time around is that when the rationalisation of the fishery occurred some years back it was done on the basis that, by reducing the number of boats, buying those boats out and the cost of buying those boats out being shared among the rest of the fishers, we could stabilise the fishery and everyone would get a reasonable return. That was the understanding under which the buy-back scheme occurred and under which the debt was accepted by the people operating in the fishery.

As it has turned out, the advice given was inaccurate. I have made the comment on a number of occasions that leaving the liability with the fishers—a liability which they accepted only on the basis of advice given to them by Government—was unconscionable behaviour on the part of the past Government and, I would argue, is unconscionable behaviour by the present Government in terms of the fact that that liability continues to remain. I will quote from a letter dated 7 February from one fisher who wrote to me. He states:

> Despite three previous inquiries and a 2¾ year closure, the fishery's position was so bad four months after it was reopened that the Department of Fisheries advised the Government to bring Dr Morgan from Western Australia to examine its situation. He reported (after only five days) that the fishery appeared to be in a healthy state; a point of view with which I publicly disagreed. Contrary to his finding the fishery's position deteriorated further the next year and, incredibly, Dr Morgan was brought back again. After eight weeks he reported that the fishery was in a recovery mode. I put a minority opinion into the Minister's office pointing out that such a finding was contrary to the facts.
>
> There have been two periods of fishing since and the results are not only alarming but completely at odds with Dr Morgan's model. The affair has been allowed to go on for nearly 20 years during which time basic features of the fishery have altered greatly as a result of overfishing. These changes need to be reversed in order to rehabilitate the fishery but those presently in charge of management do not recognise (and will not accept when told) that these changes have occurred, so they are at a loss to know what to do. It can be seen that the fishery is in great difficulty and that intervention is necessary. Messing about, altering the buy-back legislation, is putting the cart before the horse. None of it will matter unless action is taken to fix the fishery.

In a submission made to me on behalf of a number of other fisherman, a number of points were made. The first point relates to the Bill itself:

1.1 This Bill was introduced by the Minister with no prior consultation with SAFIC, Gulf St Vincent Advisory Committee (GSVAC) or individual fishermen.

On the matter of transfer of licences, three points were made as follows:

2.1 When section 4 of the Act is read in conjunction with section 8, and bearing in mind the decision of Olsson J., if anybody did transfer their licence and, in effect, pay out their total liability to surcharge, there is no ability to recognise this total payment by imposing a differential surcharge on the other licence holders.

2.2 This anomaly needs correcting. It could easily be overcome by amending the existing Clause 4 (2)(b) to read:

> 'An amount is paid to the Director representing the licensees accrued liabilities by way of surcharge under this Act.'

A later amendment I have on file will do precisely that.

2.3 In effect, that deletes any reference to prospective liability. The ability to transfer is still available but the ability to levy a surcharge on all licence holders uniformly is not affected.

On the subject of amalgamation of licences, five points were made as follows:

3.1 The Minister seeks to rely on the Morgan report as the basis for amending the legislation to allow for the amalgamation of licences.

3.1.1 It should be noted that the amalgamation of licences was not one of the terms of reference and Morgan was not asked to consider it.

3.1.2 Nowhere in the bulk of the Morgan report is there any reference to the matters referred to by the Minister.

3.1.3 No submission was requested or made on the issue of amalgamation.

3.1.4 No consultation with the industry on the issue of amalgamation.

3.1.5 Morgan talks about a limit of 15 fathoms as total headrope length. He specifically excluded any amalgamation.

3.2 The GSVAC at its meeting on 7 November 1995 adopted the Morgan report but specifically excluded the comments made by Morgan under the heading '*IV* Other Issues', which is where he makes his sole comment about amalgamation.

3.3 John Jeffreson of Fisheries had advised that there would be the opportunity with amalgamated licences for amendments to the regulations to allow for:

3.3.1 increased horse power;

3.3.2 increased boat length;

3.3.3 increased headrope length.

3.4 The amendments to the regulations/conditions of licence would be entirely in the Minister's/Director of Fisheries' discretion.

3.5 Management of the fishery is the issue. It is up to the GSVAC to determine how that management occurs. It should be the aim of the Government to protect the fishery not to legislate for how much the fishermen should make.

That submission was made to me on behalf of a substantial number of fishermen. Based on the above information, they said that that part of the legislation regarding amalgamation should be opposed. The issue of the transfer of licences is not as critical. However, if any amendments are to be made, they should recognise the 1987 agreement that a surcharge would not be levied until the fishery produced 262 tonnes or the promised benefit from the reduction in the number of licences arose. This position is supported by the Morgan and Morrison reports. Those submissions explain the position quite clearly. I have moved an amendment and I have further amendments on file which are consistent with those submissions and which represent the view that I also hold.

The Hon. R.R. ROBERTS: I rise to indicate that the Opposition will support the amendments outlined by the Hon. Mr Elliott. Obviously, the Hon. Mr Elliott and I have had discussions with a great number of people. I have had much to say on the Gulf St Vincent prawn fishery, not over the same length of time as Mr Elliott but probably of the same quantity. I note that my speech during the second reading debate covered about six pages. Much of what I said has just been repeated by the Hon. Mr Elliott. He refers to the parlous or uncertain state of the fishery, but one matter that he did not touch on was the fact that when Gary Morgan last looked at this particular model a report was also made by Morrison, a fisheries economist. To my knowledge, that report has still not been presented; no-one has seen it. In all the circumstances, the Opposition indicates now that it will support all these amendments.

The Hon. K.T. GRIFFIN: I am disappointed to hear that. The Government opposes the amendments. The amendments oppose the Government's proposal relating to amalgamated licences. Licence amalgamation is a matter which will be addressed in the regulations. However, before the regulations

can be prepared and promulgated, obviously the rationalisation Act must provide for the fact that, upon amalgamation, the licence holder choosing to do so must be responsible for the surcharge debt attributable to licences. This means there must be power for the Minister to impose a surcharge that reflects the situation. If there were no power, following the amalgamation the Minister would be required to vary the surcharge so that the nine remaining licence holders each had an equal surcharge. The effect of this would be to impose a higher level of surcharge on those licence holders who choose to do nothing: that is, instead of paying one-tenth of the total debt, licence holders who do not amalgamate would be forced to pay one-ninth of the total debt.

Clearly, a licence holder who chooses to upgrade their operation through an amalgamation should pay the surcharge attributable to licences. That is inconsistent with the Government's view that licence amalgamation will provide a mechanism for operators to operate on a more efficient, corporate basis, but I think it ought be identified that if the Gulf St Vincent prawn fishery is to remain open—and there are signs that this is feasible—the available catch might not be adequate to meet all the operating costs of licence holders as well as their current debt obligation. Removal of the one person/one licence policy would provide licence holders with the opportunity to increase their stake in the fishery by obtaining additional licences in order to increase their catch potential. Such a transfer or amalgamation process should provide operators with improved financial flexibility and a more efficient corporate structure.

Furthermore, this would provide other interested parties with an opportunity to enter the fishery by purchasing sufficient licences to make a worthwhile investment. It must be recognised that the mere fact of amalgamation does not mean that that will thereby double the catch entitlement. What it does mean is that those who hold more than one licence may be enabled to develop their own capital infrastructure to the point where they are more efficient—and that is the aim of the Government.

The Hon. R.R. ROBERTS: Some of those remarks need to be responded to. We are talking about amalgamated licences. There is no real logical plan as to where this fishery is going. Why would a licensee want to amalgamate two licences at the moment when there is no clear plan as to what the future catch strategy will be? At present, this industry is controlled by the number of nights fished. The Morgan report recommends that there be no increase in head line lengths, etc. Therefore, we would need to break down Morgan's recommendations, upon which half of this proposal relies. If we had a quota system, you could say that we could catch two quotas, but if you have the same fishing gear and if you fish the same number of nights, unless you hit every hot spot in the gulf, you will basically catch the same amount.

When I ask questions about this, such as whether we will get two quotas or whether we can fish extra nights, no-one knows. There are no regulations. The Attorney-General in his response to the Hon. Mr Elliott and me said that, as far as the amalgamation of licences is concerned, the Bill will have to be passed before the regulations can be promulgated. This proposed Bill has been around for months. When I ask the Government what will be in the regulations, it does not know.

The Hon. K.T. Griffin interjecting:

The Hon. R.R. ROBERTS: You know what the legislation is—clearly, you know what you want. It is quite a simple matter. Having said what we want, if we get that, this is how we propose to formulate the regulations. However, this Government has a history of trying to get some legislation through and then putting up the regulations in the Council. The Attorney-General will probably respond by saying that they can be defeated in this place. We have another Bill in this place relating to recreational net fishing. This Government has filibustered and messed about the recreational fishermen of South Australia for four months. We still do not have a resolution to the problem, we have no explanation, and no scientific evidence or rationale for doing what it wants to do.

We are facing exactly the same scenario here. The Government does not know where it is going, it has no clear direction. At present, there is no reason why people would want to amalgamate, because they do not like the future catch strategy. Every time we have opened the fishery, we have never set down quotas, as was in the Quirke report some years ago. They said that we should not open the fishery until individual quotas had been allotted and a total catch strategy put in place. That has never been done properly since the fishery was opened two or three years ago. As explained by the Hon. Mr Elliott, this Bill was brought into this place without consultation with fishermen, without consultation with SAFIC, and without consultation at least with me as shadow Minister. You may turn up your nose, Mr Chairman, but it is not uncommon practice that, if people want to get something through in a cooperative way, they talk to one another. I have done that before with respect to other Bills, and they have gone through this place like water down a drain.

However, no-one wanted to do this. This legislation turned up in the Council. They said, 'This is a great idea.' The Gulf St Vincent Advisory Committee had not even been consulted. When I asked why, I was told that it was not the committee's role to talk about the management of the fishery. What do we have a committee for? If the committee cannot consider matters such as the financial management or the catch history of the fishery, why does it exist? This has been an absolute sham all the way through. These amendments deserve to be supported, and the Opposition will support them.

Progress reported; Committee to sit again.

DE FACTO RELATIONSHIPS BILL

Adjourned debate on second reading.

(Continued from 29 November. Page 667.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The Opposition supports the second reading. The Government is quite rightly concerned that *de facto* couples often face greater difficulties, higher costs and longer delays than do married couples in resolving disputes on the breakdown of their relationships. I have raised these issues with the Attorney in this place before and I am genuinely glad to see these issues being addressed.

The Bill improves access to justice for *de facto* couples in several ways. It allows for cohabitation agreements so that parties which are considering living together in sexual relationships can predetermine how they will hold property and how that property will be divided should the relationship come to an end.

Secondly, part 3 of the Bill allows for either of the *de facto* partners in a *de facto* marriage to apply to court for a just and equitable division of property on termination of the relationship, whether or not the parties have entered into a cohabitation. In this context the Opposition considers it

reasonable that the *de facto* relationship must have lasted for at least three years or there must be a child to the *de facto* couple. These factors suggest a relationship of a certain level of seriousness and commitment.

When application is made to a court under part 3, rather than having to provide that there is a constructive trust according to the doctrines of equity, where neither the law nor the typical evidentiary scenario are uncomplicated, the court is directed to have regard to the matters set out in clause 10 of the Bill. These matters include financial and non-financial contributions made by the parties, including home making or parenting contributions which reflect the considerations stipulated in the Family Law Act in respect of legally married couples whose relationship comes to an end.

Apart from the innovation of cohabitation agreements for *de facto* couples and the new and fairer basis for property division between *de facto* partners, it should also be noted that the application for property division can be made either to the Supreme Court, the District Court or the Magistrates Court, depending on the value of the property disputed. This is a vast improvement on the present situation where the Supreme Court is generally the only venue for disputes of this nature. We have tried to assess the complete magnitude of the numbers of *de facto* relationships in South Australia, and an assessment is 10 per cent or more. Therefore, these reforms are long overdue and welcome.

There are some issues, however, which the Opposition feels must be addressed in the interests of fairness and justice. In relation to cohabitation agreements, nothing in the Bill refers to the minimum age at which a person can be a *de facto* partner and, therefore, be entitled to enter into a cohabitation agreement. This highlights an inconsistency or artificiality in the law. The age of consent is less than what used to be known as the age of majority. In other words, anyone can legally have sex if they are 17 years old, but if they enter into a contract the contract will generally not be enforceable against them because they are still considered children in the eyes of the law.

Perhaps it is fair to say that our society is somewhat confused about the capacities of 16 to 18 year old people, because the law in different areas will allow young people to engage in activities requiring a certain adult maturity at 16, 17 or 18 years, depending on the type of activity. It is curious that one can start driving a car and smoking cigarettes at 16 years, can start having sex with people at 17 years (or at 16 years in some cases), but one cannot be admitted to an R-rated movie or buy a drink in a pub until one is 18 years. These issues will continue to be debated in society for a long time.

The implications of cohabitation agreements for people under 18 years will not be straightforward. Since clause 6 of the Bill renders cohabitation agreements subject to the law of contract, that means that both the common law and the Minors Contracts (Miscellaneous Provisions) Act must be considered. The Opposition suggests that there is some doubt about the enforceability of cohabitation agreements against minors, that is, people under 18 years, even after they legally become adults at the age of 18 years. If the Government intends that a cohabitation agreement is to be unenforceable against minors, and for such agreements to remain unenforceable even after the minor turns 18 years, subject to ratification by the minor after turning 18 years, the Government should make that clear in the Bill.

It should be borne in mind that many ordinary people are likely to become aware of the legislation without being at all aware of the nuances of contract law in respect of the legal capacity of minors. We want young people to be very clear about what they are getting into if they sign one of these agreements and to realise that it is not compulsory for the agreements to be checked by lawyers.

Today I have placed on file the Opposition's amendments to the Bill. One amendment relates to cohabitation agreements and the possibility of a cohabitation agreement being beyond review by the courts if a lawyer's certificate exists in relation to the agreement. The real and practical problem we seek to address lies in a situation where one of the parties is in some way more emotionally vulnerable and perhaps emotionally beholden to the other party. There may be an imbalance of power, experience and influence right from the outset. In these circumstances the dominant partner can accompany the other partner to the lawyer for the lawyer to go through the motions of explaining the implications of the agreement. We therefore propose to expand clause 5(3) so that parties who wish to obtain a lawyer's certificate must have the legal implications explained to them by a lawyer in the absence of the other party to the agreement. In addition, there will also be an obligation on the lawyer to assess whether either party has unduly influenced the other with the aim of extracting consent for the agreement.

The other Opposition amendment will alter the definition of *de facto* relationship to include people who live together on a domestic basis in a homosexual relationship. As a matter of principle, no distinction can be made between the property disputes of a *de facto* homosexual couple and a *de facto* heterosexual couple. This Bill is about property disputes and affordable access to justice. I suggest that we do not need to get into the wider social philosophical debate about what marriage is or is not in order to proceed with this Bill. I look forward to debating my amendments in Committee. In conclusion, I must say that this Bill is a long overdue reform which is fully supported by the Opposition. It is a matter of justice and, in most cases, that will be mean more justice for women.

The Hon. SANDRA KANCK: The Democrats support the Government's intention that the law should be amended to provide a fair and equitable system to resolve property disputes that may arise when a *de facto* relationship breaks down. *De facto* couples experience higher costs and longer delays than do married couples in resolving disputes upon the termination of a relationship. The Democrats are therefore keen to support legislation that would settle these complications. Given that *de facto* relationships are not as formal as marriage, it is easy to understand that the consequences of breakdowns are often not considered by the couple. Indeed, that happens in marriages. With all the excitement and optimism at the beginning of a relationship such unromantic matters as the breakdown of the relationship are simply not thought about. This legislation is particularly relevant when it is considered that the number of people choosing a *de facto* relationship is growing. So, it is important that we get this legislation right.

From my reading of the Bill there are three major areas in which the Bill could be improved. These improvements would further enhance the Government's desire for the law to provide equity and fairness. The first is the role of the solicitor when advising clients. I note that the New South Wales legislation sets out the matters that solicitors are obliged to explain to each party to a cohabitation agreement. Not only does such an outline avoid possible confusion as to

the solicitor's role but also it is an easy reference for both the lawyer and any other person considering a cohabitation agreement. I am sure that the Attorney would be aware of the New South Wales Act, so I am curious to know why such provisions were not included in this legislation.

The second area of concern, which the Opposition has also touched on, is the issue of homosexual relationships. The Bill does not take the opportunity positively to include such relationships. As these couples cannot marry under current law, we must recognise that cohabitation by homosexual couples must always be in the form of *de facto* relationships. When their relationships break down, just like heterosexual relationships break down, there are likely to be property disputes. Based on conversations our office has had with various people from the homosexual community, I think their inclusion in the Bill would provide them with the same rights as others members of the community.

A recent article in the *Adelaide GT* newspaper reported that the President of the AIDS Council, Will Sergeant, supports the inclusion of gay and lesbian relationships in the legislation. He states:

> Gay and lesbian relationships should not be denied the normal protection of the law. Some gay men and lesbians may not wish to associate themselves with the trappings of heterosexual relationships, but the choice should be made available.

The third area of concern is the exclusion of the court from dealing with some cohabitation agreements. The Democrats consider that a significant weakness of this legislation is the ability for the agreement to exclude the power of the court if this has previously been agreed to by the parties in their cohabitation agreement. I point out that no other State has gone this far, in purposely writing out the courts in the event of such a cohabitation agreement.

In his second reading speech the Attorney-General stated that this legislation shared many features with similar legislation in other States. However, he did not take the opportunity to elaborate on the reasons why his Government is taking the radical step of excluding the court's power. In fact, it seems to run counter to some of the provisions in some of the consumer legislation with which we dealt in the last year or so. I understand that no other State has gone this far. Indeed, legislation in New South Wales and the ACT specifically provides that a cohabitation agreement cannot write out the role of the court in determining fairness at determination of a breakdown and that the statement is considered void if a matter of serious injustice is taken up by one party.

Not having heard why the Government has decided to write out the court's power in cohabitation agreements, my only guess is that this is on the ground of people's right not to include the court should that be their desire. I can remember some of the discussion in terms of consumer rights in regard to warranties on secondhand vehicles and people having the right to sign away their rights. When we are talking about relationships we are talking about more than property. The property dispute is a symbol of the relationship having come apart.

If both people to an agreement do not want court involvement, that is easily obtained by a proper and fair agreement, anyhow. A matter will go to court only if there is a breach of the agreement or in the case of a serious injustice. In going down the Government's proposed path, it cannot be overlooked that in giving some people the right to choose their own destiny we are inadvertently institutionalising injustice. Such a clause, which writes out the involvement of the courts even in the event of serious injustice, could have been made only in the belief that all people enter *de facto* relationships on an equal basis—equal in terms of power, be it emotional, financial or future opportunities. However, I believe that such a belief is quite fallacious. I must admit that my immediate reaction to learning of the Government's intention to allow cohabitation agreements to exclude the courts was from a woman's point of view, perhaps because I am a woman. I envisaged a not so unlikely scenario where a woman, finding herself in a vulnerable situation, because of an emotional and/or financial attachment to her male *de facto*, accepts a less than fair cohabitation agreement, which includes terms that could not be changed by the court.

My reaction has been mirrored by a study undertaken by Helen Glezer and published in *Family Matters* in December 1991 in a section entitled 'Attitudes and Meaning'. Glezer's study revealed that men and women had different attitudes to cohabiting. She writes:

> Men are more likely than women to believe cohabiting allows them to keep their independence. They perceive it as having economic advantages. It also is seen as involving less commitment than marriage and men are more likely to view cohabiting as trial marriage. This suggests that women may be either more romantic or emotionally dependent in *de facto* relationships than men and indicates that there are 'his and her' *de facto* relationships.

She further states:

> There was also often a lack of commitment to the other by one or both partners, with women being more likely than men to mention the lack of commitment by their partner.

Interestingly, this traditional difference between the attitudes of men and women still remains, despite the fact that Glezer also found that the cohabitants themselves had less traditional family values; they were more egalitarian in their attitude to the sex roles, and this was reflected in how they shared household tasks. They were less likely to have any religious affiliation and were more likely to come from an urban background. Glezer also found that there was no educational difference for men, but women who had cohabited were more likely to have had tertiary education.

