LEGISLATIVE COUNCIL

Thursday 25 July 1996

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

LEGIONNAIRE'S DISEASE

The Hon. DIANA LAIDLAW (Minister for Transport): I seek leave to table a ministerial statement in regard to the *Legionella* incident, given this day by the Minister for Health in another place.

Leave granted.

OLYMPIC GAMES

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to table a copy of a ministerial statement made in another place today by the Premier on the Atlanta Olympics and the courage and excellence of our two gold medal olympians, Gillian Rolton and Wendy Schaefer from South Australia.

Leave granted.

TAPESTRIES

The Hon. DIANA LAIDLAW (Minister for Transport): I seek leave to make a short personal explanation with regard to tapestries.

Leave granted.

The Hon. DIANA LAIDLAW: Last Thursday, 11 July, I was asked a question by the Hon. Angus Redford in relation to the women's suffrage tapestries. In answer to a supplementary question, I said the following:

> Catherine Helen Spence, Elizabeth Webb Nicholls and Mary Lee were distinguished South Australians. When members think of the tapestry with Catherine Helen Spence looking at the Speaker, as she does with the turn of her ahead, she has a bit of a frown on her face, and I suspect she might be pretty spitting mad with the Speaker at the moment, and I hope that the glare registers with the Speaker.

Mr President, you said to me immediately after I made that statement:

> It is not very clever to pick on people who cannot defend themselves in this Chamber, whether it is the former Speaker or the present Speaker.

The present Speaker has spoken to me about my statement. He believes that it demeans the role of the Speaker. I would like to point out that the statement was not made to demean the Speaker or cause personal offence. However, the subject is one about which I feel strongly.

QUESTION TIME

SCHOOLS, FUNDING

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about funding for schools.

Leave granted.

The Hon. CAROLYN PICKLES: The Minister has announced his intention to tie $3 million worth of grants next year to this year's basic skills test results. The Government's intention is for year 3 and year 5 students to sit the basic skills test on 21 August. Last year, a substantial proportion of parents chose for their children not to be subjected to the test. The Minister's recent press release suggests that students could be disadvantaged if they did not sit the test because their school's potential allocation of additional funding would be jeopardised. The Minister himself stated last year that parents could write to the principal of their children's school and seek exemption. The Minister stated on 8 August 1995:

> Those grounds could be as simple as objecting to the tests and not wishing your child to take part.

My questions are:

1. If a parent or a school council determines that they do not wish children to undertake the basic skills test at a particular school, will they be penalised by the Minister's excluding their school from additional funding?

2. How does the Minister intend to implement the withholding of funds from some schools where some parents decide not to permit their children to take the BST, and will funding be withdrawn from the whole school in those cases? The Minister might also like to advise the Council whether parents will still be able to exempt their children from these tests.

The Hon. R.I. LUCAS: I will answer the last question first. Of course parents can decide whether their children will participate in the basic skills test: that was the case last year, and it will remain the case this year and in future years. That decision may be taken by parents on behalf of their children. We hope that they take such a decision without feeling pressured or being misled into taking such action by the actions and statements of union leaders regarding the basic skills test. We are comforted by the fact that recent research indicates that up to 80 per cent of parents strongly support the introduction of basic skills testing in Government schools.

The statement that I made last week did not necessarily indicate that all the $3 million in cash grants would be tied directly to results of the basic skills test but that potentially a significant proportion of that funding may well be tied to the BST. It is a policy direction brought about, in part—no, that is not true. It is a policy direction that the Government had always intended—

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: Misleading Parliament?

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: No, what I was about to say was not correct. It was always the Government's intention to provide additional funding to schools as a result of the information that it gained from results of the basic skills test. One of the criticisms that the shadow Minister and members of the teachers union and other critics of the basic skills test have made over the past 12 months is that the Government was doing these tests and wasting money and that it was not prepared to give additional resources to schools once it had established the results of the tests.

On the one hand, we have had the criticism that the Government is not prepared to give money to schools which have conducted the tests, and, on the other hand, when the Government indicates that it will give additional money, a significant proportion of which will be tied in some way to the results of the basic skills test, there is criticism from the Labor Party and the union representatives as well.

The Hon. Carolyn Pickles: I am just asking the question.

The Hon. R.I. LUCAS: And I am just answering the question.

The Hon. Carolyn Pickles: There is no criticism implied in the question.

The Hon. R.I. LUCAS: The criticism implied is that the Government is to be criticised because in some way it is seeking to tie the cash grants to the results of the basic skills test information. A significant proportion of the funds will be tied to the basic skills test results. One option that we are looking at is that the number of students who perform in skill band level 1 will receive funding according to the number of students in that skill band level within a particular school.

In response to the third or fourth question about what would happen if some parents and students participated and others did not, if that funding model were to be used it would not affect the operation of the formula, but it would affect the amount that might be allocated to a particular school. For example, if all students participated in the test and we identified 15 students in skill band level 1 and we gave $X per student in that band, that school would get 15 lots of $X. However, if the union manages to scare enough parents or students into not wanting to participate and we identify only 10 students in skill band level 1, that school would get 10 lots of $X if that was the final funding option that the Government decided to pursue. The formula would not be changed, whatever formula had been decided upon by the Government and by me as Minister, but clearly the actions of the union might affect the amount of money that is made available to—

The Hon. Carolyn Pickles: What about the actions of the parents?

The Hon. R.I. LUCAS: That is exactly the same; I have just answered that question. If the union convinced enough parents or students not to participate, a school would not receive the same level of funding that it might have got if all students had participated in the basic skills test results. That will provide a significant incentive to schools to participate in a most important educational reform instituted by this Government. In effect, it will respond to the sorts of criticisms that members of the union, the Labor Party and the Democrats have made about the Government not being prepared to provide funding to assist students who are identified as having learning difficulties under the basic skills test results.

It is a potentially win-win situation for all involved in this most important issue. Students and schools can win through the attraction of additional funding to assist students with learning difficulties, and the Government's basic skills testing program, which is an important educational reform, will be implemented and cemented in the educational culture of South Australian schools for the 1990s and beyond.