The role of the courts in our society is to promote social cohesion by meting out fair decisions. For a court to be expressly written out of this role is a dangerous precedent and will only be an invitation for abuse. It is not surprising that no other State has gone down this road. In fact, their legislation expressly states in no uncertain terms that the court will always have the right to be involved in cases of unfairness. When it is considered that the number of people choosing *de facto* relationships is increasing, the court's role in ensuring such fairness becomes even more crucial.

In passing, it is interesting to note the inconsistency between the Government's purpose of the Bill to promote fairness and equity while, at the same time, it is making it possible for a vulnerable party to an agreement to be abused with absolutely no recourse for justice, even at time of certification by the solicitor. It is true that a solicitor can recommend that a party to an agreement does not sign the agreement. However, the solicitor has no power over such action. The common argument is that no-one can protect people from themselves. However, the law can and does defend vulnerable people, and this role of the court should remain. Moreover, it is not the lawyer's brief to ensure justice but to serve only his or her client. Indeed, it is only the court that has the power to ascertain all the information in making a determination on fairness and equity. At the very least, in the signing of these cohabitation agreements, the two people

forming the couple should have to see separate lawyers and those lawyers should belong to separate legal firms so that there is less chance that rights that should not be signed away will be signed away. The Democrats believe it is absolutely imperative that the court always has the power to ensure justice and defend the vulnerable people in our society.

One matter that certainly needs clarification is the court's role in terms of children. I would be horrified if a cohabitation agreement could exclude the role of the court, even if children were born out of the relationship. In fact, I doubt whether this would be even legally possible, but I ask the Attorney for further clarification of this matter.

In conclusion, for the most part the Democrats support the legislation because, as the Attorney stated, we are seeing a growing number of people going into *de facto* relationships. However, I believe the matters raised in my speech will further improve the Government's Bill, and I would like to hear what the Government has to say on these matters before we move into Committee so that I can consider whether I need to draft any amendments.

The Hon. BERNICE PFITZNER secured the adjournment of the debate.

FISHERIES (GULF ST VINCENT PRAWN FISHERY RATIONALIZATION) (LICENCE TRANSFER) AMENDMENT BILL

In Committee (resumed on motion).

(Continued from page 967.)

Clause 2—'Repeal of s.4.'

The Hon. K.T. GRIFFIN: The Morgan Consultancy report discussed the need for the ability to combine licences. It recommended that the advisory committee set in place guidelines for vessel replacement at an early stage. The minimum conditions, in order to retain control of effective fishing effort while enabling sufficient flexibility to encourage the development of the industry, should be, first, a limit on the total head rope length to the present 15 fathoms and, secondly, the ability to combine licences and gear entitlements. I stress that requirement: the ability to combine licences and gear entitlements provided the total head rope length for the combined licences remained the same.

This would necessarily mean that one vessel is permanently removed from the fishery for every such amalgamation, and I again stress that requirement to the Hon. Mr Ron Roberts. The Management Advisory Committee endorsed all management recommendations in the Morgan report. The predictions of the Morgan model are supported by SARDI. The Management Advisory Committee was consulted on both of the amendments in the Bill. It supported the need for incoming licence holders to assume the surcharge debt associated with that licence. It did not reach an agreed position on the need for amalgamation, very largely because that issue was still being considered. But it is clear from the Morgan report that amalgamations were envisaged, and that will certainly provide, if it occurs and is permitted by the Parliament, an additional benefit to the fishery.

The Hon. M.J. ELLIOTT: I need to remind the Minister again that it was not a term of reference for Morgan: he did not invite submissions on amalgamations nor, do I understand, did he receive any submissions on amalgamations. It was not generally discussed in the body of the report, and is mentioned in only one place at the very end of the report. I know how difficult it is to work in this fishery in that the fishers do not always present a united front, but nevertheless there needs to be a real attempt to find a resolution to the problems that is a total package, a resolution which looks not only at whether or not there is to be a reduced number of licences and boats, but addresses issues around head rope length and how we will finally cope with the liabilities that are contained within the fishery.

I remind the Minister again, they are debts that, in the first place, were created on the basis of advice from the Government department. The debts were not created under the present Government, but nevertheless the debts exist because of advice that was given and, on the basis of that advice, the debt was agreed to in the first place. These issues need to be treated as a total package and in a proper consultative fashion. This simply has not happened. When the Government is prepared to do that, then we will see the problems in the fishery being resolved, but until that happens they will not be resolved.

The Hon. K.T. GRIFFIN: One of the terms of reference of the consultancy was to propose options for harvesting sustainable catch in the fishery, including full consideration of appropriate input and/or output controls for the fishery. One does not have to specifically say 'should or should not there be amalgamation of licences?'

The Hon. M.J. Elliott: If something is being considered, it should be canvassed with the interested parties. That has not happened.

The Hon. K.T. GRIFFIN: It is there in the terms of reference: certainly not amalgamation by that particular description, but full consideration of appropriate input and/or output controls for the fishery, and amalgamation falls within that category.

The Hon. M.J. ELLIOTT: It seems to me that if Morgan is going to make a recommendation in a particular area, it would have at least been appropriate to discuss the issue with all interested parties. Whether or not he ended up discussing it with the department, I do not know, but it certainly does not appear to have been discussed with the people involved in the fishery. To that extent, to make a recommendation which is then acted upon without Morgan himself consulting with the fishers about the issue and then, after his report, without the Government consulting with the fishers about the issue, is what is being complained about.

The Hon. K.T. GRIFFIN: My advice is that the whole of this report and all the recommendations were discussed with the Management Advisory Committee. Whilst SAFIC does not have a formal membership on the Management Advisory Committee, it is there in terms of its participation informally. It is a question of what should be the extent of consultation with industry. The Management Advisory Committee is fairly well broadly represented, and SAFIC is involved in that part of the process, whether one likes it formally or informally and, if this report has recommendations to discuss with that body, one would have thought that that would provide a good sounding board for determining whether or not the recommendations would be supported or are supportable. I am also told that the consultant met every licence holder within the fishery. There can be no more comprehensive—

The Hon. M.J. Elliott interjecting:

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: It is not a question of discussing the Bill. Morgan met all the licence holders within the gulf. The licence holders are under pressure and this Bill is in their interests.

The Hon. R.R. ROBERTS: I should make one thing very clear. I am fully conversant with the fact that Morgan did consult the fishers when he was making his inquiries into the state of the Gulf St Vincent fishery. What I said was that there was no consultation in respect of this legislation with the Gulf St Vincent Advisory Committee. During the briefing that I was given I asked what their view was and I was told that the financial management aspects of the fishery had nothing to do with the Gulf St Vincent Advisory Committee. In my contribution I asked: what are they there for? The answer may well be: the harvesting.

When Morgan was brought back the second time—after numerous other inquiries and select committees—it was clear that the process of just looking at the catch was not adequate. Therefore, Morrison was brought in to look at the financial management aspects of the fishery. We have Morgan's report, but I have still not seen Morrison's report. I do not know whether the Hon. Mr Elliott or anybody else has seen it. As far as I know, it has not been made available.

How can anybody make a proper comparison as to whether these alterations to the financial management of the fishery are appropriate without the information? It is unreasonable to expect people to do it. It is not only unreasonable to expect them to make those decisions without the information, but it is even more unreasonable if they are not consulted in the first place. One of the major players has been the Gulf St Vincent Advisory Committee. It may well have had discussions about the matter now. I do not know whether it has any scheduled meetings or not, but it would have discussed it as a formal agenda item from the Government or of its own motion. Also, SAFIC has not been involved in the discussion. I do not know whether the Attorney-General has understood what I have said, but I know that Gary Morgan had discussions with the fishery. Indeed, everybody knows that. However, what I said was that before this legislation was introduced there were no discussions.

Clause negatived; new clause inserted.

Clause 3—'Money expended for purposes of Act to be recouped from remaining licensees.'

The Hon. M.J. ELLIOTT: I oppose this clause. It is consequential.

Clause negatived.

Title passed.

Bill read a third time and passed.

RACIAL VILIFICATION BILL

Adjourned debate on second reading.

(Continued from 7 February. Page 826.)

The Hon. P. NOCELLA: The Opposition has broad support for this Bill, which follows a Bill that we brought in last year. Where there is a commonality of purpose and intent, I am more than happy to pledge the Opposition's support. It is heartening, after racial slurs were made in the public domain during the recent Federal election campaign, to be part of a multi-party opposition to racial vilification. We have a real chance in this Council to have the best racial vilification legislation in Australia, and we must work together in order not to squander this opportunity.

There are two areas of difference between this legislation and the previous Bill. The first difference is that this Bill contains provision for slightly harsher penalties for the most serious cases of racial vilification. I am happy to indicate that the Opposition will support the provisions for penalties. The second area of difference is the way in which the two Bills deal with the complexity of racial vilification. It is important to realise that there are different categories of racial vilification varying in the extent and severity of the crime. This Bill deals with the most serious cases with due severity. However, what is lacking is a mechanism to deal appropriately with the less serious cases, for which a three-year sentence would be inappropriate. The Opposition will be moving a series of amendments to make the Bill a finer instrument for dealing with the different degrees of racial vilification. We believe that mediation can in many cases be a more useful tool than the court process for both the perpetrator and the victim.

Our suggestion is that there should be an amendment to the Equal Opportunity Act 1984 which provides for the conciliation of complaints of racial discrimination and vilification. Acquiescence of this law will therefore be more by persuasion than by the threat of punishment. In fact, the inclusion of the vilification provisions in the anti-discrimination legislation clearly implies that considerable weight has been given to the fact that the legislation is a formulation of clear community standards which can positively influence behaviour.

The inclusion in the Bill of the mechanism of conciliation will reflect the faith that has been placed in the educative potential of the respondent having to confront the complainant and be educated in the fact that such conduct is unacceptable. Resolution of disputes through conciliation rather than by reliance upon punitive damages encourages the educative, preventative aspect of the legislation to moderate social behaviour as in fact is the experience gained since 1989 in New South Wales.

There is a possible objection to this amendment: that people currently have recourse to the Human Rights Commission in the Federal sphere. I have two answers to this objection. First, it is not desirable that people deal with State and Federal bodies when dealing with a particular issue. It is far better that one level of Government is capable of adequately responding to a social problem in all its dimensions. It is far more logical that the State Government take responsibility for the entire issue of racial vilification. The second answer is that here and now in this Chamber we have the opportunity to make a worthy and admirable piece of legislation. Why leave it incomplete and inadequate by limiting it only to the most serious cases of vilification when we can introduce clauses which will make a flexible and sophisticated response to a serious social problem?

The Multicultural Communities Council of South Australia has written to the Premier on the subject of this Bill. As a representative of those most likely to suffer from racial vilification, the Council's advice is invaluable on this subject. I quote from a letter in support of my decision to introduce amendments to add conciliation to the options available to the community in dealing with racial vilification. The council writes:

> The Multicultural Communities Council considers it important that the proposed Bill be amended with some of the elements of the original Legislative Council Bill relating to conciliatory and educative provisions. A combination of the two Bills, with appropriate criminal elements for the most extreme offences, as well as conciliation for other serious incidents of vilification appears to provide the best solution in combating the evils of racial vilification.

The council also writes that an important objective is:

> . . . the prevention of such actions through education, arbitration and conciliation that can be settled through the Commissioner of Equal Opportunity by way of public apologies and negotiated

remedies rather than severe gaol sentences or harsh financial penalties.

The Opposition will be taking account of these important views in framing its amendments to the Bill. In conclusion, I repeat that this Bill provides South Australia with the opportunity to shape community attitudes on what is acceptable behaviour towards the many different cultures that combine to form this nation. The Opposition will be doing all in its power to make this the best Bill possible. It will be the basis for a sophisticated approach to the serious issue of racial vilification.

The Hon. BERNICE PFITZNER: It is with the greatest satisfaction that I speak to this Bill. Debates and arguments have raged on the impact of this Bill saying that it impinges on freedom of speech and that perhaps through conciliation and education and through the more gentle area of the Office of Equal Opportunity we can address this most horrendous and pernicious of all community ills: racial vilification and racial victimisation. I note from the Attorney-General's and Minister for Consumer Affairs' Office that discrimination complaints have increased and that complaints to the Equal Opportunity Commission have increased. In relation to race, in 1992-93 it was 17 per cent. This rose in 1993-94 to 19 per cent and in 1994-95 21 per cent of complaints related to race. What can be done with these complaints which have been raised at the State's Equal Opportunity Commission? We have at last some legislation that has teeth, so to speak. It will be a criminal offence if an act of racial vilification is perpetrated provided that it includes a serious threat of violence to property or to person in public.

The criminal penalties include payment of damages of up to $40 000 in the criminal court and a maximum penalty of $25 000 against a body corporate. There will be a penalty of up to $5 000 or imprisonment of up to three years or both for an individual and civil remedies in a civil court for individuals who suffer detriment as a result of racial victimisation, up to a limit of $40 000. Yes, we need to send a clear and strong message that such acts of intolerance will not be tolerated. Last year was the United Nations declaration of the Year of Tolerance. It was an opportunity for all of us as a multicultural community to examine our own beliefs, behaviour and practices. Unfortunately, we had a sporadic rash of small groups ironically calling for tolerance of their own intolerant and racist views.

Racism in its extreme form has caused war between nations and disaster within boundaries of nations. Here, we are talking about 'racial vilification' defined as:

> a public act to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the grounds of their race by:
>
> (a) threatening physical harm to the person or members of the group or to property of the person or members of the group;
>
> (b) inciting others to threaten physical harm to the person or members of the group or to the property of the person or members of the group; but it does not include:
>
> (a) publication of a fair report of the act of another person; or
>
> (b) publication of material in circumstances in which the publication will be subject to a defence of absolute privilege in proceedings for defamation; or
>
> (c) a reasonable act done in good faith for academic, artistic, scientific or research purposes or for other purposes in the public interest (including reasonable public discussion, debate or expositions).

'Race' is specifically defined as:

> . . . the nationality, country of origin, colour or ethnic origin of the person or of another person with whom the person resides or associates.

We also note racial victimisation that results in detriment, and 'detriment' is defined as:

> (a) injury, damage, or
>
> (b) distress in the nature of intimidation, harassment or humiliation is also actionable as a tort.

The previous Federal Race Discrimination Commissioner, Ms Irene Moss, Chairperson of the Report of the National Inquiry into Racist Violence in Australia 1991, recommends legislation creating criminal offences for these acts. I draw on this report for some of its shocking findings which makes this legislation of ours imperative. The report uses the term 'racist violence' which includes verbal and non verbal intimidation, harassment and incitement to racial hatred as well as physical violence against people and property. In the case of racist violence against Aborigines the report states:

> Clearly, a major problem brought to the attention of the inquiry is the problem of racist violence by police officers. . .

Most importantly, those who presented evidence to the inquiry were generally poor and disadvantaged people who had difficulty in formally proving a legal case. The chapter on Racist Violence on the Basis of Ethnic Identity looked at factors that influenced racist violence, such as:

1. The visibility of the member's group: for example, physical appearance, as in Asian appearance, or dress, as in a Muslim woman's head scarf, or in an accent.

2. The ethnic identity of a group: for example, Asians, Jews, people of Arabic descent, especially at the time of the Gulf War, Germans during the Second World War and, recently, refugees from Central and South America.

3. The social, economic and political context such as changes in patterns of immigration, levels of unemployment, crime reports, international conflicts, public statements by prominent Australians, all of which can trigger racist actions.

Some of the conclusions arrived at in the report are of significance. The report states:

> The inquiry does not consider that serious racist violence on the basis of ethnic identity is an endemic problem in this country. Comparatively speaking, Australia is a non-violent, socially cohesive nation. Nevertheless, the inquiry has established that racist violence is a significant issue, which must be confronted before it becomes a significant threat to our fellow Australians and to our society.

Further, the report states:

> Australia has been blessed with an essentially non-violent ethos. It is a matter of concern, however, that the current emphasis on race which has emerged in public debates on immigration, foreign investment and employment is little more than a convenient scapegoat for underlying economic and social problems. However, the inquiry considers that changes to our laws and institutions and in community attitudes should occur now, before our problems become serious ones.

This report was produced in 1991, five years ago, and these concerns still pertain. Some other findings of the report that I personally deem in need of special attention are as follows:

> Finding No. 1: Racist violence, intimidation and harassment against Aboriginal and Torres Strait Islander people are social problems resulting from racism in our society rather than isolated acts of maladjusted individuals.
>
> Finding No. 7: Racist violence on the basis of ethnic identity in Australia is nowhere near the level that it is in many other countries. Nonetheless, it exists at a level that causes concern and it could increase in intensity and extent unless addressed firmly now.
>
> Finding No. 8: The existence of a threatening environment is the most prevalent form of racist violence confronting people of non-English speaking background.

Finding No. 9: People of non-English speaking background are subjected to racial intimidation and harassment because they are visibly different. For recent arrivals, unfamiliarity with the English language can exacerbate the situation.

Finding No. 10: The perpetrators of racist violence against people of non-English speaking background are generally young, male Anglo-Australians. There have, however, been some notable exceptions.

Finding No. 14: On the whole, public authorities do not respond effectively to reports of racist violence.

This last finding confirms further that the Racial Vilification Bill, which places more emphasis on criminal and civil sanctions than on conciliation and education, is the way to go at present. Further, the report advocates the 'need for change'. This need is exemplified as it impacts on the community. I quote the following examples from the report:

While the impact of racist violence on people from non-English speaking backgrounds is often experienced as fear of physical attack or abuse rather than actual incidents of physical violence, the damage caused by this degree of fear should not be underestimated.

Racist violence and harassment reduces self-esteem, promotes insecurity and leads to victims being ashamed of their identity. The harm done to children is particularly disturbing in this respect, as discriminatory attitudes and actions can make them feel that they have no rights to fair treatment and are second-class citizens. As one child said, 'A group of Australians about four or five years older than me came up and started pushing me around. They hit me and ripped my school books. That is really terrible. . . There are many other incidents but I don't want to remember. . . '

In Perth the inquiry was told that many children had been badly affected by a racist campaign. One such incident is related as follows: 'It manifested itself especially in the weaker members of the community such as young children and older people. Children were coming home and saying, "Why am I black? Why am I Asian?".'

We need change as it impacts on trade with foreign countries. The report states, in part:

The racist activities of certain groups were widely reported in the Asian media. The Singapore newspaper *The Straits Times* ran an editorial in September 1989 warning potential migrants that they ignored racism in Australia at their own peril if they planned to emigrate. They were advised to balance the existence of racial prejudice against the economic benefits of migration.

Of course, this situation has now changed because Singaporeans are now returning to Singapore due to our own poor economic performance. The report states further:

The subsequent loss of earnings to Western Australia, both in terms of tourism and business, is difficult to assess. However, it was considered sufficiently serious for the then Premier of Western Australia to write to major Asian newspapers to assure business people and politicians that Asians are welcome in Australia.

There is no doubt that Australia needs to pay close attention to its international image. Australia is not yet perceived to have the collective will to market effectively in Asia. . . There is worry over what is seen as racism in Australia spilling over into a certain amount of condescension by Australians to visiting Chinese businessmen, and an unwillingness by Australians to take seriously the idea of being part of Asia. Australia's perceived racism was regarded as hindering the development of new trade relationships, although the majority thought Australia's image had improved a lot over the last five years. Perceptions about racism in Australia were seen to make it harder to establish good relationships because of Chinese suspicion that they will not be welcome or be accepted on an equal footing.

On purely economic terms, Australia cannot afford to be perceived by its Asian-Pacific neighbours as being a racist country.

We need change as it impacts on Australia's human rights reputation. In this respect, the report states:

As a nation with a high international profile on human rights issues Australia has particular obligations to uphold.

With regard to the need for change as it impacts on social issues, the report states:

Evidence put to the inquiry indicates that the real threat to social cohesion is the presence of racial violence, intimidation and harassment towards people of non-English speaking background. This is perpetrated by a small number of racist individuals and groups who translate their own racist beliefs and/or social problems into overtly racist behaviour—behaviour that has ramifications for the whole community.

Australia prides itself on tolerance and cultural and ethnic diversity. Our society (with the very definite exception of relations with Aboriginal people) has generally been successful in terms of cohesiveness and harmony between various ethnic and racial groups. However, the potential threat posed by racist violence cannot be ignored.

In conclusion, Mr J. Jones of Sydney puts it very succinctly, as follows:

. . . just what [kind of] society has Australia become: one that tolerates racism which has as its end result harassment, intimidation and violence or one that has the resolve to confront the evil of racial hatred head on, offering protection to the targets of racist thugs who have chosen to bully the weak and the powerless?

Our Australian community ought to accept the challenge to confront racist violence unequivocally, and this Racial Vilification Bill goes a long way towards confronting racial vilification unequivocally. I strongly support the Bill and urge members of this Chamber to do likewise.

The Hon. R.D. LAWSON: I, too, support this measure, which is further testimony to this Government's commitment to fostering a community in which racial intolerance is to be discouraged. The Liberal Party has a proud record in relation to matters of racism in this country. It was the Menzies Government of the 1950s and 1960s that actively encouraged and welcomed to Australia millions of migrants from the nations of Europe and many other nations. It was the Menzies Government which initiated the Columbo plan, under which many young people from Asia came to Australia to study in our universities.

It was a Liberal Government under Prime Minister Holt which, in 1966, effectively abolished the 'White Australia' policy, a policy which had itself been progressively weakened by preceding Liberal Governments. The Holt Government introduced an inclusive and totally anti-racist philosophy into our migration policy. It was also the Holt Government which in 1967 brought forward the referendum, subsequently carried overwhelmingly, to recognise Aborigines and Torres Strait Islanders as Australians equal with all others. It was that Government which appointed the first ever Federal Minister for Aboriginal Affairs.

It was the Gorton and McMahon Coalition Governments of the late 1960s and early 1970s that extended still further the implementation of these policies and philosophies. Under Prime Minister Malcolm Fraser the Federal Government welcomed to Australia the first boat people from Indo-China, despite some strident opposition from members of the Labor Party, the trade union movement and, notably, the then ACTU Leader, Bob Hawke.

So, we come to this issue of racial tolerance with a proud record. Federally, more recently the Liberal Party has been a supporter of anti-racist measures. In 1992 the then Leader of the Party, Dr Hewson, in an address to the Zionist Federation, said that national anti-vilification legislation would be a worthwhile initiative. A year later the much maligned Fightback document contained a policy on law and order, as well as a GST. Unfortunately, many of the fine policy initiatives of that document were overlooked in the light of opposition to the GST.

However, the then shadow Attorney-General, now Treasurer, Peter Costello, was the author of the policy in Fightback which read:

> Inciting fear or damage to people or their property on racial grounds should be prohibited.

That was the Federal policy in 1993, a policy further reflected by a letter from Mr Costello to Mr Mark Leibler of the Australian Council of Jewry to the following effect:

> We accept the principles underlying the first part of the [Federal Labor Government's then Racial Hatred] Bill, which is designed to prevent intentionally stirring up racial hatred, fear of violence or injury to person or property.

The then shadow Attorney-General and now Attorney-General, Daryl Williams, QC, said:

> The Opposition recognises the need for legislation and in principle we accept that legislation should provide criminal sanctions for racial violence and hatred.

The then Leader of the Federal Liberal Party, Alexander Downer, said:

> Where there is incitement to violence or to damaging property on the basis of race, then there is no question that that should be a criminal offence.

It is well documented, however, that the Federal Coalition was concerned about certain provisions of the Federal Labor Party's Racial Hatred Bill. The provisions which caused greatest certain were those which made it an offence to passively incite racial hatred, even by non-violent words or gestures. It was said—I think correctly—that those measures would infringe the right of free speech.

In the debate on that Bill Senator Jim Short in the Senate said of those provisions:

> These elements seek to punish people for what they say rather than what they do. They punish words, not deeds. As such they pose great danger to one of the fundamental cores, the fundamental underpinning of our tolerant and civilised democratic society, namely, freedom of speech. People reject strongly the notion that they can be jailed for expressing their opinion.

So, the Federal Opposition's objection to racial hatred legislation was primarily based upon the proposition that they could not accept mere incitement, unaccompanied by violence, to racial hatred. Senator Nick Minchin, of South Australia, expressed two bases of opposition to the legislation, one being that the Federal Bill did represent an improper and undue restriction on freedom of speech. Secondly, he was of the view that the matters dealt with in the Federal Bill were matters more properly for State Parliaments rather than the Commonwealth Parliament.

That last sentiment is one with which I agree, and the South Australian State Government has now brought forward a Racial Vilification Bill which contains appropriate provisions to protect the community. It contains provisions which create a criminal offence, which provide civil remedies and which do not infringe anyone's fair right to free speech.

It would be wrong to suggest that acts of racial vilification in this State are so common or prevalent that there is an epidemic of racially motivated violence. Clearly, there is not a widespread problem in this State. In this country we are blessed by a community which is relatively racially tolerant and free of incidents of racial violence. However, there are incidents from time to time of racial violence. Such incidents do engender in members of our community fear and unacceptable disquiet. It is easy for those of us who represent what might be termed the mainstream of the Australian population to shrug off incidents of racial intolerance. However, for the victims of such intolerance serious detriments, inconvenience, fears about their own life and safety and serious fears about their own security and wellbeing are experienced. No member of our community should be subjected to the fear of threats of racially motivated violence.

It is worth stating for the record that over the years in South Australia there have been a number of incidents of racial violence. For example, it is well documented in the late 1980s that there was a citizenship ceremony for Asian migrants in West Torrens. The ceremony was obviously a serious and important one for those participating in it, and that ceremony was disturbed by a number of demonstrators shouting, 'Asians out.' Although that demonstration was promptly terminated by police, who were fortunately present, and the demonstrators arrested, this was a serious intrusion which clearly could have engendered, and indeed did engender, fear in those who were present.

The Mayor of the City of West Torrens, Alderman Steve Hamra, was greatly offended by the incident, and he reported to the Human Rights and Equal Opportunity Commission that similar events had occurred in other councils. He reported that prior to these events a list of names of citizenship candidates had been published in local newspapers but the local councils desisted thereafter from publishing names for fear of encouraging demonstrations of this kind. It is a sad commentary on the situation in this country if an event such as a citizenship ceremony cannot be widely advertised and the fact that certain new citizens cannot be publicised by name for fear of encouraging racially based disturbances.

In the western suburbs of Adelaide in the late 1980s, a number of members of Federal Parliament had electoral office windows smashed and they received threats such as:

> If a [named member] does not stop Asian migration, it will be a bomb next time.

Between June 1987 and August 1988 the Torrensville Primary School and surrounding areas were attacked with racist graffiti. After the initial attack the school principal sent a letter to the Editor of the *Advertiser* expressing his disgust that young children in schools should be targeted with racial hatred. Following the publication of that letter, the National Action organisation threatened to visit the school and harass parents. The police intervened; the principal had to change his telephone number to an unlisted number; and ultimately the school council decided that it would be unwise to give any further publicity whatsoever to the perpetrators of these attacks. Once again, that was an unfortunate situation in this day and age in this country.

The member for Reynell, Julie Greig, has experienced significant racial vilification in her own electorate. In January last year National Action began a concerted recruitment drive in the Noarlunga area and plastered its stickers and anti-Asian posters around the district. It decided to target Mrs Greig as her anti-racist views were well known in the area because of her involvement with Noarlunga council. National Action held a well publicised rally outside her office on 28 January 1995, when she was organising an anti-racist rally.

In the past year or so there has been a good deal of publicity both in newspapers and on television about racist campaigns by fringe groups of so called neo-nazis. A number of them were described in a full page 'Insight' article published in the *Advertiser* on 29 April 1995.

In July last year certain Jewish graves at West Terrace Cemetery were desecrated. That incident was widely portrayed as a manifestation of racial vilification. In the event, it was shown that the attack was not motivated by racial considerations but, notwithstanding that the perpetrators of that terrible attack were not so motivated, the reaction

of the community was interesting and illustrative. The public outrage that the attack engendered shows the depth of feeling within our community of a significant section of thinking people against racist acts.

I turn now to the current position in South Australia, where presently there is no South Australian law dealing with racial vilification. The Equal Opportunity Act prohibits discrimination—not racial vilification but discrimination—on the ground of race in certain specific areas. For example, the Equal Opportunity Act prohibits a person refusing to serve another a drink in a bar or to give a hotel bed or job to someone on the ground of race, but the Act does not prohibit a person from inciting others to racial hatred. Nor does it deal specifically with threats of racial violence.

Of course, certain manifestations of racial violence and racial vilification are caught as general offences under the Criminal Law Consolidation Act and the Summary Offences Act. For example, offensive conduct is an offence, as is making unlawful threats and so, too, assault, whether it be common assault or assault occasioning actual bodily harm. Damaging property is an offence under the general law. Of course, many instances of damaging property may not be racially based but others will be.

It is also an offence to threaten or conduct oneself in an insulting way at a public meeting and is a common law offence, quite apart from our statutes, to incite some other person to commit an offence. One cannot suggest that in South Australia there is not some provision of the criminal law that will prohibit and ensure punishment for those who commit certain acts of racial vilification. However, the point remains that, at present, there is no specific South Australian law relating to this topic. I agree with the Government that some specific law is warranted.

Over the years, a number of reports in this State have made recommendations on this topic, and I mention a few of them briefly: in 1991 the Community Relations Advisory Committee recommended that the Equal Opportunity Act be amended to outlaw racial vilification. That committee, chaired by Mr Elliott Johnston QC, a retired judge of the Supreme Court of South Australia, believed there should be no criminal sanctions because it took the view that criminal sanctions might tend to make martyrs of racists. That committee recommended that the emphasis should be on conciliation and education. For reasons I will give later, I do not share that view of the committee.

In her report of 1993, the Commissioner for Equal Opportunity recommended that the Equal Opportunity Act be amended to include a prohibition of racial vilification. The Commissioner noted that a number of complaints were made to the commission each year in relation to vilification matters, but that no action could be taken because those acts were not specifically covered by the Equal Opportunity Act. In October 1994, Mr Brian Martin QC undertook a review of the Equal Opportunity Act for the Government. Mr Martin analysed the background to suggestions for racial vilification provisions, but he did not reach any firm conclusion. He recommended at that stage that there be no change in the Equal Opportunity Act until after the enactment of the then pending Federal legislation. With the greatest respect to Mr Martin, I would say that he ducked the issue. However, the Federal legislation has now been enacted, albeit in a vastly different form from that originally proposed. The South Australian Government cannot duck the issue.

In 1994 the Equal Opportunity Commissioner again reported and, on that occasion, she adopted the position of Mr Brian Martin, namely, that action be deferred pending Federal legislation. As I said, that legislation has now been enacted, and I will describe it shortly. The Commissioner on that occasion recommended that racial harassment—a lesser form of offence than racial vilification—be introduced into the Act.

That is a brief conspectus of the position in South Australia prior to the introduction of this Bill. I should, for completeness, refer to the position elsewhere in Australia and federally. A number of recommendations and reports have been made by various Australian bodies. The Human Rights Commission published a report in 1983 and recommended legislation creating criminal offences. The Western Australian Law Reform Commission in 1989 recommended in favour of laws against racial vilification. However, that commission did not favour the creation of criminal offences but favoured racial conciliation and education measures. Later, Western Australia amended its criminal law to address particular problems that had occurred in that State with regard to racial vilification and harassment. In 1992 the Victorian Racial Vilification Committee recommended the introduction of legislation creating criminal offences, and so too did a report of a national inquiry into racist violence in 1991. I mention also the report of the Royal Commission into Aboriginal Deaths in Custody, which reported in 1991, and a report of the Australian Law Reform Commission on this subject in 1992. Both of those last mentioned bodies recommended laws against racial vilification, but did not favour the creation of criminal offences.

In 1989 in New South Wales legislation in the form of the Anti Discrimination Racial Vilification Amendment Act came into force. The essence of that Act—which is, to some extent, picked up by elements of the Bill presently before this Parliament—was that racial vilification, namely, a public act which incited hatred towards, serious contempt for, or severe ridicule of, a person, which was accompanied by threats to person or property, was a criminal offence. I mentioned the report of the Western Australian Law Reform Commission in 1989. The legislation, which was introduced in consequence of the report of that commission, made amendments to the Criminal Code in 1990.

That legislation created four offences, which can be summarised as follows: the possession of material that is threatening or abusive with intent to publish or display an intent that hatred of any racial group be created or increased; the publication of threatening or abusive material with intent of hatred of any racial group being created or increased; the possession of threatening or abusive material with intent that the material be displayed, and that a racial group will be harassed by the display; and, finally, the display of threatening or abusive material with intent that that material should be displayed and that a racial group would be harassed by the display.

No other State, apart from South Australia, has to my knowledge yet introduced legislation of this kind. The Federal legislation, now embodied in the Racial Hatred Act of 1995, had a tortured history through the Federal Parliament. The Keating Government introduced the Racial Hatred Bill in 1992. That Bill lapsed upon the 1993 election. It was reintroduced in November 1994. In September 1995 the then Opposition, comprising the Coalition Parties and the Western Australian Greens in the Senate combined to amend the Bill by removing the criminal sanctions that were contained within it. The Federal Government accepted those amendments and the Racial Hatred Act of 1995 came into operation in October of that year.

In essence, the Federal Racial Hatred Act makes it unlawful, but not a criminal offence, to do an act in public if the act is 'reasonably likely to offend, insult, humiliate or intimidate another person or group and the act is done because of the race, colour or national origin of the person or group'. This unlawful conduct is not described as racial vilification; it is called offensive behaviour because of race. The Human Rights and Equal Opportunity Commission is given jurisdiction to intervene and mediate and report upon transgressions of that law.

The question is: given that there is now some Federal legislation in place, ought we have any State legislation on this subject? The question is not whether there should or should not be legislation—we already have Federal legislation—but whether we in South Australia wish to make a statement on behalf of this State. I would argue in support of the Government's position that this Parliament should express a strong view on this issue by enacting its own legislation. Moreover, if States do not have legislation on this matter, the claim of the Federal Government that it has some justification for imposing national legislation, whether pursuant to the foreign affairs power or any other power, is enhanced. I believe it is undesirable for States to abdicate their responsibility in so important an area to the Federal Parliament.

Of course, there is a threshold question whether there is a need for any legislation at all. I would argue that there is. All the reports to which I have referred the Council show that the community does not believe that people should be entitled to incite racial hatred or to incite contempt of others on racial grounds or on grounds of nationality. Even if there were a widespread belief in the community that incitement to racial hatred was a legitimate or acceptable exercise, I would say that Parliament should show leadership in this area by rejecting incitement to racial hatred as a legitimate form of expression. My view is always subject to the proviso, reflected in the Bill, that reasonable discussion of any social and political issue, including immigration, multiculturalism and the like, must be protected.

One reason that we often hear advanced against racial vilification legislation is that legislation will not solve the problem. Of course it will not. No legislation by itself can stamp out racism or racial vilification. The law against shoplifting has not eliminated shoplifting, but no-one suggests that it should be repealed on that ground. This legislation will be a statement by the Parliament of this State about its abhorrence of certain practices. Although the most violent racist behaviour (threats and so on) is already caught by the general law, I contend that this legislation is necessary. The issue is not merely one of law enforcement; it is political. Failure to pass racial vilification laws is itself a political statement.

I do not suggest, and the Bill does not seek to provide, that it is an offence to have racist beliefs or even to entertain hatred based on racist feelings. It would be futile to seek to pass such a law. This legislation should be limited to public acts, and it is limited to public acts.

Earlier I mentioned that some of the reports which have been published on this issue—notably that of the South Australian Community Relations Advisory Committee and others—recommended against criminal sanctions and favoured conciliation and education. I take a different view. This legislation is aimed at those who would perpetrate violence—neo-Nazis and the like. In my view, conciliation and education is wasted on them. I am sceptical of attempts by any Government to re-educate people or to make them better. I consider it to be the function of the State to prescribe limits beyond which people may not go. I do not believe in 'feel good' schemes devised by social engineers to make people better. The incidence of racial vilification in South Australia is not sufficiently widespread to warrant an expensive education campaign, even if funds were readily available for that purpose.

I turn now to the provisions in the Bill. Clause 4 creates the offence of racial vilification by providing:

> A person must not, by public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of their race by—
>
> (a) threatening physical harm to the person, or members of the group, or to property of the person or members of the group; or
>
> (b) inciting others to threaten physical harm to the person, or members of the group, or to property of the person or members of the group.

The maximum penalty is $25 000 for a body corporate or, if the offender is a natural person, a $5 000 fine or imprisonment for three years or both. These heavy penalties are a measure of the seriousness with which the Government sees this offence.

It is important to note that it is essential for an offence to be committed that there must be a threat of physical harm to a person or property. The consent of the Director of Public Prosecutions to any prosecution is required in order to prevent vexatious prosecutions. That measure has been adopted in some of the legislation in other places and it is an important protection in the community interest.

The criminal court which convicts a person of an offence under clause 4 is specifically empowered to award damages against that person. The next part of the legislation creates civil redress by giving to any person who suffers from an act of racial victimisation a right in the ordinary courts to claim compensation from the perpetrator of that act up to a limit of $40 000. It is important to note that, in order to recover damages under this civil redress, the court must be satisfied that the person making the claim actually suffered detriment, meaning injury, damage or loss or distress in the nature of intimidation, harassment or humiliation.

The manner in which the court would assess those damages is not spelled out in the Act; however, the jurisdictional limit of the Magistrates Court is sufficient to enable it to make an award under this section. The court would apply ordinary principles of assessment of damages. There is a great deal to be said for allowing the ordinary courts of law to determine these matters rather than to have them determined by the Equal Opportunity Commission or tribunal. This Government has gone about a program of reintroducing to the ordinary jurisdiction of the courts many of the specialist functions previously carried out by specialist tribunals. I note that the member for Spence in another place expressed disquiet about the activities of the Equal Opportunity Tribunal and mentioned, for example, that the tribunal's decision in the celebrated Jobling case hardly covered the tribunal with any glory in the manner in which it discharged its functions.

This legislation does not have exclusive operation. Notwithstanding it, the Federal racial hatred legislation will continue to apply and persons will still have access to the Human Rights and Equal Opportunity Tribunal if they choose to exercise those rights. That is the nature of our Federal system. It is perhaps unfortunate that a Federal Government has sought to establish a Federal bureaucracy and a Federal

judicial arm to deal with these issues which can be more appropriately dealt with by State tribunals.

It is of significance that this Act does preserve the rights of free expression. It does so by providing in the definition of 'act of racial victimisation' that a public act which is caught by the legislation does not include publication of a fair report of the act of another, publication of material in circumstances in which the publication would be subject to a defence of absolute privilege (such as publication of the proceedings of Parliament or of a court) or any reasonable act done in good faith for academic, artistic, scientific or research purposes or for other purposes in the public interest.

Some people are very fond of speaking of the right to free speech but I take the view that the right of free speech is tempered by responsibilities, and on some occasions the right of free expression should be tempered provided always that *bona fide* debate on matters of public interest is protected—and that is what is done in this legislation. No-one can say that they enjoy an existing right or freedom in our society to threaten others with physical violence or violence to property—no such right exists.

This legislation follows in the footsteps of comparable legislation in other parts of the world. For example, since 1976 in the United Kingdom there has been an offence of incitement to racial hatred. That was contained in the United Kingdom Race Relations Act. Section 5a of that Act makes it an offence for a person to publish or distribute written matter which is threatening, abusive or insulting. It is also an offence to use in any public place or any public meeting words which are threatening, abusive or insulting in any case where 'having regard to all the circumstances, hatred is likely to be stirred up against any racial group in Great Britain by the matter or words in question'.

The Canadian Criminal Code of 1970 contains in section 281.2 an offence as follows:

> Everyone who by communicating statements in a public place incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of an indictable offence and is liable to imprisonment for two years or an offence punishable on summary conviction.