AIR QUALITY

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

Leave granted.

The Hon. T.G. ROBERTS: I have previously asked a question of the Minister and received a reply in relation to air quality testing, which the Government says it is improving. I understand that the testing methods are being improved and the air quality is being assessed and analysed for the general health and quality of life for people, particularly in the metropolitan area. Questions asked were in relation to any increased monitoring services and, among other things, the answers have been relayed to me via the Minister. Also in the replies some reference was made to other points within the previous question as follows:

> The extent of the testing of ambient air in South Australia to date has not been sufficient to give a comprehensive understanding of air quality. Recent plans have been made to expand the ambient air monitoring network to six Adelaide based sites and two mobile sites to further investigate pollution in major country areas. Monitoring results from the network will allow better understanding of ambient air pollution and hence the ability to better plan for future control.

The answer goes on to say:

> The State *Health Atlas*, published by the South Australian Health Commission, does divide data into geographical areas. It drew heavily upon the geographical spread of air quality data, which is one of the suggested contributing factors for which information was available at different sites across the region. When the completed EPA air monitoring network data is available, it will also be available on a locational basis through the environmental data management system being developed by the EPA through geographically based user interface. Air monitoring sites are planned for Gawler, Elizabeth, Tea Tree Gully, Kensington and already exist at Netley and Northfield as well as a carbon monoxide site in Adelaide and a sulphur dioxide site at Christies Beach. Ambient air will also be monitored in major country areas as a part of the expanded ambient air monitoring program. These include Whyalla, Port Augusta, Port Pirie and Mount Gambier.

I congratulate the Government for the expanded service that it is providing in monitoring. I am told by members of the community in a number of areas that the monitoring will verify the complaints that they have been making over a number of years in relation to air quality deterioration within the suburbs in which they live, but they are also saying that the Government already knows what the quality there is like. I also know that the point source pollution sources exist within their local areas and not enough is being done to police and control that. My questions are as follows:

1. Will the Government set up an air monitoring site on the Le Fevre Peninsula, which is a particularly bad area that showed on the *Health Atlas* a lot of problems associated with chest and lung infections, particularly in children?

2. Would the monitoring sites be placed in appropriate areas for the testing of air quality and the policing of point source pollution identification?

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

FERRIS, Ms J.

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Attorney-General a question in relation to Senator Jeannie Ferris and an article in this morning's *Advertiser*.

Leave granted.

The Hon. A.J. REDFORD: In today's *Advertiser*, at page 6 under the headline,'Ferris may still face challenge', written by the political writer, Greg Kelton, the article purportedly sought to report on the events of yesterday's Joint Sitting. Unfortunately, the reporter omitted a number of facts raised in the Joint Sitting and in other documents that were tabled in the Parliament yesterday. First, the article says:

> The Opposition repeatedly questioned the Government on why it was so confident Ms Ferris had been validly appointed. She had resigned to create the vacancy.

Unfortunately, for reasons not known to me, the political writer omitted to report the Attorney-General's response to that question and in that regard I draw members' attention to pages 4 and 5 of the *Hansard* report of the Joint Sitting. Also

in yesterday's Joint Sitting an opinion of the Solicitor-General of South Australia and an opinion of an Adelaide barrister, Tim Stanley, were tabled and referred to. Both those opinions referred to a case of *Vardon v O'Loghlin*, a 1907 High Court case, as did an opinion tabled in the Federal Parliament by Christine Wheeler QC. Notwithstanding the reference to those decisions, the *Advertiser* political reporter, Mr Kelton, said:

> Senator Bolkus, the Labor Senator, who raised the issue of Ms Ferris's eligibility, warned any legislation passed once she returned to the Senate could be tainted and subjected to challenge, . . . but the Federal Government faced the distinct possibility that any legislation passed by only one vote, once Ms Ferris took her place in the Senate, could be tainted and subject to challenge.

That statement was made notwithstanding the reference to the case of *Vardon v. O'Loghlin*. For the benefit of members, that case referred to a situation where there was a possibility that the election of some or all of the senators purportedly returned at an election is invalid. In that case the Chief Justice said:

> In that case the return is regarded *ex necessitate* as valid for some purposes unless and until it is successfully impeached. Thus the proceedings of the Senate as a House of Parliament are not invalidated by the presence of a senator without title.

This decision was approved by the Full Court of the High Court in the case *in re Wood*. In the light of that and for the benefit of a more balanced media report, I ask the Attorney-General the following questions:

1. Will the Attorney repeat the Government's explanation of why Senator Ferris had resigned to create the vacancy?

2. Will the Attorney-General confirm that any vote taken by the Senate—

Members interjecting:

The Hon. A.J. REDFORD: Senator Bolkus didn't, did he—of which Senator Ferris is a member, will not be invalidated in the unlikely event—

Members interjecting:

The PRESIDENT: Order!

The Hon. A.J. REDFORD:—that she is held to be invalidly elected by the High Court at some future date?

Members interjecting:

The PRESIDENT: Order, honourable members on my left!

The Hon. K.T. GRIFFIN: I would have hoped that by today all members had a chance to read the opinion of the Solicitor-General which was tabled and see that it is a coherent approach to a difficult issue. The Solicitor-General has clearly indicated, as have other opinions, that if Ms Ferris now takes her place in the Senate, there is no invalidity of the votes in the Senate if subsequently it is determined by the High Court, sitting as a Court of Disputed Returns, that there was no vacancy in the first place and that her appointment is invalid. That is a matter ultimately for the High Court.

As I said yesterday in response to the Leader of the Opposition in another place who was asserting quite vigorously with one hand, and his face as well, directed towards the media that it is not just a matter of looking solely at the vacancy. It is a matter of looking at what is the ultimate outcome. It may well be that the matter is still resolved by a Court of Disputed Returns. Obviously, if the Leader of the Opposition in another place, any member or any State citizen who is an elector for the Senate wishes to take the matter to the Court of Disputed Returns, they can do so. I will be watching very carefully—

An honourable member: Will you give them legal aid?