Offences are also created of wilfully promoting hatred against any identifiable group, and other offences of a like kind have been enacted not only in the Canadian Criminal Code but also in the Canadian Human Rights Act and in the legislation of several Canadian provinces.

The New Zealand Race Relations Act of 1971 contained an offence of inciting racial disharmony. By amendments made in 1977 to that Act, an offence was created in section 9a of publishing or distributing written matter which is threatening, abusive or insulting or to broadcast by means of radio or television words which are threatening, abusive or insulting, being words or matter which are likely to excite hostility or ill will against or bring into contempt or ridicule any group of persons in New Zealand on the ground of colour, race or ethnic or national origin of that group.

The provisions of the South Australian Bill are perhaps not as wide-ranging because of the view we take about freedom of expression. In my view, they are entirely appropriate. As I said at the outset, this measure is testimony to this Government's commitment to fostering a community in which racial intolerance is to be discouraged. It is an important statement and one which I wholeheartedly support.

The Hon. J.C. IRWIN secured the adjournment of the debate.

EVIDENCE (SETTLEMENT NEGOTIATIONS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 February. Page 853.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The Opposition supports the second reading of this Bill. The current section 97c of the Evidence Act was introduced by the former Attorney-General, the Hon. Chris Sumner, in 1993. The Hon. Trevor Griffin, who was then shadow Attorney-General, raised no objection at the time as to the content of section 97c. In fact, the 1993 amendment followed an Australian Law Reform Commission report of 1985 dealing with the laws of evidence generally.

Furthermore, the 1993 amendments substantially enacted the common law position, at least as far as the precise point before us is concerned. The privilege in aid of settlement is a longstanding common law doctrine which says that things in the course of negotiations cannot be the subject of evidence led at the trial of that matter if negotiations are unsuccessful. There is quite obviously a sound principle behind this, namely, that parties should be encouraged to reveal their hand to a certain extent in order to increase the likelihood of settling a dispute. If parties had to live in fear of compromising material being raised at trial against them, that would be a very strong motivation to disclose as little as possible during the negotiation process.

The negotiation process might involve some sort of compromise or conditional admissions of fault either by means of words at a conference or through correspondence. Traditionally, correspondence sent in a genuine spirit of negotiation was marked 'without prejudice', although these words themselves often do not necessarily draw the protection of the privilege over the contents of the documents. Conversely, letters written or remarks otherwise made during the negotiation process need not be prefaced with 'without prejudice' in order to gain the benefit of the protection of this common law privilege.

There have been developments in our legal system since 1993 which are relevant to the consideration of this Bill. First, there is the continuation of a trend for judges, courts administration and the Parliament to do everything reasonably possible to encourage the early settlement of litigation or even to settle matters before formal litigation is commenced. Apart from the benefits of affording parties to litigation relatively fair and expedient resolutions, from the State's point of view, the encouragement of settlements is desirable because of the efficiency it represents in terms of use of the courts system's resources. In fact, it is probably more than a matter of efficiency, because every jurisdiction in our courts system would rapidly get out of control if there were a significant increase in the number of matters which went to trial rather than settling. So, the Government and the Opposition agree that the promotion of settlement opportunities is highly desirable.

The second development that I mention is the formulation of the Commonwealth Evidence Act. The Attorney has not seen fit to enact South Australian legislation identical to the Commonwealth evidence law. There has been considerable debate about the desirability of that course, so I do not propose to address that issue in any detail. The present Bill is an opportunity to bring one aspect of our Evidence Act into line with the Commonwealth Evidence Act. Those responsible for drafting section 131 of the Commonwealth Evidence

Act chose not to follow the recommendations of the earlier Australian Law Reform Commission report. Instead, the Commonwealth legislation takes a fairly broad view of the communications and documents to be protected if they have been made or prepared in connection with an attempt to negotiate a settlement of litigation.

With the aim of promoting settlement opportunities and increasing consistency between our South Australian legislation and the Commonwealth evidence law, the Opposition will support the extension of the protection from disclosure. It should be said that this move represents an exception to the general trend of increasing disclosure of documents in courts, leaving it for judges and magistrates to give what weight they consider fair and reasonable, bearing in mind the nature and source of the evidence.

In this Bill, however, we are extending the scope of protection from disclosure purely so that parties can carry on negotiations without fear that the material used during the negotiating process will be revealed in similar or parallel litigation which might have much the same subject matter. It could well be said that the cases which we most want to have settled expeditiously are those long and drawn out commercial cases where there is a greater likelihood of several strands of litigation arising out of the same set of circumstances, whether it be the failure of a financial institution, a takeover bid, or something of that nature. For these various reasons, we are happy to support the reform which is the intent of the Bill.

However, the Opposition has some very grave concerns about the retrospective effect of the Bill as it stands. We cannot support the passing of the Bill in its present form. Because the subject matter of the Bill deals with the rules of discovery and evidence, which are essentially procedural matters rather than points of substantial law, the Bill would be highly likely to have impact immediately on litigation presently on foot. In many cases when laws are passed by this Parliament, parties to litigation and other people are sometimes caught unaware because they have not had the opportunity to hear of changes to the law. The fact that citizens will immediately be affected by the passing of legislation is not generally a reason for blocking or amending the legislation. However, this is a special case. Clearly, this Bill has been inspired by the failure of a State-related enterprise in the courts of law. It is repugnant legislation because it appears to have been drafted at the instigation of a party which does not wish to comply with an order of the Full Supreme Court of South Australia, a party which also has the ear of the Government.

Members should be aware that that litigation is still continuing. In the matter of *The State Bank v Smoothdale No. 2 Limited*, the plaintiff is presently the subject of an order for the discovery of documents made by the Full Court. I understand that the plaintiff has sought to take the matter further to the High Court, albeit with an application made out of time. Meanwhile, both parties await the deliberations of Parliament in respect of this Bill. The defendant and its associated companies have understandably raised an objection that this Bill, if passed in its present form, could seriously damage the reputation of South Australia in the international business and financial community. Where in the world would one expect to see the Parliament of a country change the law midway through litigation at the request of a Government related entity receiving an adverse ruling in a properly constituted court of law? Perhaps in a third world country presided over by a dictatorship where there is no tradition of the rule of law and the system of justice which we have inherited from the British. But it should not be allowed to happen in South Australia.

The Opposition has received a letter from Mr Richard Rosenberg, Chairman of the Board of the Bank of America. Here we are dealing with one of the more significant financial institutions in the world. In my view, the contents of the letter are worth reading in this place to spell out the grave consequences of what the Government seeks to do. The letter states:

> I am not in the habit of writing letters of this kind while litigation is pending, but I feel compelled to do so because of an extraordinary turn of events. These events put at risk the excellent reputation that the State of South Australia has in the foreign community and the confidence of foreign investors in the opportunities for investment there.
>
> Bank of America NT & SA, as successor-in-interest to Security Pacific National Bank, is the parent company of Security Pacific Overseas Investment Corporation (SPOIC), which is involved in litigation with the State Bank of South Australia (SBSA) in the Supreme Court of South Australia.
>
> SPOIC recently obtained a favourable ruling in the Supreme Court on its request for production of certain documents in the possession of SBSA. SBSA appealed the court's ruling to the Full Court, and on 13 December 1995 the Full Court affirmed the ruling in favour of SPOIC. No application for special leave to appeal to the High Court of Australia has been made by SBSA, and I am advised by counsel that the time to do so has expired. Instead, the South Australian Government introduced a Bill on 14 February 1996 that would amend the Evidence Act section upon which the High Court's decision was based with the apparent intent to abrogate the decision of the court in favour of SPOIC and alter the course of future discovery in this case. Indeed, the report on the Bill unabashedly states that the Smoothdale litigation caused the Government to act.
>
> I am surprised that the South Australian Government would consider using its legislative power to seek to interfere with normal judicial processes in the State in an effort to influence the result in litigation in which the Government's instrumentality is a party. This legislative action will surely cause prospective foreign investors (and any company contemplating a substantial transaction with the State Government) to give pause before making any future economic investment in the State.
>
> The courts in Australia have an excellent reputation, and we have complete confidence that we will receive a fair and impartial hearing in the courts of South Australia. However, we must register our strong objection to proposed Government action which attempts to interfere with normal judicial processes designed to render justice impartially. Such interference is especially troublesome when the seeming purpose of the action is to overturn adverse judicial rulings suffered by the Government at both the Supreme Court and Full Court levels after full and fair hearings. We hope that the Government will consider its ill-advised action.
>
> I understand that the Government is seeking to rush this Bill through the Parliament as quickly as possible, and therefore I would very much appreciate your efforts in seeking to persuade the Government that in the circumstances the proposed Bill should be withdrawn. If that cannot be accomplished I would urge you to oppose this legislation.

That is signed Mr Richard M. Rosenberg, and the letter was addressed to me, the Hon. Mike Rann (Leader of the Opposition in another place) and the Hon. Mike Elliott (the Democrat Parliamentary Leader). The logical consequences of what I have said so far is that the Opposition will support the second reading but also will introduce an amendment to ensure that the reform opposed by the Government can only affect litigation commenced after the commencement of the operation of this amendment to the Bill. We support the second reading.

The Hon. BERNICE PFITZNER secured the adjournment of the debate.

SUPPLY BILL

Adjourned debate on second reading.
(Continued from 15 February. Page 933.)

The Hon. BERNICE PFITZNER: In supporting the Bill, I take this opportunity to congratulate the Federal Coalition for its tremendous victory in the Federal election. It is appropriate to make mention of victory in this context, as it is the only Party that will make some headway towards improving Australia's financial situation. The Federal election was indeed a landslide, with the numbers now in the House of Representatives being Liberal 75 and National Party 18, giving 93 seats in all (in 1995 the Coalition had 66 seats), ALP 46 (in 1995 it had 79), Independents 4 and doubtful 5. I believe some have now been confirmed in the doubtful area. There was a huge loss to the ALP of over 30 seats.

One can put forward many theories as to why the Australian people sent such a message, and I propose two factors. First, we have the Keating factor. As a member of the Legislative Council, travelling through South Australia and parts of Australia, I have noticed that the ordinary people such as shop assistants, taxi drivers, small business operators and research assistants all felt that the attitude of the immediate past Prime Minister was unacceptable, with an arrogance that did not listen to sensible and responsible advice. Even in the Parliament the immediate past Prime Minister did not think he had the responsibility of being there at Question Time, demonstrating a total disregard and contempt for the tradition of Parliament.

The other factors that played an even greater part in the downfall of the ALP is our fall in living standards. In an article by Mr T. Larkin and Dr T. Dwyer entitled 'Living Standards in Decline?' they identified a report commissioned and released by the immediate past Prime Minister in December 1995. To be exact, it was entitled 'Trends in the Distribution of Cash Income and Non-cash Benefits'. This report was what they called a scorecard on how economic policy has affected Australian living standards for the past 12 years from 1981-82 to 1993-94. The report was described by the immediate past Prime Minister as being the latest and most comprehensive data available. The authors note that one could conclude from that Federal report that there was a fall in real household private income of nearly 9 per cent.

The PRESIDENT: Order! I draw the honourable member's attention to the fact that this is a Supply Bill and rightly she should link up her remarks. It is not a grievance debate as in the opening of Parliament. I suggest that she try to link somehow into the supply of money for the use of public servants.

The Hon. BERNICE PFITZNER: Yes, Mr President, I am linking it up to show how there is a fall in our standard of living, and such a fall has much to do with economics and therefore with Supply. Further, the report says that when account is taken of extra labour efforts, living standards have probably fallen on average by at least 13 per cent and, although the report points to the benefits of the social wage, which is the Government cash and non-cash benefits, a close reading of the report shows that Government financial social wage benefits have not succeeded in offsetting the decline in living standards.

The report also provides evidence that the financing of the social wage appears ultimately unsustainable as the balance on Federal Government current transactions as a percentage of Government current expenditure has slipped from a surplus of 1 per cent, which equates to $483 million, to a deficit of 9 per cent, which equates to a deficit of $13 713 million. Therefore, we see that the Australian living standards are declining and that Government financial social wage benefits have not succeeded in offsetting the decline in living standards, and financing of the social wage appears ultimately to be unsustainable.

The PRESIDENT: Order! I am finding it difficult to see where this argument leads to the supply of money for the running of the State for the next six months. Would the honourable member link up her remarks more closely with that argument? It is not an Appropriation Bill in which you can argue along those lines. It is a Supply Bill dealing with the supply of money for the running of our State.

The Hon. BERNICE PFITZNER: I will identify why with regard to the economics. No doubt the subject is to do with this State, but we need to look at the bigger picture and at what we have in the nation and target it later to the State.

Still on the issue of the economy, we note that at the recent fourth Annual Microeconomic Reform Conference Mr Prescott of BHP stated:

> Today we are discussing how microeconomic reforms could contribute to business competitiveness because microeconomic reform is, after all, about reducing the cost of doing business in Asia, which includes doing business in South Australia.

In his opening address he states that Australia's infrastructure prices are generally well above the world's best practice; for example, road freight prices are 10 per cent higher, electricity prices are 30 per cent higher, telecommunications are around 80 per cent higher, rail freight is 50 per cent higher and waterfront costs are three times higher than world's best practice. All this around the nation must impact on South Australia.

Further, Mr Prescott identified the performance on the waterfront as deserving special mention, as the latest Bureau of Industry Economics Study shows that productivity in major Australian ports, which includes the port of Adelaide, has actually gone backwards. He further says:

> International best practice is a moving target and we have to run fast to even keep pace with the world leaders. The fact that we actually stepped backwards in two of the key transport industries such as waterfront container handling and aviation, while the rest of the world has been marching ahead, is of major concern, and it also impacts on South Australia.

Dr Hawkins, the Director of the Bureau of Industry Economics, further supports this concern and says:

> . . . the poor performance on the waterfront and some aspects of aviation demonstrate two of the dangers facing [our economic] reform process. Further, the analysis of performance gaps suggests that it is in the area of operational efficiency, especially labour productivity, that the largest performance gaps were made. . . further reform of the labour market and work practices are required. . . relaxing the pace of reform or letting the process falter would see Australia [including South Australia] fall back into the trailing group of international also-rans.

We now look at South Australia, and the same Bureau of Industry Economics supports South Australian Government claims that the South Australian economy has turned around and is catching up to the economies of New South Wales and Victoria. However, we still have a way to go with our job growth, which reached only 1 per cent, but with such incentives as the lowest level of tax collected as a proportion of total revenue, the third lowest level of payroll tax and with our debt at $5 400 per person, as opposed to $7 098 in Victoria and $7 103 in Tasmania, it is timely that a report by

the Victorian Chamber has said that South Australia ranked as one of the strongest economic performers in this nation.

I now move to the topic of racism. I would like to identify certain minority groups. For example, I want to address the plight of Aborigines and the reason we as a fair and just community ought not to feel that too much preference is given to one of the most vulnerable sections of our general community. I hope that some funds in the Bill will be targeted to this area because in a recent article Professor O'Dea, Professor of Human Nutrition, Deakin University, states:

> Most Aboriginal people in Australia today live a westernised lifestyle, deriving their diet completely or largely from western food and leading sedentary, physically inactive lives. Compared with the rest of the Australian population, Aboriginal people have a 20 year shorter life expectancy; as much as four times the prevalence of coronary heart disease; and, in the 20-50 year group, more than 10 times the prevalence of diabetes. They not only have a higher incidence of diabetes, but the onset of the disease is at a much lower age.

They have what is known as and is called Syndrome X, and the characteristics include obesity, high blood pressure, diabetes and other abnormalities of the blood and urine. This Syndrome X is associated with increased risk of coronary heart disease, and we need interventive strategies to be successful over the long term. It is essential that they are developed by the Aboriginal communities themselves, as this will ensure that the strategies are culturally appropriate and are able to be owned by the community rather than imposed from outside and therefore accepted rather than rejected, despite being well intended.

Finally, I refer to the ubiquitous pokies or gaming machines, and I hope that some funds from Supply, or perhaps somewhere else, can be used to support those people who have become habitual gamblers as a result of the presence of pokies. I refer to an *Advertiser* article of February 1996 in which the following statistics were noted: 1995 turnover was $2 241.9 million, gross profit was $276.1 million and the tax on turnover was $94.2 million. Therefore, spending on pokies increased from $167 per adult per year to $450 per adult per year. South Australian gamblers are noted to be possibly the biggest players of pokies, surpassing even New South Wales, the home of the nation's first pokies.

An inquiry was held into the impact of pokies, and its report was produced in November 1995. The report's broad conclusions, which are of concern, were as follows:

> 1. Poker machines have impacted upon 40 per cent of the adult population in South Australia.
> 2. Poker machine users are more likely to be female and are more likely to come from young (under 25) and older (over 55) age groups, from pension and welfare backgrounds, and are more likely to be single.
> 4. Unplanned overspending on poker machines is evident in some cases, with resultant adjustments to their essential spending in other areas, including delays in bill payments.
> 5. A total of 6 per cent of the adult population, or 15 per cent of all poker machine players, accounts for 50 per cent of all visits to hotels and clubs to play poker machines, and they account for 56 per cent of all expenditure on poker machines.
> 6. Poker machine players are motivated primarily by the social atmosphere benefits of visiting hotels and clubs, but there is a tendency to spend more than anticipated on [these] machines once at the venue, for some players.

However, of greater concern is the 1995 paper presented by Mr Vin Glenn of the Adelaide Central Mission, who has worked with welfare groups for a great number of years, and I respect his concerns. In his paper he says that there are now almost 8 000 (although I believe it is now more like 9 000) poker machines in our State, and to date they have earned more than $23 000 per machine in gross profit, that is, $1 500 each month.

Turnover has now exceeded $2.1 billion and players have lost $300 million since the launch of pokies. The return to Government, as I said, would now be about $95 million. The profile of gamblers seen at that welfare service is summarised as follows: gamblers, by sex, 56 per cent females; in terms of housing, 60 per cent of gamblers live in rental housing; by family composition, 19 per cent are sole parents; 34 per cent were wage earners, 9 per cent aged, 14 per cent sole parents and 17 per cent disability/sickness. In terms of bankruptcy, 5 per cent of clients had petitioned for personal bankruptcy; and, as to pawnbrokers, 23 per cent of clients had used a pawnbroker in the last month, with an average of four items in pawn.

As to social assistance, 34 per cent of clients sought food assistance, 38 per cent sought utility account assistance and 22 per cent sought assistance because all savings were used. In summary, following the gambling conference in Perth, Mr Glen said that it seemed important for all sections of the gaming industry—Government, industry, research, therapists, gamblers and their families—to work together to permit the majority of people to enjoy the forms of gambling which represent part of their regular entertainment activities.

Unfortunately, we must also support those who inevitably develop out of control gambling. We are continuing to see that, and we must address swiftly this new morbidity. Although this will not be addressed through an allocation in the Bill, it should be addressed in some other area. It is with this sobering report on the pokies that I conclude and support the second reading of the Bill.

The Hon. J.C. IRWIN secured the adjournment of the debate.

[Sitting suspended from 6.5 to 7.45 p.m.]

WILLS (WILLS FOR PERSONS LACKING TESTAMENTARY CAPACITY) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 15 February. Page 933.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): I support the second reading of this Bill. In his second reading explanation, the Attorney has clearly expressed the reasons for introducing such a Bill. I believe the reasons for welcoming this reform are best summed up in the New South Wales Law Reform Commission report of 1992, which stated:

> A statutory will-making scheme would greatly enhance the rights and dignity of persons with disabilities by enabling their property to be devised appropriately by having regard to their current situation.

The scheme adopted under the Bill seems appropriately drafted. The Opposition also agrees that the Supreme Court is the appropriate forum to entertain applications for statutory wills to be made. The factors to be set out in section 7 of the Wills Act are sensible and appropriate. No doubt some problems will arise. There is always scope for disputes about whether a person actually had or had not testamentary capacity at a given point in time. These disputes can, of course, arise under the present situation where a person makes a will and their mental capacity is questioned when it

comes to a claim that the terms of the will should not be followed.