The Hon. K.T. GRIFFIN: They will not get legal aid for this. That is a very interesting point. If the Leader of the Opposition in another place and Senator Bolkus likewise decide that, having made these pronouncements and assertions, they want to take it up to the High Court, it is a matter for them.

Members interjecting:

The Hon. K.T. GRIFFIN: The Hon. Mr Cameron is already trying to give them a way to back off.

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: It is interesting that already they are paving the way for the Leader of the Opposition in another place and Senator Bolkus to back off. Everyone heard yesterday how passionate the Leader of the Opposition in another place was about the High Court. I challenged him to put his money where his mouth is. We will look carefully at what actions he takes in relation to this matter. The fact is—

The Hon. T.G. Cameron interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: That is not correct. The advice—

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: Mr Tim Stanley did not say that she was invalidly elected. His opinion said that it is arguable, but the opinions which—

The Hon. T.G. Cameron: So you are relying on Tim Stanley's opinion?

The Hon. K.T. GRIFFIN: No; you were.

The Hon. T.G. Cameron interjecting:

The Hon. K.T. GRIFFIN: No, but you said that she was invalidly elected.

The Hon. T.G. Cameron: Why did she resign?

The Hon. K.T. GRIFFIN: You ask Ms Ferris why she resigned. The fact is that she was entitled to do so if she so wished, and from the Government's perspective—

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: From the perspective of the State Government, it is obliged to act in accordance with the Constitution, and we have done that. There was notification from the Governor-General, who took advice from the Solicitor-General for the Commonwealth, of a vacancy in the Senate. That was notified to the State Governor; the State Governor notified the Premier, the President and the Speaker, and that is the proper course. The Speaker and the President had a constitutional responsibility. So, as far as the State Government is concerned, it complied with the Constitution, and at a Joint Sitting we have filled the vacancy, and that will be notified to the Commonwealth. The fact of the matter—

The Hon. T.G. Cameron interjecting:

The Hon. K.T. GRIFFIN: That is absolute nonsense, and the honourable member knows it. He can throw all this language around: rorts and abuses—

The PRESIDENT: Order!

The Hon. A.J. REDFORD: On a point of order, I ask that the Hon. Terry Cameron withdraw that comment—

An honourable member: And apologise.

The Hon. A.J. REDFORD:—and apologise to the Attorney-General for claiming that he was involved in a rort.

The PRESIDENT: There is a point of order. The honourable member is implying that the Attorney-General had done something that was—

The Hon. T.G. Cameron: I referred to the Government.

The Hon. K.T. GRIFFIN: You did not. You said that I was involved in it.

The Hon. T.G. Cameron interjecting:

The PRESIDENT: Order! I ask the honourable member to retract the comment and apologise.

The Hon. T.G. CAMERON: I retract the comment.

An honourable member: And apologise.

The PRESIDENT: I ask the honourable member to retract the comment and apologise.

The Hon. T.G. CAMERON: I apologise.

The Hon. K.T. GRIFFIN: That is the proper course. In this Chamber we do attempt to comply with the Standing Orders and, after yesterday's Joint Sitting, I can say that, even though we have this sort of interjection and exchange at Question Time, it is much more appropriate than what occurs in another place. May I just—

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: The more you continue, the less time you will have for questions.

The Hon. T.G. Cameron interjecting:

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

The Hon. Anne Levy: We might find out why she resigned.

The Hon. K.T. GRIFFIN: It is not a matter for me or for the Government to debate reasons why a person resigns. We acted in accordance with the Constitution, and quite properly. If members look at the opinion of the Solicitor-General, which is on the public record, they will see that his advice quite clearly is that the course of action was appropriate, and that the Joint Sitting and the Governor-General are entitled to proceed on the presumption of regularity. It is in the interests of the State—

The Hon. T.G. Cameron interjecting:

The PRESIDENT: Order! I call the Hon. Mr Cameron to order.

The Hon. K.T. GRIFFIN: From the perspective of the State, it is appropriate to fill the vacancy so that the State's representation in the Senate is maintained, and if any elector wishes to challenge that they are entitled to do so. I make no secret of the fact that I agree that those citizens who wish to do so may do so under the Constitution, and we will look very carefully at what might occur in relation to that during the period of 40 days which proceeds.

Under the procedure which the Senate had followed by indicating a reference to the High Court, members must recognise that the parties before the High Court would be, presumably, the Solicitor-General for the Commonwealth, representing the Senate, perhaps the Australian Electoral Commission, and possibly also the State of South Australia with a valid interest in it. There would be no contravener. Of course, quite obviously, those parties may still be involved if there is a petition to the Court of Disputed Returns, but also there will be someone who can put alternative arguments to the High Court and that may occur. In those circumstances, no-one can then complain about the process which has been followed. I repeat: so far as the advice which I have received and quite obviously others have received, the advice which Mr Stanley has given as well as the advice given by the Solicitor-General, there is not likely to be any invalidity in proceedings of the Senate and no valid challenge to any of the legislation which might pass.

The Hon. R.I. Lucas: Is Tim Stanley getting Mr Foreman's position?

The PRESIDENT: Order!

The Hon. T.G. Cameron: Is the Leader now asking me questions?

The PRESIDENT: Order!

ENTERPRISE INCENTIVE SCHEME

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister representing the Minister for Industry, Manufacturing and Small Business a question about cuts to the new enterprise incentive scheme.

Leave granted.

The Hon. T.G. CAMERON: The new enterprise incentive scheme assists the unemployed to establish their own small businesses, and is one of the nation's most successful job creation programs. Last year, the new enterprise incentive scheme helped over 200 new businesses in South Australia. Latest data indicates that new enterprise incentive scheme participants have a business success rate of 84 per cent. Despite saving the Federal Government over $65 million last year, the new enterprise incentive scheme has had its funding reduced by one-third, from $123 million to $86 million, as part of the cuts introduced by the Howard Government to arrange federally funded labour market programs.