Similarly, the terms of a statutory will may not meet the expectations of close family members of the testator. In these cases disputes are likely to arise, but such disputes would not be substantially different from those which can arise under the present situation where close family members are not, in their own opinion, provided for sufficiently by a will. The Opposition discerns at least one problem which might arise in the operation of this scheme and which cannot really arise under the present law. The situation may occur that a statutory will is made at a time when a person does not have testamentary capacity. However, the testator may later recover from a brain injury, or dementia, or whatever, which has rendered them temporarily unable to express their true testamentary intentions.

The query is simple: is there any guaranteed means of informing that person that they have a statutory will in their name? Presumably the Registrar of Probates relies on the guardian or the carer for the testator to communicate to the testator that a statutory will exists, which may or may not satisfy the current testamentary wishes of the testator. The Attorney might also reassure us about what procedure is envisaged in circumstances where the testator dies after the Supreme Court has approved the terms of the statutory will but before the Registrar of Probates has executed the will. Could the approved terms of such a will subsequently be approved and deemed to be a testamentary provision of the testator under section 12(2) of the Wills Act? Subject to the Attorney's commenting on these matters, the Opposition is very happy to support the Bill.

The Hon. J.C. IRWIN secured the adjournment of the debate.

COMMUNITY TITLES BILL

Adjourned debate on second reading.

(Continued from 13 February. Page 866.)

The Hon. K.T. GRIFFIN (Attorney-General): I thank the Hon. Anne Levy for her indication of support to this Bill. The honourable member did, during her contribution, raise a number of issues, and it is appropriate I respond to those on the record although, as a result of some further consultation, I have belatedly put on file today some amendments which are reasonably straightforward and which recognise some of the concerns raised by the honourable member. The first issue relates to the conversion process in the Bill whereby a strata corporation, under the existing Strata Titles Act, can decide to come under the umbrella of the new Community Titles legislation.

The relevant provisions are contained in schedule 1 to the Bill and require that a strata corporation made by ordinary resolution (which for these purposes is a simple majority) decide that the Community Titles Act will apply to the corporation and the scheme. The honourable member suggests that people would be better protected by requiring in this instance a special resolution. I understand the honourable member's position on this. However, the reason the ordinary resolution was chosen was to give all the members of the corporation the opportunity to have a choice and not be oppressed by the holder of a number of proxies, or the single owner of several units, who may always be in a position to use those votes to defeat a special resolution.

In some groups it is not possible to get a special resolution unless there is the support of a particular block of votes. Everyone who is a unit holder will have the opportunity to vote on the issue of how the future management in the scheme should be undertaken. I note that the Hon. Mr Elliott has an amendment on file that seeks to address that issue. The remarks I have addressed in response to the Hon. Anne Levy's question are equally applicable to that amendment, but there will be the opportunity to further debate that issue at that time.

The second issue relates to the rating of community title schemes. I advise the honourable member that I have finalised a Statutes Amendment Community Titles Bill, which I expect to introduce tomorrow. This Bill will amend all of the rating and taxing Acts, for example, the Local Government Act, the Land Tax Act, the Sewage Act, the Waterworks Act, the Valuation of Land Act, and some others to deal with the issue of rating and taxing of community schemes. At present all of these Acts deal with the rating and taxing of strata schemes, and it is necessary for them to be amended to accommodate community schemes.

In relation to the issue of roads, the honourable member is correct in her understanding that if a road does not vest in the council it will be part of the common property of the corporation and its maintenance will be the responsibility of the community corporation. In this respect the Bill is the same as the current Strata Titles Act. Most strata schemes have at least a common driveway, and many of the larger schemes have road networks through the scheme.

I turn now to the issue of leasing of lots and by-law restrictions. As the honourable member points out, clause 36(2) provides:

> A by-law may prohibit or restrict the owner of a lot from leasing or granting rights of occupation in respect of the lot for valuable consideration for a period of less than six months.

This provision was included following consideration of the situation in Queensland where owner occupiers of units sometimes find themselves faced with other units in the scheme being used for short-term holiday rental by people who do not obey the rules of the corporation and use and abuse the corporation's facilities. The inclusion of a by-law under this power is not compulsory, but it was considered to be a useful addition to the by-law-making power. It is to be noted that the restriction is on leasing for valuable consideration and does not prevent a person coming in to house sit in the absence of the owner. Members will note that I have an amendment on file which will seek to reduce that period from six months to two months, and we can debate the issue further at that time.

The next issue raised by the honourable member concerns clause 100, which deals with the power to enter property to enforce a duty of maintenance and repair. This clause is a direct copy of that which is in the current Strata Titles Act in section 28. The Strata Titles Act was enacted in 1988 and was the subject of an extensive review in 1990. Section 28 has not in the eight-year life of the Strata Titles Act been the cause of any problems so far as I can ascertain. Clause 101 is substantially the same as section 29 of the Strata Titles Act. Again, I am not aware that this section has caused any problems. However, I have noted the honourable member's concerns and, in consequence, there are amendments on file which will address some aspects of that issue.

I think it is important to put the model by-laws into some perspective. The intention of the Bill is that there will be individually prepared by-laws for each scheme. The Bill is

not the same in this regard as the Strata Titles Act, where the articles at the back of the Act are the articles of the corporation and remain so unless changed by the corporation. This is a matter of some difficulty in the Strata Titles Act as the articles relate to domestic unit living arrangements and are clearly inappropriate to an industrial or commercial scheme.

The Community Titles Bill requires that the first set of by-laws in a community scheme are those filed with the community plan at the Lands Titles Registration Office. These by-laws will need to be in a form approved by the Registrar-General and provide for the administration, management and control of the common property. As I have said, they need to be individually prepared for each scheme.

It was with some reluctance that the Government agreed to put a set of model by-laws in the legislation. For those who have followed the extensive drafting and redrafting of the Bill over the past year, it will be noted that the model by-laws were included only in this last version of the Bill. This was the result of submissions requesting that a set of standard by-laws be included in the Bill. As I have explained, a standard set of by-laws is not appropriate, given the range in size and complexity of schemes which could be developed under the Bill. It is not the Government's intention that the model by-laws now included in the Bill will be used by any corporation at all. They represent possible by-laws for a fictitious scheme. The Government is not firmly wedded to the model by-laws and, given the wide variety of developments which can take place under this legislation, it is only possible to provide an example. It is not possible to provide a set for use in all situations.

If the model by-laws were to remain in the Bill in that context, I suggest there would not be much point in debating the content of the model or example. However, I have an amendment on file which seeks to remove the model by-laws. I hope that will satisfy the honourable member's concerns. If we need to give some guidance in relation to model by-laws generally or to specific provisions which might be required by virtue of the operation of the statute, there is a general power to make regulations, and it may be necessary to prescribe model by-laws as a guide only. However, in the light of the matters raised by the honourable member, I have taken the decision that, subject to the concurrence of the Council, we will get rid of model by-laws from the Bill.

I thank the honourable member for her contribution and indication of support for the Bill. It is a particularly significant Bill on which many people have worked for a considerable period of time from across a range of disciplines in both the private and public sectors. I appreciate their constant work, sometimes being harassed by me to meet deadlines which have been difficult to achieve, but I think it will be a significant piece of legislation. It will facilitate development more flexibly across a range of development schemes, which will be for the benefit of South Australia and of developers as well as those who may wish to occupy and own a community title of one sort or another.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Interpretation.'

The Hon. K.T. GRIFFIN: I shall be moving a number of amendments. Most of them, if not all, have arisen from the consultation phase and are of a technical and practical nature. I will give explanations of each of these and if any further amplification is required I shall be happy to provide it. I move:

Page 4, lines 7 and 8—Leave out the definition of 'relevant planning authority' and insert the following definition:

'relevant development authority' in relation to the division or other development of land means the person or body authorised by the Development Act 1993 to consent to, or approve of, the division or other development of the land or to give any other development authorisation under that Act in relation to the division or other development of the land.

This change expands the definition of 'relevant development authority' to include any person or body who has authority under the Development Act to authorise development. The definition in the Bill is confined to the Development Assessment Commission or a council and does not include the Minister under section 49 for a Crown development or the Governor for a major development under section 48 of the Development Act. The other alteration in the new definition is to change the term from 'relevant planning authority' to 'relevant development authority.' 'Development' is regarded as being more consistent with the terminology of the Development Act than the use of the word 'planning.'

The Hon. ANNE LEVY: I support the amendment. It is one of a number which can be regarded as tidying up or technical amendments which do not alter the intent or purpose of the legislation in any way but obviously result from fine toothcombing by legal people who like to find i's to dot and t's to cross.

Amendment carried.

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

Page 3, line 16—Insert '(if any)' after 'description'.

This minor drafting amendment recognises that small schemes are not required to have a scheme description.

Amendment carried.

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

Page 7, after line 26—Insert new subsections as follows:

(11) Where—

(a) this Act requires the scheme description lodged with the Registrar-General to be endorsed by the relevant development authority; and

(b) —

(i) all the consents or approvals required under the Development Act 1993 in relation to the division of land (and a change in the use of the land (if any)) in accordance with the scheme description and the plan of community division have been granted; or

(ii) no consent or approval is required under that Act in relation to the division of land (or a change in the use of the land),

the relevant authority must, subject to section 29(4), endorse the scheme description to the effect of either paragraph (b)(i) or (ii).

(12) The endorsement of a scheme description does not limit the relevant development authority's right to refuse, or to place conditions on, development authorisation under the Development Act 1993 in relation to any other development envisaged by the scheme description.

New subclauses (11) and (12) of clause 4 are inserted to make it clear that the development authority's endorsement on a scheme description is a certification that the necessary consents or approvals under the Development Act have been obtained. Subclause (12) emphasises the fact that the endorsement does not prejudice the development authority's right to subsequently consider applications for consent under the Development Act 1993 to other development envisaged by the scheme description.

Amendment carried; clause as amended passed.

Clauses 4 to 7 passed.

Clause 8—'Development lots.'

The Hon. M.J. ELLIOTT: This question does not relate to this clause but it is something that I want to put on the record and get a response from the Attorney-General. The Bill still leaves intact the strata titles system and there are also people under company titles or something like that. What mechanisms are envisaged to facilitate people moving out of company titles into perhaps community titles? As I understand, there are some significant problems occurring for people under the company titles. If we can facilitate them shifting into either strata titles or community titles they will be much better off.

The Hon. K.T. GRIFFIN: The question of companies holding land and then leasing to the shareholders who are also directors of that company really was the start of jointly owned property but exclusive possession of particular parts of a development before strata titles came into vogue. When we were developing this Bill that was one of the issues that we looked at: is there a way by which we can facilitate the translation from a company to a community title? The difficulty is that, whilst we do provide for that transition from company structure to a community title—and it is provided already in the Strata Titles Act for transition from a company to a strata title scheme—the fact is that it has to be initiated by those who own the corporation and who have exclusive possession of the units owned by that corporation.

It is really no different from any other development which might be owned by, say, one person or company but which subsequently the corporation may wish to strata title. They must have plans and surveys. It has to be a process followed to ensure the integrity of the title which is issued and the proper identification of common property. That involves some expense. I do not see how we can assist with the meeting of that expenditure for what are essentially private purposes.

The Bill does allow for that translation from company to community title but it does require the initiation of that course of action by the particular corporation, which means then the unit holders. In years past when I have suggested this to people who have asked, 'What can I do about my 99 or 100 year lease?' I have indicated that they really do have to be prepared to go through a process which does involve some expense to get to the point of issuing a strata title. For most, if not all of them, it would probably enhance the value and the resale opportunity, but they have to be prepared to take the initiative and expend some funds to get to the point of getting a community title.

The Hon. M.J. ELLIOTT: Is there anything we can do in a legislative sense (I am not asking the Government to spend more money) which can make it any easier or is the Attorney saying that the Bill is as friendly as it can be to that process? I understand that there is an ageing population involved in these titles and that they have significant problems with resale value, among other difficulties. Is this Bill as friendly as it can be to that process?

The Hon. K.T. GRIFFIN: It is an issue which I have looked at and which I have had examined by officers. The Bill is as user friendly as we can make it. The difficulty is that, where there is a block of units owned by a corporation, there is only one title and there is no identification of a separate title for each unit either at the Lands Titles Office or elsewhere. In my experience, most of the leases from a company to a shareholder have really talked about unit 1, unit 2, unit 3. Even if they identified a plan in the General Registry Office as the description of the area of a particular unit, that would not be sufficient for the creation of a new title, because there are issues like party walls. If there is more than one level development there is the issue of access, and so on. It is not just a matter of saying, 'Look, these are the units; let us get a plan and do it.' There is a course of action which is required to be followed to ensure integrity in the title as well as initiation by the owners.

The Hon. T. CROTHERS: I have a genetic question in the sense that it is akin to the type of question that Michael Elliott asked. I must say that I have a vested interest in this question but, nonetheless, I will ask it. For the past nine years I have been living in a strata title unit. It is very large as there are six units in it. On one side of the units the neighbour next door has an 80ft gum tree jammed up against the fence. What concerns me is the threat to life that those trees pose because some of the branches on them would have to weigh some tons. One branch blew over the roof of my house and had it impaled someone out the front of my garage where it landed it would have killed them. I know that this issue is the bane of many an MP's life. In fact, because of my personal involvement, I took a couple of people along to see one of our Lower House colleagues, Joe Scalzi, to determine what redress there was for us. My friend, Terry Roberts, is playing the violin. Let me say that he is well cast for the role of the pauper violinist.

The Hon. T.G. Roberts: It was a handball!

The Hon. T. CROTHERS: It was a hand grenade was it? For the past nine years, because of my position in this Council, I have not attended a strata title corporation meeting, but I have sent a proxy. I have tried to honour the fact that I am a member of this Chamber. Therefore, from time to time, such as tonight, I am subject to some consideration and to voting in respect of this matter. This particular villain in question has had the council out to his front garden. He has had the EWS ordering him to cut back the trees in his front garden because they were impinging on the high powerlines above the pavement, some 10 feet from his front door. He had on his front gate a sign which read 'Greening the plains of Adelaide'. He is an environmental lunatic of no small quantum—take it from me.

Recently, my back fence was damaged by a falling branch from one of his gum trees. I reported the matter to the secretary of the strata title corporation who duly had the fence fixed. The corporation wrote to this merchant requesting payment for the damage that had been caused. That was six to eight months ago, and as far as I know he still has not answered the letter. I think this is the bane of every MP's life. Both political Parties, because of the politically sensitive nature of the issue, have danced and skipped and jigged away from the fact that these Bills should contain significant redress for the many hundreds of people who are annoyed because they have to take further expensive action to try to get some redress. I do not know what the old Bill says, but we have had barristers and all look at it this Bill, and it seems to me that if a move was made to ensure that there is a mechanism which can deal with this type of situation fairly accurately and well, it would be in the interests of all concerned.

I am as much an environmentalist as anyone here—my voting record in this Council will prove that—but I also detest lunatics. For instance, I am a socialist, but I would never have supported Hitler. The position is quite clear. The question I ask the Attorney is: what simple, inexpensive redress, if any, is there that can expedite not only the matters that I have reached out and touched upon but other matters, and thus save hundreds of silent, suffering South Australians

from environmental lunacy—which is life threatening? One person, who is a plumber by trade, took out from his roof space three barrow loads of gumnuts. That is extremely dangerous, because all the wiring goes through there. You only have to get that wiring shorting out, and any fire service will tell you that the most dangerous fires to which they are called are the ones that have been smouldering in roof space for some hours before they go up and destroy everything in their path.

The Hon. K.T. GRIFFIN: I sympathise with the honourable member's problem. In a sense it is a neighbourhood dispute.

The Hon. T. Crothers: No.

The Hon. K.T. GRIFFIN: It is, because it does not matter whether it is a strata title or an ordinary house block, the fact of the matter is that the same law applies whether that problem is experienced by a person who owns a strata title and occupies it or someone who owns a house and occupies that. If the tree is on common property of a strata title corporation, the strata title members, who are actually the owners, can do something about it at a properly constituted meeting. If it is not on common property, if it is growing on a property that is identified as being next to the unit, again it may be that the strata corporation can do something about it. However, on the run I cannot give chapter and verse of what may or may not be appropriate. Many issues that relate to trees apply equally to strata corporations as they do to other titles.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: I said that I cannot give you an answer off the top of my head, because it is always a vexed question. It is better for that sort of dispute not to go to court if it can possibly be avoided. In some areas, community legal centres have been established, and they have a mediation service attached to them. Local councils have some authority. If it relates to a strata unit, there is a dispute resolution process under the Strata Titles Act, which is also included in the Bill before us dealing with community titles.

The Hon. T. Crothers: That is only if it is a dispute between strata title members.

The Hon. K.T. GRIFFIN: That's right. I am not aware of all the facts, and I will not become embroiled in a discussion about the merits of that particular case. I am just identifying that there are a number of opportunities for disputes to be resolved, provided the trees are not on the heritage list. That is a big question mark, too, sometimes where you have big trees. There is no difference between a strata corporation and an ordinary house block where it relates to neighbours who are not part of the strata unit or to members of the public.

The Hon. T. Crothers: So, there is no answer.

The Hon. K.T. GRIFFIN: No. Go and see a lawyer. I move:

Page 9, after line 29—Leave out 'a developer may, if he or she wishes to, divide a development lot in stages' and insert 'the owner of a development lot may, if he or she wishes to, divide the lot in stages'.

This is a drafting amendment that picks up the fact that a subsequent owner of a development lot succeeds to the rights and obligations of the developer.

Amendment carried; clause as amended passed.

Clauses 9 and 10 passed.

Clause 11—'The scheme description.'

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

Page 10—

Line 5—Leave out 'The original' and insert 'Except in the case of a small scheme (see section 15), the original'.

Line 11—Leave out 'relevant planning authority' and insert 'relevant development authority'.

These amendments are consequential, particularly in relation to a change which recognises that a scheme description is not required for a small scheme.

Amendments carried; clause as amended passed.

Clauses 12 and 13 passed.

Clause 14—'Application.'

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

Page 12, line 22—Leave out 'with the approval of the relevant planning authority' and insert 'by the relevant development authority'.

Page 13, lines 3 and 4—Leave out 'endorsed with the approval of the relevant planning authority'.

The first amendment changes the requirement for the scheme description to be endorsed with the approval of the development authority to a requirement that it simply be endorsed by the authority. The approval process takes place under the Development Act, and to require endorsement of approval under this Bill may lead to the mistaken impression that there is a separate approval process under the Bill. The second amendment removes the requirement that a development contract be endorsed by the relevant development authority. A development contract must be in a form approved by the Registrar-General and must be consistent with the scheme description. In view of this and the fact that the development authority endorses the scheme description, not much is gained by the authority endorsing the development contract as well.

Amendments carried; clause as amended passed.

Clause 15—'Scheme description not required for certain small schemes.'

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

Page 14, line 16—Leave out 'with the approval of the relevant planning authority' and insert 'by the relevant development authority'.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clauses 16 to 22 passed.

Clause 23—'Vesting, etc., of lots, etc., on deposit of plan.'

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

Page 19, lines 10 and 11—Leave out paragraph (a) and insert the following paragraph:

(a) the common property vests in the owners of the community lots but the certificate of title for the common property will be issued in the name of the community corporation;

This change is consequential on later changes that vest the common property in the owners of the community lots instead of in the community corporation.

The Hon. ANNE LEVY: I realise that this is the first of a number of amendments through the legislation which are changing the vesting of property so that it is for the owners of the community lots who will in fact be the owners of the common property in proportion to their ownership of different lots. This, of course, will be very relevant when it comes to rates. As I previously understood the Bill, each unit or lot owner would get a rate notice from the council and there would also be one to the corporation for the common property.

As I mentioned in my second reading speech, this would mean that owners of lots would have to realise that the rate notice they got from the council was not the only rate notice they would get: they would have their share of the one sent to the corporation for the common property. Does this change mean that part of the title for the common property for the

owners of the individual lots will be such that they will get one rate notice only from the local council, or will the common property still have a separate rate notice which will be sent to the corporation, even though the common property will be vested in the owners of the community lots rather than in the community corporation? This may all be explained when we get the other legislation tomorrow.