My office has been overwhelmed by calls from small business operators who are outraged by the Howard Government cuts. They believe the decision could not have come at a worse time. South Australia continues to be locked into the highest youth unemployment rate in the nation—currently it stands at 31.7 per cent compared to the national average of 27.9 per cent. Since December 1993, when the Brown Government took office, the youth unemployment rate in South Australia has risen by nearly 10 per cent. Small business operators who have contacted me have called the cuts to this highly successful scheme an utter disgrace. They believe that the cuts will not only directly contradict the Federal Coalition's pre-election commitment to expand assistance to small business but will also have a significant social impact on South Australians. My questions to the Minister are:

1. How much of the $37 million Federal cut will South Australia have to bear?

2. What impact will the cuts have on South Australian employment rates, and what does the Minister intend to do about it?

3. Does the Minister agree with the Federal cuts; if not, what he is prepared to do to ensure that any shortfall in funding is made up by the State Government?

4. What representation has the Minister made to the Federal Government on behalf of South Australians over this matter?

The Hon. R.I. LUCAS: I thought my question was more interesting to the Hon. Mr Cameron as to whether the *Bulletin* was right and whether Tim Stanley would get Senator Dominic Foreman's Senate position. Nevertheless, the Hon. Mr Cameron has made some claims, some of which certainly the Government would dispute in relation to the youth unemployment rate that this Government inherited from the previous Labor Administration and its comparison with the more recent figures. We can certainly bring back some evidence in relation to that. We will certainly ask the Minister to respond not only to the questions but to some of the claims made by the honourable member in his explanation to his questions.

ROXBY DOWNS

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister representing the Minister for Mines and Energy a question about waste reprocessing at Roxby Downs.

Leave granted.

The Hon. SANDRA KANCK: My office has been contacted by people who once worked for Western Mining Corporation at Roxby Downs, claiming that they handled medium to high level radioactive waste from Lucas Heights. In 1991, this Lucas Heights waste—drums and drums of the stuff, as my informant has described it—was secretly and illegally transported to Roxby Downs and put through various processes at the concentrator leach section of the Roxby Downs plant. When the process failed, the waste precipitated to the bottom of one of the very large separation tanks in the plant and set like concrete, bringing that section of the plant to a stop.

A team of workers was given the task to remove the solid material from the tank, but on the first day of excavation, when the workers went into the lunch room, the Geiger counters on the wall went off the scale. When the workers removed their protective clothing and washed themselves, a comparatively high level of radiation was still able to be measured on their bodies. Normally after washing no radiation would be measurable. I am told that the radiation control officers who were called in to investigate would not enter the tank to take measurements but instead lowered the Geiger counter into the tank from scaffolding some way above it, despite the added inconvenience. They told the men the tank was safe and that they could continue working. When the men refused, they were taken off the job and another team of subcontractors was sent in. Eventually, management brought in jackhammers to break up the concrete-like substance that was at the bottom of the tank and ultimately a hole had to be cut in the side of the tank.

The Hon. T.G. Cameron: They did that at Chernobyl.

The Hon. SANDRA KANCK: Yes, they did do that at Chernobyl; it is interesting. Small excavators were actually driven in to remove the material. The tank stayed off line for many months while the material was removed. I have a statutory declaration from my informant. I will not give his name at the moment, but I will read what he has in the statutory declaration. He says:

> While employed at the Olympic Dam mine I handled radioactive waste material from Lucas Heights. I was unaware of any personal risk and took no precautions. I assisted in the introduction of a drum of this into the Uranium Section of the plant for experimental purposes. I later delegated contract labour to work in a tank in the concentrator leach section that contained the material.
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> At this time I was advised the personal millisieverts readings of the workers was excessively high. Radiation officers could not provide any measurement of exposure or the probable stochastic effects. The workers refused to re-enter the tank and alternative labour and practice was adopted. Breaches in the handling of such material were made with my involvement but not of my design or prior knowledge.

My questions are:

1. Will the Minister investigate these allegations and report back to Parliament with his findings?

2. Was a written report on the incident lodged with the Health Commission by radiation control officers, and will the Minister table a copy of the report?

3. Was the Health Commission correctly advised of the transport of this Lucas Heights waste in 1991?

4. Given that the Government currently receives $12 million in annual royalties from Western Mining and that this figure will rise with the recently announced expansion of the Roxby Downs mine, will the Government employ independent environmental and occupational health and safety personnel, including independent radiation officers at Roxby Downs; if not, why not?

The Hon. R.I. LUCAS: I will refer the honourable member's question to the Minister and bring back a reply. If the honourable member has any details of the allegations made by her constituent, she could assist the Minister by making available greater detail. I am sure that would assist the Minister in following through those claims. I note that the Hon. Sandra Kanck nods, so it may be that she is prepared to provide further detail confidentially to the Minister for Mines and Energy so that he can undertake an investigation and to provide a response to the honourable member in relation to the allegations that she has made.

The Hon. T. CROTHERS: As a supplementary question, are the contents of the questioner's preamble correct, and does that put Western Mining Corporation in breach of the Roxby Downs indenture? If it does, and there is substance in the allegation, what does the present State Government intend to do about it?

The Hon. R.I. LUCAS: I will refer the honourable member's questions to the Minister and bring back a reply but I am sure the Hon. Mr Crothers would realise that, at this stage, they are allegations that have been made and they will need to be investigated thoroughly before we can accept them as fact. Only then will we need to explore the range of issues that the Hon. Mr Crothers has flagged in his question.

The Hon. T. Crothers interjecting:

The Hon. R.I. LUCAS: I note the Hon. Mr Crothers acknowledges that across the Chamber.

333 COLLINS STREET

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Leader of the Government in this Council a question about 333 Collins Street.

Leave granted.

The Hon. Anne Levy: The Parade, Norwood, is a better address.

The Hon. L.H. DAVIS: Yes. I couldn't afford 333 Collins Street, Melbourne; I don't think that I could even get Carmen Lawrence to donate to a cause such as that. In July-August 1988, the SGIC entered into a financial transaction which earned it $10 million for agreeing to a put option with respect to the office building at 333 Collins Street, Melbourne. That building was billed as the finest example in Melbourne of a modern office tower based on classical principles. The main entrance is through a magnificent domed chamber 20 metres high. This put option committed SGIC to take up ownership of 333 Collins Street if the developer, Becton Corporation, was unable to meet its financial commitments for this building.

The Parliament and the South Australian public did not know of this contractual arrangement until the 1988-89 SGIC annual report was tabled in Parliament in October 1989, not long before the 1989 State election. In fact, SGIC boasted about this financial transaction in the report. At that time, I was amazed and appalled at the extraordinary financial risk which SGIC had readily accepted. It is a matter of record that I went to Melbourne, and leading property experts confirmed my fears when they said that they could not believe that SGIC

had entered into this financial transaction. I came back to Adelaide and reported it to the leadership group of the day.

However, it was not until July 1991 that SGIC's ownership of 333 Collins Street was crystallised. SGIC was obliged to pay $465 million for the building. Over the next two years the building was written down to less than half this amount. For some years the occupancy level was rather less than 50 per cent. In fact, when the Liberal Party came to office in December 1993 the occupancy rate of 333 Collins Street was only 33 per cent. Even now, its occupancy rate, at about 75 to 80 per cent, is lower than any other super prime or prime office building in the Melbourne CBD. SGIC took on a financial risk of $465 million which, at the time, represented about one-third of its total investable funds. The Insurance and Superannuation Commission sets down guidelines for investment by insurance and superannuation funds. It recommends that no more than 5 per cent of total investable funds should be in any one investment. SGIC was in clear breach of that guideline. Indeed, as I remember, SGIC at no stage made provision for a contingent liability in its balance sheet nor did it insure against the risk created by the acceptance of the put option.

There are several financial experts who suggest that the issue of directors' negligence can be legitimately raised with respect to this transaction. The burden created by this financial debacle rendered SGIC technically bankrupt. As a result, 333 Collins Street was transferred to the South Australian Asset Management Corporation. It was announced by the Treasurer (Hon. Stephen Baker) just a few weeks ago that the Asset Management Task Force has taken over the responsibility for the sale of 333 Collins Street. My question is: will the Leader seek from the Treasurer at his earliest convenience an estimate of the losses to date of 333 Collins Street and a complete breakdown of the write-downs including finance charges on this disastrous investment?

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

MULTICULTURAL GRANTS SCHEME

The Hon. P. NOCELLA: I seek leave to make a brief explanation before asking the Minister representing the Minister for Multicultural and Ethnic Affairs a question about the multicultural grants scheme.

Leave granted.

The Hon. P. NOCELLA: The multicultural grants scheme administered by the South Australian Multicultural and Ethnic Affairs Commission was announced at the beginning of December 1995 to have a closing date at the beginning of February 1996. The unusual extra time was granted to allow for the festive season. The multicultural grants scheme is aimed at assisting organisations in general, largely minority ethnic organisations, in order to put into place programs to assist their communities. Under the guidelines, those programs could be for youth, the elderly, women, or just for the basic maintenance of the linguistic and cultural basis of their community.

Although the grants are not large—they range from a minimum of $500 to a maximum of $3 000—in some cases they are vital, and they are the only source of funds for communities, especially new communities, that wish to maintain their cultural heritage. It is my understanding that the applications for funds were processed early this year and recommended to the commission in April. Since April, it appears that nothing much has happened. The applications may have become bogged down somewhere in the Minister's office. I have been approached by several applicants who are wondering what has happened to their application eight or nine months later. My questions are:

1. Will the Minister let this Council know when applicants can expect to be informed about the success or otherwise of their application?

2. Because the grants cut across two financial years, will the Minister inform the Council of the total amounts spent on multicultural grants in the financial year 1995-96 and budgeted for the financial year 1996-97?

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

WATER AND ELECTRICITY PRICES

The Hon. G. WEATHERILL: I seek leave to make a brief explanation before asking the Minister representing the Minister for Industry, Manufacturing, Small Business and Regional Development a question about water and electricity prices.

Leave granted.

The Hon. G. WEATHERILL: A recent report in the *Financial Review* states that the New South Wales Independent Pricing and Regulatory Tribunal claims that it has reduced the cost of electricity and water prices for business users by $790 million in the past four years. According to the Chairman of the tribunal, Professor Tom Parry, this is the equivalent of a 26 per cent cut in payroll tax, achieved without the need to increase residential charges above the inflation rate. In fact, residential charges have fallen by 8.1 per cent in real terms in New South Wales since 1992-93. The report also shows that small businesses in New South Wales have seen falls in charges of up to $2 500 per annum. My questions are:

1. Is the Minister aware that the average cost of electricity for small businesses has fallen by over 30 per cent during the past four years in New South Wales whilst water costs have been reduced by 40 per cent?

2. Will the Minister provide details of comparable price movements in electricity and water for small businesses in South Australia over the same period?

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

COMPETITION POLICY

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services, representing the Minister for Industry, Manufacturing, Small Business and Regional Development, a question about competition policy.

Leave granted.

The Hon. M.J. ELLIOTT: For some time people have been expressing concern that with deregulation generally, but married to what are supposed to be pro-competition policies at Federal level, small businesses are suffering. One example that has been brought to my attention is that in a number of Westfield Shopping Centres Coca Cola was proposing to install a large number of machines. I understand that tenants of these Westfield Shopping Centres are concerned that this would mean new competition coming into their environment, that the selling of soft drinks is an important component for those businesses and that they would suffer a significant financial loss.

I also understand that those small retailers got together and approached Westfield and Coca Cola to express concern about the consequences of this move, but apparently things did not progress particularly well, and that they may then have had discussions to consider no longer selling Coca Cola products. Recently they have received letters from the AAAC suggesting that what they have done may be illegal. The fact that they may have talked to each other and considered no longer carrying a product which was going to do something which would hurt them competitively was deemed to be anti-competitive behaviour. In other words, they were not allowed to talk to each other and consider any action of self-protection. The concern expressed to me is that competition policy never seems to have any effect on large companies, which seem to collude fairly easily together, but that it has a dramatic impact on small businesses in a number of areas. My questions are:

1. Is the Minister aware of the case that I have raised?

2. Does the Government feel at this stage that anti-competition policy may work more against the interests of small business than keeping big business behaving in a competitive manner?