The Hon. K.T. GRIFFIN: I should have given a more expansive explanation as to why we are proposing to move in the direction of this amendment and I apologise for overlooking it. When the Committee deals with new clause 28A I will give a more detailed explanation, but I can do it now as it is important that members understand what is happening. When we get to clause 28A we will note that it vests the common property in the owners for the time being of the community lots as tenants in common in shares proportionate to their lot entitlements. The advantage of holding the common property this way instead of its being vested in the community corporation is that depreciation of buildings and other improvements for income tax purposes can be claimed by the individual lot owners. If the community corporation holds the common property depreciation can only be claimed by the corporation against its income, which in most cases is not sufficient to make the claim worthwhile.

Legislation in Queensland, Victoria, Tasmania and Western Australia includes similar provisions. In New South Wales the same result is achieved by making the community corporation the agent of the lot owners. In relation to rates, it should therefore be clearly understood that there will be a separate title for the common property, and the lot owners will hold that common property title as tenants in common in the shares in which they hold their lot entitlement. There will be one rate notice for your lot, and there will be one rate notice for the common property in the names of all the tenants in common, and they will divide that according to the proportion in which they hold their lot entitlements.

Amendment carried; clause as amended passed.

Clauses 24 and 25 passed.

Clause 26—'Vesting of certain land in council, etc.'

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

Page 21, line 25—Leave out 'Subject to subsection (6), any' and insert 'Any'.

Page 22, lines 14 to 16—Leave out subclause (6).

This is essentially a drafting matter. Subclause (6) is deleted largely because it repeats what is already in clause 26(1). It is a matter of tidying up the drafting.

Amendments carried; clause as amended passed.

Clause 27 passed.

Clause 28—'Common property.'

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

Page 23—

Lines 15 to 33—Leave out subclauses (2), (3), (4), (5), (6), and (7) and the note to subclause (6).

After line 35—Insert subclause as follows:

(8a) Any income arising from the use of the common property must be paid into the administrative fund or the sinking fund.

Page 24, line 5—Leave out 'bestow on' and insert 'vest in'.

The first amendment leaves out the provisions in the Bill that vests the common property in the community corporation. It is consequential on the new clause 28A to which I earlier referred. The second amendment inserts a new subclause (8a) providing that income from common property which would otherwise belong to the owners of the lots must be paid into one of the funds held by the community corporation, and the third amendment is a minor drafting amendment.

Amendments carried; clause as amended passed.

New clause 28A—'Vesting of the common property.'

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

28A. (1) The common property of a community parcel is vested in fee simple as tenants in common in the owners for the time being of the community lots in shares proportionate to the lot entitlements of their respective lots.

(2) If a primary parcel has been divided into primary and secondary lots or primary, secondary and tertiary lots, the common property of the primary parcel is vested in fee simple as tenants in common in the owners for the time being of the primary and secondary lots or the primary, secondary and tertiary lots in shares proportionate to the lot entitlements of their respective lots.

(3) If a secondary parcel has been divided into secondary and tertiary lots, the common property of the secondary parcel is vested in fee simple as tenants in common in the owners for the time being of the secondary and tertiary lots in shares proportionate to the lot entitlements of their respective lots.

(4) An owner's interest in a lot is inseparable from his or her interest in the common property and accordingly—

(a) a dealing affecting the lot affects, without express reference, the interest in the common property in the same manner and to the same extent; and

(b) the owner of a lot cannot separately deal with or dispose of the interest in the common property.

(5) If the community corporation is authorised by or under this Act to enter into a transaction affecting the common property, it may enter into the transaction and execute documents related to the transaction, in its own name, as if it were the owner of an estate in fee simple in the common property.

(6) A community corporation may sue and be sued for rights and liabilities related to the common property as if it were the owner and occupier of the common property.

This is the vesting of the common property in the owners for the time being of the community lots as tenants in common in shares proportionate to their lot entitlement. I have given some information to the Committee on this matter.

New clause inserted.

Clause 29—'Scheme description.'

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

Page 25—

Line 31—insert 'or other development' after 'division'.

Line 32—Leave out 'relevant planning authority' and insert 'relevant development authority'.

Page 26—

Line 7—Leave out 'its approval on a scheme description, the relevant planning authority' and insert 'a scheme description, the relevant development authority'.

Lines 9 and 10—Leave out 'planning authority' and insert 'development authority'.

The first amendment recognises that the scheme description may envisage forms of development in addition to division of land. The remaining amendments are consequential.

Amendments carried; clause as amended passed.

Clause 30—'Amendment of scheme description.'

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

Page 26, line 32—Leave out 'with the approval of the relevant planning authority' and insert 'by the relevant development authority'.

The amendment is consequential.

Amendment carried; clause as amended passed.

Clauses 31 and 32 passed.

Clause 33—'By-laws.'

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

Page 29, after line 26—Insert new subclause as follows:

(3a) A by-law may confer discretionary powers on the community corporation or any other person.

This amendment inserts a provision that enables a community corporation to make a by-law that confirms discretionary

powers on itself or any other person. This will enable the common property to be more effectively administered by the corporation; for example, it will enable a corporation to erect signs on roads on the community property regulating parking.

Amendment carried; clause as amended passed.

Clauses 34 and 35 passed.

Clause 36—'Restrictions on the making of by-laws.'

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

Page 31, line 14—Leave out 'six' and insert 'two'.

I referred to this briefly in my second reading reply. The clause provides for restrictions on the making of by-laws, and subclause (2) provides that a by-law may prohibit or restrict the owner of a lot from leasing or granting rights of occupation in respect of the lot for valuable consideration for a period of less than six months. I am seeking to change six months to two months as this better targets the aim of the clause, which is to limit short-term holiday rental of lots.

The Hon. ANNE LEVY: I support the amendment, as two months seems a lot more reasonable than six months. As I indicated in my second reading speech, it seemed to me that the owner of a lot may well decide to undertake an overseas trip and expect to rent out his or her property while away, the income from such leasing perhaps being sufficient to meet the payments on the mortgage while the owner was away. While people might go on trips interstate or overseas, they were unlikely to do so for a period as extended as six months, and it seemed unreasonable to say that unless they were going for six months they could not let out their property. People who could go for more than six months are obviously well heeled and least need to let out their property while they are away. So, it was a case of 'to him that hath shall it be given, but to him that hath not shall it even be taken away'. I quote that to show that I know the Bible.

The Hon. K.T. Griffin: No, it shows that you know one passage of the Bible.

The Hon. ANNE LEVY: I can quote large lumps of the Bible, actually. Two months is a much more reasonable time to insert if the aim is to prevent owners of lots renting out their properties for short-term holidays. I should have thought one month would probably achieve that, as most people have four weeks annual leave, so they are unlikely to want to rent a place for a holiday for more than a month. I wonder about having such a clause, anyway. Of course, it is an interference with the rights of the owner of a property. Someone owns a lot but they are restricted in what they can do with it.

I realise that we have restrictions on what people can do with land that they own: that is what all our planning laws, building regulations, and so on, are about, but this is yet another imposition on a property owner, limiting what they can do with their own property. Why was it felt necessary to have such a clause in any case?

I refer to clause 132, which, although it is a long way further on, deals with nuisance and means that an owner or occupier of a lot, which would include someone who rented it for a month, must not use or permit the use of the lot or the common property in a way that causes a nuisance or interferes unreasonably with the use or enjoyment of another lot or the common property by another person who is lawfully on the lot or common property. Would not the use of clause 132 by itself solve the problem to which the Attorney refers without bringing in this added imposition on the owner of a property as to what they can or cannot do with their property?

The Hon. K.T. GRIFFIN: There were some expressions of concern about the use of short-term occupancies in strata developments, remembering that community title developments can be much more diverse, and some of them, for example, such as those that Wirrina uses, would not have a provision preventing short-term occupancy. There are some strata title people who get very much annoyed when constant problems are experienced by those who occupy strata units for relatively short periods of time.

On balance, it was considered in the light of experience in Queensland and based on representations that had been made that there ought to be a provision which enabled the lot holders to restrict the use of premises where that might be creating a nuisance. I refer to a nuisance not in the common law understanding of that but in regard to some disruption which may not be actually within the legal definition of 'nuisance'.

Also, if there is a provision in the by-laws when the lots are created which prevents this, everyone who buys will be aware of the limitation. If there is not such a by-law, then a special resolution is required to enable such a by-law to impose that restriction. On balance, the Government took the view that there ought to be at least a power to do what is proposed in subclause (2). We acknowledge the honourable member's firmly held view about this, and that is why we believe that a reduction from six to two months would be sufficient to enable those who wished to have this sort of by-law to achieve the objective.

The Hon. Anne Levy: To catch things that would not be caught by section 132?

The Hon. K.T. GRIFFIN: It is really to identify up front that there is this power. It is dealing with it prior to the problem occurring—putting everyone on notice—rather than dealing with it under section 132 which is, in a sense, after the event.

The Hon. Anne Levy: Innocent until proved guilty.

The Hon. K.T. GRIFFIN: Yes, but you are talking about people's property. You have this tension between the lot owner on the one hand who might say, 'Look, let it to anyone. I do not care what happens—let it.' There may though be a significant number of people who say, 'We do not want to have our premises devalued by short-term residencies, some of which will be good but some which might cause us some difficulty in the way in which we enjoy our premises and which might affect the value.' In those circumstances, it is better to put it up front than it is to say after the event, 'Well, there is an occupier who is interfering unreasonably with the use or enjoyment of another lot or the common property, so we must therefore go out and get an injunction, or some other order.' Under clause 36(2), it seems to me that, if you put it up front, it is a warning to everyone.

The Hon. ANNE LEVY: This clause provides that the by-law may prohibit leasing of the lot for valuable consideration for a period of less than X months. I presume that 'valuable consideration' means straight rent, but would not prevent an owner who got a friend to house sit for a month from charging the house-sitter for the electricity, gas and water used and the telephone bill for the period. That would not, I presume, be considered valuable consideration. I feel that should be clear.

The Hon. K.T. GRIFFIN: That is my understanding. If you are paying the cost of water, you are paying for a service or product. It is just reimbursement for costs incurred. This clause is directed towards protecting the sort of situation to which the honourable member referred. You want someone to house sit and they pay you something to cover the costs of telephone, water, gas and electricity.

Amendment carried; clause as amended passed.

Clauses 37 to 45 passed.

Clause 46—'Development contracts.'

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

Page 34, after line 24—Insert paragraph as follows:

(ca) state whether development authorisation under the Development Act 1993 will need to be obtained before development in accordance with the contract can proceed;

This amendment will require development contracts to draw the attention of persons reading them to the fact that the development work they provide for has yet to receive development approval.

Amendment carried; clause as amended passed.

Clauses 47 to 50 passed.

Clause 51—'Application for amendment.'

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

Page 39, line 25—Leave out 'with the approval of the relevant planning authority' and insert 'by the relevant development authority'.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clause 52 passed.

Clause 53—'Amendment of the plan.'

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

Page 41, line 5—Leave out 'the approval of the relevant planning authority' and insert 'the endorsement of the scheme description by the relevant development authority'.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clauses 54 to 56 passed.

Clause 57—'Amendment of plan pursuant to a development contract.'

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

Page 44, line 3—Insert 'reverted' after 'have'.

This is a minor drafting amendment.

Amendment carried; clause as amended passed.

Clause 58 passed.

Clause 59—'Amalgamation of plan.'

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

Page 46, lines 2 and 3—Leave out 'with the approval of the relevant planning authority' and insert 'by the relevant development authority'.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clause 60 passed.

Clause 61—'Deposit of amalgamated plan.'

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

Page 48—

Line 15—Leave out '(including the common property)'.

After line 16—'Insert paragraph as follows:

(g) the common property vests in the owners of the community lots.

These amendments are consequential.

Amendments carried; clause as amended passed.

Clauses 62 and 63 passed.

Clause 64—'Application to the Registrar-General.'

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

Page 49, line 19—Leave out paragraph (d).

It has been decided to remove the requirement for the consent of the relevant development authority to the cancellation of a plan. The result of cancellation is that the owners of the lots will own the whole parcel of land as tenants in common. There is no need for development approval for such a change, and there is no requirement in the Strata Titles Act 1988 for a development authority to consent to the cancellation of a strata scheme.

Amendment carried; clause as amended passed.

Clauses 65 to 67 passed.

Clause 68—'Cancellation.'

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

Page 52, line 5—Leave out '(excluding the common property)'.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clause 69—'Division of primary parcel under part 19AB.'

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

Page 53—

Line 19—Leave out 'relevant planning authority' and insert 'relevant development authority'.

Line 35—Leave out '(excluding the common property)'.

These amendments are consequential.

Amendments carried; clause as amended passed.

Clause 70—'Establishment of corporation.'

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

Page 55—

After line 8—Insert subclause as follows:

(2a) The abbreviation 'Inc.' may be used in place of the word 'incorporated'.

Line 10—Leave out 'vested in the corporation'.

The first amendment makes it clear that 'Inc.' can be used in the name of a community corporation. The second amendment is consequential.

Amendments carried; clause as amended passed.

Clauses 71 to 73 passed.

Clause 74—'Functions and powers of corporations.'

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

Page 56, line 3—Leave out 'other'.

This is consequential.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 56, line 19—After 'functions' insert 'in investments of a kind prescribed by regulation'.

The consequence of the amendment is that the investment of money by a corporation under this legislation would be the same as under the Strata Titles Act, namely, that the Government can by regulation at least direct the way in which the moneys of the corporation are invested. It is really a matter of providing extra security against potential abuse or bad investment decisions.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. We have taken the view that there is no reason to give the Government the power to prescribe investments. Members will remember that with trustee investments last year we amended the legislation which, until that time, provided a list of authorised trustee investments and broadened the scope of the powers of the trustee to invest. I suppose that a similar principle applies here. I do not see the need for the Government to be involved in prescribing the sorts of investments in which a corporation may hold its money. It is appropriate for each corporation to make its own decision. I do not think that I can take it much further than to repeat that it is not an appropriate responsibility these days for governments to exercise.

The Hon. ANNE LEVY: I only saw these amendments earlier this afternoon and have not had time to give them a great deal of consideration. I ask the Attorney: is it true that this protection for the investments of a community corporation exists also for the investments of a strata title company? I presume that strata title companies, like

community corporations, will rarely have large sums of money to invest, so to that extent it is irrelevant whether they have a free hand with their investments or whether protection is granted by controlling the investments that they can undertake. If there is this protective clause in the Strata Titles Act, it seems to me that there is good reason for having it in this Bill, particularly if, as I am sure the Attorney would agree, there is to be encouragement for strata title groups to convert to community title.

If they felt they were losing protection in doing so, that would be a disincentive for them to convert to a community title. I wonder whether the Attorney could consider that point, because at the moment I feel inclined to support the Hon. Mr Elliott's amendment, unless there is no such protection in the Strata Titles Act.

The Hon. K.T. GRIFFIN: There is provision in the Strata Titles Act which provides that for the purpose of carrying out its functions a strata corporation may invest money not immediately required for its purposes in investments in which trustees are authorised by statute to invest trust funds or in any prescribed investment. So far as trustees are concerned, as I indicated, we made significant amendments to the Trustee Act. We removed the list of prescribed investments but I suppose that, under the Strata Titles Act, investments in which trustees are authorised by statute to invest trust funds would enable investment on anything which trustees are now entitled to invest in.

The Hon. Anne Levy: Which is anything.

The Hon. K.T. GRIFFIN: No, there are certain rules which apply about acting to invest in what is a prudent investment. There are some rules which the law establishes. So, I think that is probably covered. I do not know of any prescribed investments which have been made by regulation under the Strata Titles Act. I do not think that there are any but I cannot unequivocally say that that is the case. I think it has probably been left that investment in which trustees are authorised by statute to invest trust funds is generally regarded as being adequate. The honourable member's amendment will prevent investment of money unless there is a prescribed list of investments. I do not intend to recommend to the Government that we prescribe any investments, because we have just moved away from that under the Trustee Act. That is as far as I can take it.

The Hon. M.J. ELLIOTT: I indicate to the Attorney-General and to the Hon. Anne Levy that I did move this amendment following communication from the Strata Unit Owners Association of South Australia. In its submission to me of 2 February this was one of a number of things that it felt needed to be changed in this Bill. The association believes as strata title unit owners that such a protection is a useful thing to have. Clearly, some of them will want to transfer to community titles, and it appears that they are keen to see that that part of the Strata Titles Act can also be found under the Community Titles Act.

It appears to me that such a regulation does not need to be highly restrictive in a very short list. The Attorney-General has already said that his intention is not to do anything even if it gets there. It can be quite broad and it should be possible to almost do it in the negative in terms of perhaps discouraging particular practices. I am not saying that the regulation needs to be heavy-handed. I am sure that it is not beyond the wit of the Attorney-General to come up with something which gives a fair degree of flexibility but which perhaps avoids some of the less desirable investment practices that might occur.

The Hon. ANNE LEVY: What I will do at the moment is support the amendment but on the basis that I do not think it is well worded. The Attorney may well see fit to amend it again in another place so that it does reflect what is in the current Strata Titles Act; in other words, that the corporation can invest in anything in which a trustee can invest. It would seem to me that that does provide the same protection as currently applies to strata titles in the Strata Titles Act and so would reassure the strata title owners who wish to convert to community title but not be as restrictive as is the amendment in front of us which requires prescription. It seems to me that another form of words could be found which did not require regulations being drawn up but which still gave this protection and that perhaps the Attorney might consider that as an amendment in another place.

The Hon. K.T. GRIFFIN: I will give some further consideration to it. In the House of Assembly we will try to address those issues. There are a number of options. One option is the one to which the Hon. Anne Levy referred; another is whether building in some provision will enable by special resolution the broadening of an investment beyond that of a trustee. There is a range of options but I can inform the Committee that I do not intend—and I am sure that the Government would not propose—to make any regulation which seeks to prescribe a list whether exclusively or by omission of investments that might be approved. We are away from that now in the area of trustees. In my view, it was always inappropriate for Governments to get into the business of saying, 'That is an appropriate investment and that is not.' People have to act prudently and be given some responsibility. I acknowledge the concern which has been expressed and I will undertake to have it looked at again before the matter is finally resolved in the House of Assembly.

Amendment carried.

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

Page 56, line 20—Leave out 'other' and insert 'the'.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clause 75—'Presiding officer, treasurer and secretary.'

The Hon. M.J. ELLIOTT: I move:

Page 57, line 3—Leave out subclause (3) and insert subclause as follows:

(3) In the case of a community scheme—

(a) comprising four community lots or less—two or all of those offices may by held by one person;

(b) comprising five or more community lots—two of those offices may be held by one person.

As the Bill currently stands, two or all offices may be held by a single person. Again, in a submission from the Strata Unit Owners Association, it recommends—and I think it is quite wise—that it might be okay where there are four community lots or less for two or all of the offices to be held by one person but where there are more than five community lots its recommendation, with which I agree, is that two of those offices may be held by one person. It does indicate that at least one office will be held by someone else. To some extent, it ties back to the previous question in respect of investment. All three offices are held by a single person. The Attorney-General is really saying that their investment decisions may be unfettered. I think you can see the risks you are taking. In any case, as the number of community lots starts increasing, it becomes less and less desirable for a single person to hold all of the offices. That is the effect of the amendment. In particular, if there are more than five community lots there

will be at least two distinct people holding offices for the community scheme.

The Hon. K.T. GRIFFIN: I do not believe in restricting choice in the way that the honourable member does. Although he may be well-intentioned, the fact of the matter is that those who own lots and are part of the corporation ought to be given the opportunity to do as they wish. Members should be interested to note that in the first draft of the Bill which was released for public consultation provision was made for schemes of three or less to have one person hold all offices and in larger schemes there would need to be three office holders. That provision was the subject of considerable criticism. It was put to the Government that there is considerable difficulty in some schemes getting anyone to hold any office at all and that it would be best to keep the provision which applies under the Strata Titles Act, that is, all positions could be held by the same person. I stress that it is not compulsory for the positions to be held jointly; it is an option for each corporation to determine—and that means the members of that corporation. The Strata Administrators' Institute in its submission affirmed the views that others presented. It believes that this provision is unnecessary and unworkable and that the provisions currently applying under the Strata Titles Act should apply. For those reasons, I oppose the amendment.