The Hon. R.I. LUCAS: I will refer the questions to my colleague in another place and bring back a reply.

EQUESTRIAN SPORTS

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Recreation, Sport and Racing, a question about equestrian sports.

Leave granted.

The Hon. CAROLINE SCHAEFER: In the early hours of this morning I am sure I was joined by many members as I proudly watched the Australian equestrian team win a gold medal for the second consecutive time at the Olympics.

The Hon. Diana Laidlaw: Is Wendy your cousin or sister?

The Hon. CAROLINE SCHAEFER: No. The Minister, by way of interjection, asks whether Wendy Schaeffer is related to me. I would like to claim her as a relative, but she spells her name differently. Perhaps I could change my name on this occasion. This outstanding effort by our equestrian team now confirms its members as the best in the world. Of the team of four who competed, two are South Australian women. Gillian Rolton lives on the South Coast and Wendy Schaeffer comes from Hahndorf.

Honourable members may not realise that equestrian sports require a long period of training. In the near future, we can expect equestrian teams from all over the world to come to Australia to begin their long training for the Sydney Olympics. In fact, Andrew Hoy has already announced that, God willing, he intends to ride the same horse in Sydney as he rode last night. Bearing that in mind, my question is: can we now expect a firm commitment to the establishment of an equestrian complex in Victoria Park so that we can take advantage of the competitive edge established for us by these two gallant equestrian women?

The Hon. K.T. GRIFFIN: This question obviously needs to go to the Minister for Recreation, Sport and Racing, and I will ensure that it is referred to him as quickly as possible. This is an opportune time to raise the issue to which the honourable member referred. I know that the Premier has already done so, but I, too, want to congratulate Gillian Rolton and Wendy Schaeffer on their magnificent efforts in the equestrian event. I suppose we should not forget that they were ably supported by their horses, which also deserve commendation. We should not overlook the fact that, without their horses, they would not have been so successful. The Government certainly wishes to be associated with the congratulations to those two outstanding South Australian equestrian women, of whom it is very proud, as undoubtedly all South Australians are, and recognises their efforts in these Olympics and on previous occasions. I will refer the question to the Minister for Recreation, Sport and Racing and ensure that there is a fairly quick response.

ANOREXIA AND BULIMIA

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Minister for the Status of Women a question about anorexia and the portrayal of women in the media.

Leave granted.

The Hon. P. HOLLOWAY: Last month the New South Wales Government announced its intention in August to convene a forum of fashion advertising and medical professionals to look at ways to combat the increasing number of cases of anorexia, believed to be growing by 400 new cases per year in New South Wales. New South Wales Department of Health statistics indicate that 7 500 people are diagnosed with anorexia nervosa each year, 95 per cent of whom are women. Of this number, up to 20 per cent (1 500 young women) die every year—that is a staggering statistic—and about 40 per cent of people with anorexia will develop the related eating disorder, bulimia.

The New South Wales Minister for Health, in proposing this forum, said that the widespread image of thin women as role models was unhealthy and dangerous and that the forum would aim to develop a code of conduct for the media to end 'the glamorisation of unhealthy behaviour.' He was also reported as saying:

> Bulimia and anorexia are not fashion statements—they are diseases which can kill.

My questions to the Minister are:

1. Does she support the New South Wales action to achieve a code of conduct for the media to address this problem and will she consider similar measures in South Australia?

2. Will she also provide statistics of the number of cases of anorexia and bulimia in South Australia?

The Hon. DIANA LAIDLAW: I am aware of the horrors to individuals and other family members due to this disease which, in respect of people I know well, was considered to be a psychiatric illness. It is highly distressing for all concerned and can arise for a number of reasons, not just media portrayal, although I suspect that type-casting women is a major factor to which women generally have objected for some time.

New South Wales has done quite a bit over the years with regard to the portrayal of women and codes of practice. Those matters were referred to the Office of Premier and Cabinet following a question by the Hon. Ms Levy to me some time ago about standards of advertising and Government codes of practice. I will follow up what has happened on that issue. I know that within TransAdelaide we have adopted media standards for the portrayal of women. That arises in part from women in public transport forums and conferences that have been held over the past two years within TransAdelaide. As a practice across Government I am not aware of the outcome

of the referral of the question. I will follow it up promptly and, in addition, speak to the Minister for Health. I know that the societies who take a big interest in this area and the support groups are very active in South Australia and no doubt a program is used to promote interests and raise the matter with the media. However, I will explore the questions further.

POLICE (COMPLAINTS AND DISCIPLINARY PROCEEDINGS)(MISCELLANEOUS) AMENDMENT BILL

The Hon. K.T. GRIFFIN obtained leave and introduced a Bill for an Act to amend the Police (Complaints and Disciplinary Proceedings) Act 1985. Read a first time.

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

That this Bill be now read a second time.

This Bill contains miscellaneous amendments to the Police (Complaints and Disciplinary Proceedings) Act 1985. The Act has now been in operation for almost 11 years and in that time there have been no substantive amendments. This suggests that the Act has stood the test of time but suggestions to improve the operation of the Act have been made by the Commissioner of Police, the Police Association and both the former and present Police Complaints Authority, which I will describe in the rest of this speech as 'the Authority'. Amendments are also required as a result of the administration of the Act being committed to the Attorney-General rather than the Minister with responsibility for the police.

It is important to put this Act into a proper context. It has to be recognised that the Police Complaints Authority was established in 1985 to provide an independent body to review complaints against the police. At the same time the responsibility of the Commissioner of Police under the Police Act 1952 for the discipline, the command, and the operation of the Police Force in South Australia was retained. Where the Commissioner charges a member of the Police Force with a breach of discipline and the member does not make an admission of guilt to the Commissioner, the proceedings on the charge are determined by the Police Disciplinary Tribunal, which is established under the Police (Complaints and Disciplinary Proceedings) Act.

The tribunal comprises a magistrate and there is a right of appeal to the Supreme Court—a significant protection against abuse. Section 39(3) of the Act requires the Police Disciplinary Tribunal to be satisfied beyond reasonable doubt that an officer committed the breach of discipline with which he or she has been charged. Whether this approach to disciplinary matters is appropriate for the effective delivery of human resource management in the 1990s is a matter which the Government is reviewing. The requirement that disciplinary charges be proved beyond reasonable doubt may result in the Commissioner being unable to take any corrective action because the charges cannot be proved beyond reasonable doubt. South Australia is the only State to retain the criminal standard of proof for breaches of discipline.

The Government is inclined to the view that the burden of proof in disciplinary proceedings should be changed to proof on the balance of probabilities. The Government will be consulting further on this matter and may move to amend section 39(3) depending on the result of these consultations.

The amendments contained in this Bill cover a wide area. Some of the amendments are of a technical nature while others represent changes in policy. It is intended that the Bill will lie on the table for any comment with the intention that the Bill will be debated early in the next session starting in October.

Informal Complaint Resolution

The Commissioner of Police and the former Police Complaints Authority, Mr Peter Boyce, agreed on a system for the informal resolution of minor complaints against the police. The system has been in operation since 1 January 1994 and is operating well but it is desirable that the Police (Complaints and Disciplinary Proceedings) Act 1985 be amended to reflect the current practice for resolving all complaints against the police and that they have a statutory basis.

There are real advantages in having a scheme for the resolution of minor complaints by informal means. Not all complaints against the police are serious and many do not warrant a full scale investigation which may lead to disciplinary proceedings. Rather the offending behaviour can best be treated as a management issue and dealt with at that level.

Under the scheme for the informal complaint resolution agreed to by the former Authority and the Commissioner a complaint is a minor complaint if it:

- relates to demeanour, discourtesy, rudeness, abruptness or any similar act of incivility;
- alleges a non-aggravated neglect of duty, including a failure to respond promptly, return property, make inquiries, lay charges, return telephone calls and other failures to provide adequate service;
- is based on a misunderstanding of facts or law and may be resolved by explanation;
- is based on a misunderstanding of police practices or procedures which may be resolved by explanation;
- is about police driving or parking behaviour which is not aggravated or is able to be reasonably explained;
- is made by a person who is obviously disturbed or obsessive and the allegations have either been made before or, by their nature, are consistent with the complainant's known state of mind;
- concerns incidents of unnecessary force, which may include mere jostling, pushing, shoving without any attendant features such as intimidation or attempts to obtain a confession.

The categories of minor complaints are not delineated in the Bill. 'Minor complaint' is defined in clause 3. The question whether a complaint is a minor complaint is to be determined according to an agreement between the Authority and the Commissioner or a determination of the Minister in the event of disagreement. Notice of the matters that may be dealt with informally must be laid before Parliament. This provision maintains public accountability while at the same time providing flexibility in the matters that may be dealt with informally.

The mechanics of how a complaint is dealt with informally are contained in clause 10, which inserts a new section 21A in the Act. A complainant retains the right to have a complaint investigated under the other provisions of the Act. The Commissioner and the Authority also retain the right to have a complaint investigated under the other provisions of the Act. This is important because no information obtained in relation to the subject matter of the complaint may be used in proceedings in respect of a breach of discipline before the Police Disciplinary Tribunal.

Power to Delegate

The Act does not contain any power for the Authority to delegate. This means that the Authority has to do everything him or her self. This causes problems not only in the everyday operation of the Authority but also when the Authority is absent on leave or ill and there is nobody who can perform the functions of the Authority.

New section 11A provides that the Authority has power to delegate similar to the Ombudsman's power of delegation under section 9 of the Ombudsman Act 1972.

Complaints to which the Act applies

A member of the Police Force can, in the same way as any member of the public, make a complaint to the Authority about another member of the Police Force. Hitherto this has not been spelt out in the Act. This is now spelt out in clause 8, new section 16(4)(ca).

A further change is made to section 16 to allow investigation of complaints made to a member of the Police Force by or on behalf of another member of the Police Force provided the complaints are made in writing in a form approved by the Commissioner. It is illogical that the Authority can investigate a complaint made by one police officer about another if the complaint is made to Authority but not if it is made to another police officer.

The vast majority of complaints by one police officer about the conduct of another would not be of interest to the Authority but it is desirable for the Authority to have the power to investigate them or to require further investigation in cases where the outcome appears unsatisfactory. The type of internal complaints which it would be appropriate for the Authority to investigate are those which:

- involve issues which are of public interest, importance or significance;
- relate to possible criminal action or serious breaches of discipline by members in the course of, or arising from, their duties as members of the Police Force;
- relate to matters of practice, procedure and policy on the part of the Police Force and which may impact upon the community at large.

The Authority and Commissioner of Police will need to develop a protocol to govern when the Authority becomes involved in internal complaints.

As in any other employment situation, members of the Police Force are prone to complain about their fellow employees. The amendment to section 16(5)(a) requiring a complaint made to a member of the Police Force about another member to be in writing in a form approved by the Commissioner should ensure that mere grumbles are not subject to investigation under the Act.

Necessity for a Complaint

The authority is unable to conduct an investigation about police conduct if there has been no complaint. There is often considerable criticism of police as a result of publicity. In the past issues have been raised in Parliament concerning police conduct which could not be pursued in the absence of a complaint. Where all the relevant criteria of the Act are satisfied the authority should be able to invoke the Act and investigate the complaint. New section 22A provides for this.

The power to investigate without complaint is a power which is unlikely to be used frequently. In addition to the instances already referred to it would enable the authority to investigate patterns of conduct shown in individual complaints to obtain an overview. Section 22A contains a mechanism for the Minister to resolve any disagreement between the authority and the Commissioner of Police about a matter which the authority has decided to investigate on his or her own initiative or the methods employed in that investigation.

Section 22A refers to the authority's raising a matter for investigation. Because there is no complaint it is not appropriate to refer to a complaint. The reference to a matter in this section has required references to 'complaint' in many sections of the Act be changed to 'matter'.