The Hon. ANNE LEVY: Having heard the arguments, at this point I support the amendment, although I do not really support the numbers stated in the amendment. I, too, received a letter from the Strata Unit Owners' Association. It seems to me that a lot of strata units have about six units. It is when they get past six that we start considering them as being big. Community corporations may, of course, be very much larger indeed, particularly with the tiered arrangement which will be possible and desirable for maximum flexibility—there is no argument about that—but it could involve several hundred units, and it would seem most undesirable that one individual hold all positions in such a situation.

I think there is merit in saying that, once a certain size is passed, at least two people must be involved. I appreciate that managers might like to have only one, because then there would only be one person with whom they would have to deal, and that would make their life a lot simpler—and from a bureaucratic point of view I am sure that is true—but we need to be concerned more with the rights of individual lot holders. As I say, I support the amendment at the moment, but I think the figures are set too low and that the Bill should provide that all offices can be held by one person, certainly up to six and perhaps even up to 10, but beyond such a figure at least two people should be involved. While I support the amendment, if the Attorney wishes to amend it to accommodate larger numbers, I would be happy to support that, or he may wish to give further consideration to it in another place.

The Hon. K.T. GRIFFIN: This is one of those matters on which we are fairly firm because of the representations made by a range of people. Having gone down the track that the honourable member's amendment is now pursuing and having received a chorus of disapproval, we took the view when we reflected upon it that, after all, these officers are not executive officers, they are purely there to undertake particular functions, and they cannot operate without the authority of the corporation. Clause 75 refers to a presiding officer. The presiding officer chairs meetings, the Treasurer holds, collects and dispenses money on the authority conferred upon the Treasurer by the corporation, and the secretary keeps minutes and writes letters. With respect, I cannot see the significance of those offices and why there is so much desire to ensure that they are kept separate and distinct, remembering that under the Strata Titles Act they can be held by one person. The Hon. Mr Elliott earlier used the Strata Titles Act as a precedent; I now handball it back to him.

Amendment carried; clause as amended passed.

Clauses 76 to 78 passed.

Clause 79—'Business at the first general meeting.'

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

Page 58, line 17—Insert '(if any)' after 'scheme description'.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clauses 80 and 81 passed.

Clause 82—'Procedure at meetings.'

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

Page 60, line 25—Insert '(or one of the developers if there are two or more)' after 'developer' first occurring.

This amendment allows for the fact that if more than one person owns the land to be divided there will be two or more developers.

Amendment carried; clause as amended passed.

Clauses 83 to 92 passed.

Clause 93—'Procedure at committee meetings.'

The Hon. M.J. ELLIOTT: I move:

Page 66, line 15—Leave out 'given' and insert 'sent'.

Two issues are involved. The first relates to the words 'given' and 'sent'. I am not sure how much of this is semantic, but I think the intention is that there may be times when it is not possible, in the strict sense of the word, to give notice to everyone because a person may be absent, but there should be an attempt to send notice to members of the committee. The second issue involves the amount of time available. Again, this is based on the submission by the Strata Unit Owners' Association, which suggests that seven days rather than three days may be more appropriate. The reason I give some credence to that suggestion is because the Strata Unit Owners' Association has been in this business for a while and would have more knowledge of what is happening than others who might give advice in this matter. If it has it wrong, I am not sure who will get it right. Both amendments are based on submissions from that association.

The Hon. K.T. GRIFFIN: I oppose the amendment. In our view it is not necessary because it introduces an unnecessary degree of formality to require that the notice be sent to each member of the management committee when in fact some of them, depending on the number of members of the committee, will actually be living on site. The notice can actually be given to the relevant people.

The Hon. M.J. Elliott: With community lots many may not be. Take Wirrina, for instance.

The Hon. K.T. GRIFFIN: This is a management committee and we are talking about committee meetings. I take the view that they are given to every member of the committee, so it can be handed over. If a person is not there it must be communicated in some other way to the member. We are trying to provide a formal mechanism which would recognise that there did not have to be a committee meeting but that there could be a concurrence by writing in the decision that is proposed. That is the form in a number of other areas—corporations particularly, as well as associations—where there is a structure that enables resolutions to be formal without necessarily having a meeting.

The Hon. ANNE LEVY: I certainly applaud what the clause is trying to do, and I appreciate the Attorney's position in that he uses the word 'given' so that in a community corporation which covers a small area it would be possible to hand them individually and they would not have to make use of Australia Post. Would the use of the word 'given' mean that if one of the management committee happened to be out of the State such a notice would then have to be posted to them? If the distance is so great that it is not feasible to physically hand it, does 'given' include 'send' when actual 'giving' is not possible, or does it mean that the secretary has to travel interstate to personally hand the notice to the person who is temporarily interstate?

The Hon. K.T. GRIFFIN: My view is that it does not mean that sort of physical delivery by the secretary. If the amendment is not carried I can undertake to ensure that we cover both characteristics in the Bill if there is any doubt about it. However, I am not in any doubt.

The Hon. M.J. Elliott: Or, if it is carried, you can fix it up afterwards.

The Hon. K.T. GRIFFIN: Well, I do not mind.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: Of course I do. The honourable member knows that I do. If the Hon. Anne Levy wants to support it, we can deal with it. Maybe we need to look at the drafting of it, and I will undertake to that. However, if you look at the provisions relating to service, you will see that clause 153 provides:

> A notice to be served on a person under this Act may be served as follows:
> (a) by giving it to the person; or
> (b) by leaving it for the person. . .
> (c) by posting it. . .

or by fixing it to the door or some other prominent position. If there is any doubt, I will undertake to clarify it. If the Hon. Anne Levy wants to preserve her position, I am relaxed about it.

The Hon. M.J. ELLIOTT: The Attorney-General referred to clause 153, which clearly makes a distinction between giving, posting, leaving and various other mechanisms of getting something to somebody. With community titles, even more so than strata titles, there will be people off site. At Wirrina, an example of what a community title operation might look like, many people who own lots there will not be on site, and in those circumstances 'giving'—and clause 153 is a physical act of giving directly—would be inadequate. When I first introduced the amendment I was not sure whether it was semantics and I was concerned about it but, having had my attention drawn to clause 153, I see that it is more than semantics and an issue clearly has to be addressed.

The Hon. ANNE LEVY: I indicated that I would not support the amendment, the Attorney having given his word that he would consider this matter and make an amendment if necessary, which may or not be the one before us.

Amendment negatived.

The Hon. M.J. ELLIOTT: I move:

> Page 66, line 17—Leave out 'three days after the notice is given to the last member to receive it' and insert 'seven days after the notice is sent'.

The word 'sent' still occurs in my amendment, but that is not the principal issue with this amendment; rather, that is the amount of time. Again, if, as I contend, on a number of occasions many of the people on a committee in relation to community titles are not on site, there may be a need for sending by mail or some other communication, and three days may be inadequate in those circumstances. It is not just a matter of getting a majority to consent. One would expect that, although the group is not meeting, having been alerted that something is going on, there may be communication within the committee. To allow three days for one to receive notice that there is a proposal for some change does not allow adequate consultation around the group, which we should be allowing for. Three days in these circumstances is inadequate for those two reasons.

The Hon. K.T. GRIFFIN: The honourable member keeps talking about lot owners, and certainly some may be members of the committee. However, clause 93(6) deals with a decision by a committee without meeting. That does not mean that there can be negotiations about the resolution. If some action has to be taken, a notice would go out to each of the members of the committee and it would specify the proposed decision in precise terms, and it is not subject to amendment. If you do not get a majority of the members returning a positive indication of support for the proposed decision within the three days, you do not get a decision. If you do not get a decision, you then go to the formal meeting. I would have thought that it was preferably to have the shorter time frame where you are dealing with a specific proposed decision than to have the longer period where approvals may come dribbling in and finally just creep over the line of the majority.

If it is going to be non-controversial, presumably one will get something back very quickly. If people do not respond in favour, obviously it is not carried. I acknowledge that it is a matter of judgment as to what is the appropriate time. I was trying to provide a simple mechanism for dealing with these situations which might be capable of easy decision, yes or no.

The Hon. M.J. ELLIOTT: There is no argument about wanting to provide a simple mechanism. The argument is whether or not three days is adequate. First, the Attorney-General has not addressed the question whether three days is adequate if the people involved in the committee cannot be given a notice but will need to be communicated with in another manner which may take longer. They may be supportive of the proposal but may not have time to respond, and that would work against what the Attorney is trying to achieve. Giving the extra time to allow communication between members we certainly would not need a meeting, and getting everyone together for a meeting would be an absolute nuisance if they were not all on site. However, whether the final decision is for or against a proposal, surely communication between committee members is not a bad thing. A proposal may seem simple on the surface, or it may even be misinterpreted to start off with. Communication may ensure that something does or does not get through, but at least it would involve an informed, rather than an uninformed, decision of the committee.

The Hon. K.T. GRIFFIN: Who knows whether it will be informed or uninformed.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: Or less informed. Again, I draw attention to paragraph (b), because it states 'within three days', and that is not after the notice is given to everyone but within three days 'after the notice is given to the last member to receive it a majority of the members give written notice'. So, receipt is involved, and it is three days after the notice is given to the last member to receive it. It does not say 'to the last of the majority', whatever that might be at the earlier

time. One could look into a crystal ball and determine it, I suppose, or try to do so.

However, the fact is that it is within three days after the notice is given to the last member to receive it. Within three days of that time, which might actually be seven days, if 'a majority of members give written notice to the secretary setting out the proposed decision and expressing their agreement with it', the proposed decision becomes a decision of the committee, not the corporation. So, I should have thought that more than adequate safeguards were built into that. If we start to talk about seven days, we might be spinning it out to a much longer period so that it is seven days after the last member to receive it.

The Hon. M.J. ELLIOTT: First, the Attorney-General has made the point that it has to be when the last person has been given it.

The Hon. K.T. Griffin: Received it.

The Hon. M.J. ELLIOTT: Yes, received it, but, as the earlier part of the clause stands, we are talking about 'given'. So, if someone is off site, the fast track method will not be available at all because 'giving' might not be possible. If a person was overseas, you would not be in a position to give. That is an aside in relation to the first amendment.

The Hon. K.T. Griffin: I don't want to frustrate the process; I want to see it work.

The Hon. M.J. ELLIOTT: I am simply making the point that that is another issue which the Attorney needs to look at, because those two aspects interrelate. While it may be argued that there are three days from when the last member receives it, it is possible that several members of the committee may have it for a considerable period and one or a couple have it for a short period. If we are talking about a person who is not on site, I am not sure that three days is adequate. I do not know whether the Attorney would look at a compromise of five days, but three days is a bit short.

The Hon. ANNE LEVY: I support the amendment, but not necessarily for the reasons given so far. It seems that, if the aim is to enable decisions to be made by the committee without its actually meeting, to have seven or five days means that it is more likely that a majority will have indicated their agreement in writing within that time. If we keep three days, it may well be that a majority does not get around to responding within three days. They may not have a fax machine to send it and Australia Post takes a bit of time. On the fourth day the replies could come in and, although everyone is in favour, because a majority had not responded by three days, the decision is not carried and the committee has to meet formally. By extending it to seven days it will make it easier for a majority to respond in that time, thus avoiding a formal meeting to make a decision. I support the amendment for this reason.

Amendment carried; clause as amended passed.

Clauses 94 to 99 passed.

Clause 100—'Power to enforce duties of maintenance and repair, etc.'

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

Page 69—

Line 16—Leave out 'If' and insert 'Subject to subsection (3a), if'.

After line 21—Insert new subclause as follows:

(3a) A person must not use force to enter a strata lot or a building on any other lot under subsection (2) except pursuant to an order of the Magistrates Court authorising the entry.

The amendment accommodates the concerns of the Hon. Anne Levy that force should not be used to enter a person's home except in exceptional circumstances. The effect of the amendment is that, while entry onto a lot is permitted, no entry into a strata lot or a building on a lot, except pursuant to an order of the Magistrates Court, is permitted.

The Hon. ANNE LEVY: I support the amendment, although I indicate that my concern was not that force should only be used in exceptional circumstances. It seemed to me that if force was being used to enter someone's home, it should be carried out only by organs of the State—in other words, the police or under a court order. Either the courts or the police should be involved in forcible entry into someone's home, and authority to apply force to enter someone's home is not something that can be given by a corporation to someone who is not an officer of the State in some form. I appreciate that, if it is a question of clearing weeds out of the garden, it seems unnecessary to go to court to enable that to be done.

Councils currently have the power to order people to clear weeds and, if they do not, the council has the power to come and do it for them and charge them for it. In fact, many landholders would much prefer the council to come and do it for them and then pay the bill rather than have to make the arrangement themselves. As the provision is currently worded, it includes entering not only the garden but also a building which could be someone's home. It is quite wrong that the corporation can authorise someone to use force to break into someone's home. However good the reason, the organs of the State must be involved—either the police or under a court order—before such an abrogation of someone's privacy rights can be contemplated.

I welcome the amendment, which will make it quite clear that, while the corporation can authorise someone to enter into a garden area, it does not have the power to authorise anyone to enter a building, and that police or courts must be involved before such authorisation can be given. I feel that this certainly preserves people's rights over their residences. It is not a landlord's right when he lets his property to use force to enter property. If a landlord wishes to enter his tenant's property he must give notice that he wishes to visit at a particular time, and if he is denied entrance at that time he has cause to go to the Residential Tenancies Tribunal to seek an order to ensure that he can enter the property, but that again is involving an official organ of the State (in that case the Residential Tenancies Tribunal): it is not being done by citizens without the authority of the State behind them.

Amendments carried; clause as amended carried.

Clause 101—'Alterations and additions in relation to strata schemes.'

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

Page 70, line 15—Leave out '(using such force as may be reasonably necessary in the circumstances)'.

This amendment is consequential.

Amendment carried.

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

Page 70, after line 18—'Insert new subclause as follows:

(4a) A person may only use force to enter a lot under subsection (3) pursuant to an order of the Magistrates Court authorising the entry.

Amendment carried; clause as amended passed.

Clause 102—'Insurance of buildings, etc., by community corporation.'

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

Page 70, line 28—'Leave out 'its' and insert 'the'.

This amendment is consequential.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 71, line 1—After 'full cost' insert '(to be assessed by a land valuer)'.

This amendment has not been drafted quite as I intended, but at least the idea is here so that it can be debated. We are requiring that insurance must be for the full cost of replacing the buildings. I am seeking to ensure that there is some sort of regular valuation process. I certainly did not think it was necessary to happen on a yearly basis, but it seemed to me to be at least prudent that there might be a regular—be it three or five yearly—valuation of building and building replacement carried out. That was the intention, although the provision is a little simpler than that. I suppose we can at least debate the issue to start with and see whether there is general sympathy for it.

The Hon. K.T. GRIFFIN: I do not support the amendment. It seeks to require the full cost of building replacement for insurance purposes to be assessed by a land valuer. It may be that the honourable member will amend that in some way that is more flexible, but I suggest the amendment is unnecessary. It would, I think, first impose significant costs on a community corporation if it were to be done annually.

The Hon. M.J. Elliott: That is not the intention.

The Hon. K.T. GRIFFIN: No, but whenever it does happen it would still impose a significant cost. The second point is that it does not recognise that a variety of professionals are available to provide advice and assistance in determining what full replacement cost might be. Since the amendments were tabled this afternoon we have had some discussions with the Insurance Council of Australia to get a perspective on this issue. Insurance companies, I am told, refer people to builders, architects and other like professionals or trades persons if they need assistance in determining full replacement costs. I would suggest that the provision the honourable member wishes to insert is really a very significant overkill.

We are seeking in this clause to set the standard. An offence is created if the corporation does not insure in accordance with the provisions. It is not merely a civil issue: it is a statutory offence. If one looks at subclause (2), the insurance must be against risks that a normally prudent person would insure against, and risks that are prescribed by regulation.

The Hon. M.J. Elliott: Who incurs the penalty?

The Hon. K.T. GRIFFIN: The community corporation incurs the penalty ($15 000), but it must be for the full cost of replacing the buildings or improvements with new materials, and must include incidental costs, such as demolition, site clearance and architect's fees. The obligation is very clear. Because any excess or shortfall resulting from underinsurance is payable by the corporation, it would seem to me that every member of the corporation will have a vested interest in ensuring that the provisions of that clause are adequately met.

The Hon. ANNE LEVY: For similar reasons, I do not support the amendment. I think that what Mr Elliott is seeking to achieve is already achieved by saying it must be insurance for full cost of replacement. Some insurance companies offer such insurance, not only for strata titles but for ordinary residences. I have such insurance myself. The insurance company merely asked me what my house cost to build at the time that it was built, I provided the architect's figures and the insurance company adjusts the premium each year according to what it considers the cost would be of replacing my house.

I am not required to have the replacement cost determined by anyone each year, ever. The initial insurance involved knowing only what the house cost to build in the first place. One does not insure for a particular sum that is the full cost; one insures for full cost. It is then up to the insurance company to determine what premium it will charge to be able to fully replace the building should it be damaged or demolished.

Amendment negatived; clause as amended passed.

Clauses 103 and 104 passed.

Clause 105—'Insurance to protect easements.'

The Hon. M.J. ELLIOTT: I move:

Page 71, line 24—Insert subclause as follows:

(2) A person who is required by subsection (1) to insure a building must provide to the community corporation such evidence as is required by the regulations of his or her compliance with that requirement.

Maximum penalty: $500.

Again, this amendment reacts to submissions that I received from the Australian Unit Owners' Association. It seeks to ensure that the person who has responsibilities under the Bill to insure a building provides evidence to the community corporation that the requirements under the regulation have been fulfilled.

The Hon. K.T. GRIFFIN: The Government supports the amendment.

Amendment carried; clause as amended passed.

Clauses 106 to 109 passed.

Clause 110—'Limitations on leasing of common property and lots.'

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

Page 74, line 1—Leave out 'can only' and insert 'may'.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clauses 111 to 114 passed.

Clause 115—'Administrative and sinking funds.'

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

Page 77, line 13—Leave out 'land or other'.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clauses 116 to 120 passed.

Clause 121—'Trust money to be deposited in trust account.'

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

Page 78, after line 22—Insert new subclause as follows:

(4) An agent must, when applying to open a trust account, inform the bank, building society, credit union or other financial institution that the account is to be a trust account for the purposes of this Division.

Maximum penalty: $8 000.

This amendment was requested by the Australian Bankers' Association. It is reasonable because the clause relates to trust money to be deposited in a trust account. The amendment requires a person opening that account to identify that it is to be a trust account for the purposes of this division.

Amendment carried; clause as amended passed.

Clauses 122 and 123 passed.

New clause 123A—'Banks, etc., to pay interest to trust.'

The Hon. M.J. ELLIOTT: I move:

Page 78, after line 33—Insert new clause as follows:

123A. A bank, building society, credit union or other financial institution with which a trust account has been established must pay one-half of the interest accruing in respect of the account to the Strata and Community Titles Trust for the purposes of the Strata and Community Titles Fund.

The next nine pages of amendments are consequential to this single clause, so I will debate the substantive issue. I have had an opportunity to talk to many people in the strata title business at all levels from owners to managers, and so on, and am aware of the significant problems which occur with strata titles and which will occur with community titles. This is a reflection of issues raised earlier by the Hon. Trevor Crothers. Whilst we are still talking about relationships between neighbours, we are talking about neighbours who are much closer to each other to start with and the problems are compounded by that closeness. The sharing of common areas and so on also create their own problems.

One of the problems with people going into strata titles—and we will find it with community titles as well—is that many of them do not know what they are letting themselves in for. It suits some people fine, but others it does not. They do not know what is entailed when going into such a title system because the information that they currently receive is grossly inadequate. There have been arguments for some time about the need for an education program to ensure that people fully understand the ramifications, and I believe that issue needs to be addressed.

From time to time we read in the paper about abuses of trust accounts: somebody fiddles the books and money goes missing and that can be of some significance. The question is how those two issues can be addressed. A proposal has been put to me which I think has some merit. It has already been canvassed by way of phone-ins, among other methods, of people with strata titles. The proposal is that a fund should be established, rather than have the Government find the money, to protect trust accounts and to run education programs. It has been put to me that we could build up a substantial fund to carry out these duties (and perhaps others which might be designated by the Minister by regulation) by way of a levy against the interest which accrues on the accounts of strata and community titles. The suggestion was that one half of the interest accruing would be sufficient to build up a fund capable of carrying out these tasks. I understand from sample work amongst strata titles that there is support for such a notion. I also understand that the Government is not too keen to spend money on these things. Therefore, it seems to be a sensible solution to a couple of problems that need to be addressed.

The Hon. K.T. GRIFFIN: The Government opposes the new clause. This is a very substantial issue. First, a significant amount of time has been taken by officers to talk to people about the administration of community titles and what may be expected. Over the past 18 months to two years there has been significant contact with those who are likely to use community titles.

The Hon. M.J. Elliott: Among the people who are going to set them up, not the people who are going to buy the lots.

The Hon. K.T. GRIFFIN: In order to get the scheme up and running, there must be people to set up the scheme. We now have people knocking on the door asking, 'When are you going to get this legislation up and running because we want to use it?' That is the first point. The second is that this will require a scheme description and by-laws to be deposited up front so that people who buy a lot will know from a perusal of the scheme description and the by-laws what they are getting.

There are more important and fundamental issues involved. The honourable member is proposing that, when money is placed by an agent in a trust account, half of the interest is to be paid by the relevant financial institution into the trust. It is also proposed that any money that a community corporation invests with a financial institution in its own name and on its own account—that is, it places it not with a managing agent but opens its own account—will also lose one half of the interest to the trust fund. Under the scheme which is being established by this legislation, those moneys, whether administered by an agent in a trust account in the name of the agent or in the name of the corporation, will earn interest which is the property ultimately of the corporation.

What the honourable member seeks to do by this amendment is to say, 'No, even though it is your money, for the common good you can have only one half of the interest which is earned.' One has to recognise that that may well be a tax which is an income tax constitutionally invalid under the laws of the Commonwealth and the States as they apply at the present time. Putting that issue to one side, there is the fundamental question: should the State move in when it is clearly identified that this interest is the property of the corporation and say, 'You are not to have one half of that interest.' The money that is put aside by a community corporation in any event is generally for future expenditure: rates, taxes, insurance, painting, maintenance or replacement of major items. It is money that the corporation is entitled to and it is interest which the corporation is entitled to absolutely. In my view—and it is a very strongly held view—it is not money that should be diminished in any way by legislative enactments of the State. No person is required under any Act of this Parliament to contribute the interest on his or her private bank account or even a corporation bank account to any cause.

Then, of course, there are the taxation implications. For the purposes of the Income Tax Assessment Act of the Commonwealth, the community corporation which invests money whether via a managing agent or on its own account and receives interest is required to pay tax on the interest. If the honourable member's amendment is passed we will have a situation where there is a community corporation required to pay income tax on interest which it has never received. The proposal raises some very important policy issues which are unique as far as I am aware in the way in which the State deals with the property of individuals and corporations and their incomes. There is another practical problem concerning whether in the circumstances that are proposed the financial institutions which will have to administer this are capable of administering it in this way which is proposed. I do not know whether they have the capacity to comply with it. If one presumes that they do—

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: That is right; but we still have to rely on someone in the financial institution actually administering it. This is a peripheral issue. The issue of principle is whether the State ought to step in and say, 'This is your money but we are taking a half of it for a fund for the common good.' I say, 'No, that is inappropriate.' The Government opposes the amendments.

The Hon. ANNE LEVY: The Opposition will oppose this amendment though not for the reasons which the Attorney gives. We have interest on trust funds being sequestered for various compensation funds under second-hand motor

vehicles, and a whole range of legislation. There is interest on trust funds which goes into a fund to be used for compensation in case of default. The money belongs to someone. Whether it happens to belong to the lawyer or to the second-hand motor vehicle dealer or to the person who has given it, that money belongs to somebody who is being deprived of the interest on it. It seems to me that it is certainly not unknown in this State for people to be deprived of the interest on the money that they—

The Hon. K.T. Griffin: Not of accounts in their names.

The Hon. ANNE LEVY: This will not be in their name either: this is in a trust account.

The Hon. K.T. Griffin: It is in the name of the corporation.

The Hon. ANNE LEVY: Yes.

The Hon. K.T. Griffin: And it is the corporation's money.

The Hon. ANNE LEVY: All money in trust accounts belongs to somebody. It is not unknown in this State for interest on trust accounts to be quarantined or to be extracted and put into a fund for compensation of some sort. It may not be the lawyer's or the second-hand motor vehicle dealer's money but it is somebody's money, and that somebody is being deprived of their interest in the common good to set up a compensation fund. The Attorney's argument is quite fallacious. However, I do feel that there is no evidence whatsoever that such a fund is necessary. If there is no such fund for strata titles in the strata title—

The Hon. M.J. Elliott interjecting:

The Hon. ANNE LEVY: I appreciate that, but at present there is no such fund for strata titles. As far as I am aware there have been no problems whatsoever where there has been financial default and compensation required for people. If there was evidence that it was a problem or was likely to be a problem, I would look at this question much more sympathetically. But there is no evidence whatsoever that such a problem will arise. It has not arisen with strata titles and it seems that those who propose it are indulging in an excess of caution which is unwarranted on the evidence. It is for that reason that I oppose this amendment. However, if there is any evidence that this is considered to be a serious risk and that they are having problems with strata titles where such a compensation fund would have been highly desirable, it becomes a different matter. Compensation funds for second-hand motor vehicles and other such legislation was brought in because it was perceived that it was a likely problem and there were cases where such a fund was necessary.

Unless there is some indication that such a fund would be necessary, I feel it is unnecessary to set it up at the moment, particularly as many of the details set out in the following eight or so pages seem to have been pretty poorly thought out. I agree that they could be amended to take account of what I feel are deficiencies. I am particularly surprised to see the Democrats proposing a trust without insisting on gender balance. What the ALP commonly calls the 'Levy amendment' I thought bobbed up automatically amongst the Democrats and it is even now bobbing up quite frequently in Government legislation.

The Hon. M.J. Elliott interjecting:

The Hon. ANNE LEVY: The trust is not set up of seven members from female Senators! That is not what is proposed in the amendment before us. Aside from that sort of matter, which could be attended to by amendment, I reiterate that I see no reason for setting up such a trust at this time. If there is any evidence that it is necessary, do present it and I will then be happy to look at this question in detail.

The Hon. M.J. ELLIOTT: I have not brought all my files into the Chamber with me, so I am not in a position to lay everything on the table now in relation to subclause (a) of proposed new clause 130L which refers to reimbursement. However, there is no question about the proposed use in subclause (b) which refers to education of owners and prospective owners regarding community lots and strata units and units in company schemes. There are major problems in that area, and any amount of work has been done. I am sure that the officers advising the Minister would know how often their telephone rings with problems to do with these units. I think also that subclause (c), where other—

The Hon. Anne Levy: I am sure that the WEA would run a course if asked.

The Hon. M.J. ELLIOTT: That is among the matters that could be picked up under subclause (c) to which I was about to refer. There are questions of education programs more generally and there are also questions of perhaps setting up conciliation programs among unit owners where problems have developed. In fact, they might be able to solve the problems of the Hon. Mr Crothers. A range of things could be done. I agree with the Hon. Anne Levy that the arguments put up by the Attorney-General in relation to interest were fallacious. I make the point, first, that individual funds are not likely to be particularly large. Those funds are for ongoing maintenance and those sorts of jobs, and at any one time there is not a lot of money in them, and the interest would be even less. A substantial fund would develop simply because there are so many units involved, but the actual money in each of the accounts would be trivial. It is the total which would not be trivial and which would enable some significant programs to be run, which the Government itself is not prepared to run or fund. As I see it, it is for the benefit of people in these units, and they could pay in a way which I argue would be quite painless.

New clause negatived.

Clause 124—'Application of interest.'

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

Page 79, line 3—Insert after 'credited' secondly occurring, 'by the agent'.

This is a drafting amendment.

Amendment carried; clause as amended passed.

Clauses 125 to 137 passed.

Clause 138—'Information to be provided by corporation.'

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

Page 84, line 13—Insert 'or a development lot' after 'community lot'.

This amendment gives the owner or mortgagee of a development lot the same right that the owners and mortgagees of community lots have to obtain information from the community corporation.

Amendment carried; clause as amended passed.

Clause 139—'Information as to higher tier of community scheme.'

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

Page 85—

Line 15—Insert 'or a development lot in a secondary scheme' after 'secondary lot'.

Line 18—Insert 'or a development lot in a tertiary scheme' after 'tertiary lot'.

Line 21—Insert 'or a development lot in a secondary scheme' after 'secondary lot'.

Line 22—Insert 'or a development lot in a tertiary scheme' after 'tertiary lot'.

These amendments are consequential to the amendment to clause 138.

Amendments carried; clause as amended passed.

Clause 140 passed.

Clause 141—'Resolution of disputes, etc.'

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

Page 86, after line 26—Insert word and paragraph as follows:

or

(e) for an order authorising a person to use force to enter a lot or a building on a lot.

The powers of the court are expanded to provide for the making of an order authorising entry. This goes back to earlier discussion about the right to access a strata lot or building on any other lot.

Amendment carried; clause as amended passed.

Clauses 142 to 145 passed.

New clause 145A—'Power to require handing over of property.'

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

Page 90, after line 15—Insert new clause as follows:

145A. (1) A community corporation may by notice in writing to a person who has possession of any record, key or other property of the corporation require that person to deliver it to an officer of the corporation named in the notice on or before a specified time.

(2) A person who fails to comply with a requirement under subsection (1) is guilty of an offence.

Maximum penalty: $2 000.

This clause will enable a community corporation to demand the return of property belonging to it. A similar provision in the Strata Titles Act 1988 has proved to be very useful.

New clause inserted.

Clauses 146 and 147 passed.

The CHAIRMAN: Clause 148 being a money clause is in erased type. Standing Order 298 provides that no question shall be put in Committee upon any such clause. A message transmitting the Bill to the House of Assembly is required to indicate that this clause is deemed necessary to the Bill.

Clauses 149 to 154 passed.

Schedule 1—'Transitional provisions.'

The Hon. M.J. ELLIOTT: I move:

Page 94, line 8—Leave out 'ordinary resolution' and insert 'special resolution'.

Schedule 1 allows that, by ordinary resolution, a decision can be made that this Act and not the Strata Titles Act will apply. It seems to me to be a logical inconsistency that by-laws can be changed only by special resolution, yet under this Bill a strata title can be changed to a community title by ordinary resolution. It seems to me that everyone went into a strata title believing they were in a strata title. If a decision is made to change from strata title to community title, that decision is at least of greater importance than most by-laws. If a by-law can be changed by special resolution, what logic says that an ordinary resolution would be sufficient to change from a strata title to a community title?

The Hon. Anne Levy: What difference will it make to people if they go from strata title to community title?

The Hon. M.J. ELLIOTT: It is a decision that they want to make. As the Attorney-General well knows, there was enormous resistance to abolishing strata titles and to putting everyone under community titles, which was the Government's original proposal. There was such enormous resistance to that, that this Bill did not proceed to do that. If, for whatever reason, people are not satisfied with that, I think as a matter of consistency the decision should be by special resolution as it is when one seeks to change a by-law.

The Hon. K.T. GRIFFIN: The difficulty with by-laws is that they can be prejudicial, and that is why a special resolution is required to change them. They can be prejudicial to the interests of a lot owner. The transition from strata title to community title will not be prejudicial. As the honourable member indicated, when we first put out the Bill we were to repeal the Strata Titles Act.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: Many people did not agree because they did not understand community titles. As I indicated at some stage during the debate, people with strata titles now say that they were wrong to want to hang on to strata titles. You will have an easy transition from a strata title to a community title and you will have a diminishing group of strata units, and that will make them almost anachronistic, as are corporations established before strata titles were authorised by law. It is all very well to say that the strata owners went into a strata unit because they knew what they were getting: they did not have an opportunity to make a choice between strata titles and community titles. They had a choice to make between corporations with a lease and an entitlement to exclusive possession of a particular unit or strata titles, and everybody these days chooses strata titles.

The Government believes that there is no prejudice to translating from strata titles to community titles, that it is fair that all the unit holders have an opportunity to participate and not to be blocked by a group who may hold a number of units or lots which, in the circumstances, will mean that they will never translate from strata titles to community titles. I made some reference to that earlier in relation to an earlier amendment.

On the basis of no prejudice and possibly some advantage in the longer term, we took the view that an ordinary resolution was an appropriate proportion required to vote and to support the translation from strata titles to community titles.

The Hon. M.J. ELLIOTT: The argument is not about whether people should or should not be able to change over, and the Attorney-General is well aware that I was asking questions in terms of people being able to transfer from corporately-owned properties to community titles. The issue is not about whether or not people should be able to change over or which is the better form of title but rather about how the decision is ultimately made. I am simply arguing that it is an important decision. I did not have all my notes with me, but I know that there were some issues of concern which meant that some people believed, even if the Attorney insists wrongly, they would be prejudiced in the changeover. That is their view. Surely they have a right to have the facts put before them and to be convinced and that such a change should happen by special resolution. If the facts speak for themselves, that should do the job, but if they do not they should not be foisted upon people.

The Hon. K.T. GRIFFIN: If one looks at what is occurring, one sees that there is no change to boundaries when you transfer from a strata title to a community title; there is no diminution in your rights as a lot owner, as you become—

The Hon. Anne Levy: No stamp duty payable.

The Hon. K.T. GRIFFIN: No stamp duty payable. I would have thought that, rather than giving a person who has a bundle of proxies and who can stifle a special resolution the opportunity to do so when, in fact, they cannot hold the rest of the unit holders to ransom if it were an ordinary resolution,

on the basis of no prejudice it should be allowed to occur. It seems to be fair and reasonable.

The Hon. ANNE LEVY: I do not support the amendment. While I appreciate the reasons for which the Hon. Mr Elliott has moved it, it seems a basic principle that majorities decide. That is the basic principle on which our whole democracy works: a majority is 50 per cent plus one. That is the normal situation—50 per cent plus one carries the day. Where there are provisions for special resolutions, special majorities, two thirds majority or three quarters majority, it seems that these are unusual circumstances and there must be a specific case made for them in order to depart from the general principle that 50 per cent plus one decides an issue.

I do not think this is a special case as there is no disadvantage to any individual in moving from strata title to community title. There is no financial interest that needs to be protected, no privacy considerations that need to be protected and no special reason why the general principle of 50 per cent plus one should not be the applicable rule. There are situations in this Bill where special resolutions—in other words, majorities of greater than 50 per cent plus one—are required to pass something, but these are cases where a very good reason has been made out to show that someone could be affected financially or could have their privacy or their whole way of life affected, and that is a good case for having majorities which are not 50 per cent plus one. However, the onus must always be on establishing why it should not be 50 per cent plus one, and I do not see any reason for that to apply in this case.

Amendment negatived.

The CHAIRMAN: I point out that clause 2(3)(a) of schedule 1 reads 'subject to subclause (4)' but should read 'subject to subclause (5)'.

Schedule passed.

Schedule 2—'Model by-laws.'

The Hon. K.T. GRIFFIN: I oppose schedule 2. As I indicated in my second reading reply, the schedule contains model by-laws, and the removal of it from the Bill takes into account the concerns as to the misapplication of the model by-laws. There is a general regulation making power which is wide enough to allow the making of model guidelines and by-laws if we believe ultimately that that is necessary. However, removing the schedule takes it out of the Bill and ultimately out of the Act, and no-one would quarrel with that.

The Hon. ANNE LEVY: I certainly support this. While I realise that the model by-laws would have no legal force, the very fact that they arrived in any copy of the legislation would give them a tremendous persuasive force and they would tend to be picked up and used by many community corporations simply because it would save people from thinking. There are a number of matters within the schedule against which I would argue strongly. For instance, model by-law 14 dealing with pets suggests that the occupier of a lot may keep one or two cats as pets but must not keep any other animal on the lot. I presume this means to suggest no dogs but, if you cannot keep another animal, it means people cannot keep a pet lizard, a guinea pig in a cage or a budgie in a cage. People could not have a goldfish in a bowl. They are all part of the animal kingdom, and I suggest that whoever drew up this model by-law was not intending to prevent people keeping goldfish and has forgotten that aspect. It really means that you can keep cats but not dogs but those involved have not dared to say so. In trying to say that, whoever has drawn up the by-law has stopped people having goldfish. If anyone tells me a fish is not an animal, I will say it is not a plant so it is an animal. It is certainly part of the animal kingdom. It may not be a mammal but it is certainly an animal.

The Hon. M.J. Elliott: We need biologically trained draftsmen.

The Hon. ANNE LEVY: Hear, hear! A bit more biology around the place would be a good idea. There are other matters in these model by-laws with which I would argue strongly if they were going to persist. However, rather than discussing them in detail and deciding what we believe is a desirable model, seeing that they are to have no legislative authority or compulsion about them, it seems to be much better that the Parliament does not take up its time discussing what should be in model by-laws but just leaves them out, particularly as they would have a very strongly persuasive influence on many people. If they were to stay in, we would have to argue about the various points in them. Not only because of the time of night but particularly as they are not destined to have legislative authority, it is rather pointless that we spend our time discussing what should be in something that is not compulsory anyway. Rather, we should drop the whole question of model by-laws and let people work them out for themselves. I am sure it will mean that people will have to think about them, which is not a bad idea. They will gradually develop, and I am sure they will borrow one from another, and so on. Standards will emerge, but they will emerge from the needs and desires of people who will have to live under them, and that is highly desirable. Certainly, I support the Attorney in not having non statutory model by-laws attached to pieces of legislation.

The Hon. M.J. ELLIOTT: I am not arguing about model by-laws which are already gone on the numbers but, as this is my last opportunity, I want to put a couple of matters on the record before we leave the Committee stage. One matter relates to insurance. Previously I expressed concern about whether or not people would have adequate insurance, although the legislation requires them to do so. I have been given information of several cases of insurance rorts, for example, a strata manager providing owners with an in-house valuation. In one case a group of 16 units was over insured by $.66 million, costing them $550 extra each year for the past eight years or so. The manager was an insurance agent. This is a case of over insurance and a rip-off of people, and it is another reason why an independent valuation can be quite valuable. That needs to be considered.

The Hon. Anne Levy: It's a conflict of interest.

The Hon. M.J. ELLIOTT: It is a clear conflict of interest.

The Hon. K.T. Griffin: It comes under the Secret Commissions Act.

The Hon. M.J. ELLIOTT: I simply put it on the record as something that has occurred. As to the question of a fund, I said that a number of issues needed addressing. In the submission I received from the Strata Unit Owners Association, one matter that I have not discussed in much detail yet was the resolution of disputes. The association submitted to me that it anticipated a significant increase in unresolved disputes following the enactment of the Bill. It is not because of the nature of the Bill but because more and more people will be under title arrangements similar to strata title arrangements.

The association considers it imperative that a strata and community titles advisory service be provided along similar lines to the Retirement Villages Advisory Service, which operates from the Residential Tenancies Office. I simply put

that on the record and reiterate that disputes are a major area of concern. The Minister should be aware because he knows his office is rung regularly by people in dispute, and we need to put some mechanism in place to try to help resolve disputes.

Schedule negatived.

Title passed.

Bill read a third time and passed.

WITNESS PROTECTION BILL

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

RACING (TAB) AMENDMENT BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendment.

PASTORAL LAND MANAGEMENT AND CONSERVATION (EXTENSION OF INTERIM BOARD) AMENDMENT BILL

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

ADJOURNMENT

At 10.47 p.m. the Council adjourned until Wednesday 20 March at 2.15 p.m.