Disclosure by Witnesses

Section 48 of the Act, by implication, prevents police officer witnesses from disclosing anything about the investigation of a complaint. There is no provision requiring civilian witnesses who have been interviewed by the Internal Investigations Branch or the authority to maintain confidentiality in relation to the investigation. It may be important for witnesses to maintain confidentiality in relation to an investigation so that the investigation is not jeopardised. There is, however, no reason for a blanket requirement that witnesses, either police or civilian, maintain confidentiality in relation to an investigation.

Sections 25 and 26 of the Act are amended to provide that the authority may direct witnesses not to disclose that an investigation is being or has been carried out or that he or she has been requested or required to provide information if the circumstances warrant it. The amendments specifically provide that a person is not prevented from consulting a legal practitioner in relation to the matter under investigation. A member of the Police Force whose conduct has been under investigation may also divulge the outcome of an investigation and comment on it.

Information about the Complaint

Section 25(7) requires a member of the Internal Investigations Branch, before giving a member of the Police Force a direction to furnish information, to inform the member of the general nature of the complaint. Section 28(8) which deals with investigations by the authority requires the authority to inform the member of the general nature of the complaint. The person against whom a complaint has been made should be entitled to know more than the general nature of the complaint, and the provisions have been amended to provide that the police officer is to be informed of the particulars of the matter under investigation.

Offences

Section 25 provides that a member of the Police Force who furnishes information or makes a statement to a member of the Internal Investigations Branch knowing that it is false or misleading in a material particular may be dealt with in accordance with the Police Act 1952 for breach of discipline. There is no provision which penalises a civilian witness who gives information or makes statements to the Internal Investigations Branch knowing that they are false or misleading in a material particular. It is only an offence for a witness to give false information or make false statements to the authority.

New section 25(8a) makes it an offence for a civilian witness to furnish information or make a statement to a member of the Internal Investigations Branch knowing that it is false or misleading in a material particular.

Directions to Investigating Officer

Under section 26 the authority oversees the investigation of the complaint by the Internal Investigations Branch to a certain extent but there is no power for the authority to direct an investigating officer. The authority can notify the Commissioner of any directions he or she considers should be given by the Commissioner as to the matters to be investigat-

ed or the methods to be employed in relation to the investigation. The present section is in accordance with the structure of the Act whereby the Internal Investigations Branch is not under the control of the authority. In an extreme case the authority can investigate the complaint himself or herself under section 23(2).

However, there may be situations where it would be appropriate for the authority to be able to give directions to an investigating officer as to the matters he or she wishes to be investigated and when and how they should be investigated. This would enable the authority to direct that certain avenues of inquiry be addressed and to require the investigating officer to provide reports to the authority about the progress of the investigation.

Giving the authority the ability to direct police officers has implications for police resources, and the Commissioner may well object to the use that the authority is making of his officers. Accordingly, the amendments provide that the Commissioner may object to what the authority is proposing. If the authority and the Commissioner are unable to agree about the directions the authority wishes to give the Minister resolves the disagreement.

Administration of the Act

The administration of the Act was committed to the Attorney-General in December 1993. Prior to this the Act had always been committed to the Minister in charge of police. There is good sense in having the Act committed to the Attorney-General because it clearly keeps the responsibility for policing and administration of the police separate and independent from complaints oversight. Several provisions require amending as a result of the Act being committed to the Attorney-General.

Section 26(5). As already mentioned, section 26 deals with the power of the authority to investigate the investigation of complaints by the Internal Investigations Branch. Section 26(1) provides that the authority may give the Commissioner directions as to how matters should be investigated. If the authority and the Commissioner are in disagreement the authority can refer the matter to the Minister, who may determine what directions (if any) should be given by the Commissioner (s. 26(5)). Section 26(6) provides that a determination under subsection (5) that relates to complaints generally, or to a class of complaints, shall not be binding on the Commissioner unless embodied in a direction of the Governor under section 21 of the Police Act 1952.

Section 34(5) does not recognise that it is the Director of Public Prosecutions who now determines whether criminal charges should be laid, and it is amended to provide that the Minister should consult with the Director of Public Prosecutions and, in relation to disciplinary matters, the Minster responsible for the administration of the police. Section 51 provides that nothing in the Act prevents the authority or the Commissioner from reporting to the Minister upon any matter arising under, or relating to, the administration of the Act. This is expanded to make it clear that the Commissioner and authority can report to the Minister responsible for the administration of the police about matters arising under the Act.

Duplication of Registration of Complaints

Section 29 requires the authority to keep a register of complaints and section 27 requires the officer in charge of the Internal Investigation Branch to maintain a register containing the prescribed particulars with respect to each complaint referred to the branch for investigation or further investigation. This is an unnecessary duplication of resources. The authority should assume responsibility for maintaining a register in respect of all complaints made under the Act. Accordingly, section 27 is repealed. The repeal of section 27 does not prevent the Commissioner from maintaining a separate police complaints information database with a view to analysing trends if that is thought desirable.

Reasons for Decision

Section 45 provides that the tribunal is required to give parties to proceedings before it reasons for its decisions. The tribunal is not required to give the authority the reasons for its decisions. It is important for the authority to know the tribunal's decisions. Accordingly, section 45 is recast to require the tribunal to provide the authority with the reasons for its decisions if requested by the authority.

Secrecy

Several changes are made to section 48. Section 48 deals with the divulging or communicating of information obtained in the course of an investigation.

Section 48(2) prohibits the release of information except as required or authorised by the Act or a relevant person. The effect of section 48(2) in conjunction with section 48(5) is that the authority can authorise the release of information obtained by authority staff but not information obtained directly by the authority.

The Commissioner of Police is in a similar position in relation to information obtained by him and his staff. This is anomalous and the anomaly has been removed by excluding the authority and Commissioner from the definition of 'prescribed officer'.

Section 48(4) provides that a 'prescribed officer' is not prevented from divulging or communicating information in proceedings before a court. A 'prescribed officer' is the Commissioner of Police, the authority, a person acting under the direction or authority of the authority and a member of the Internal Investigations Branch or any other member of the Police Force.

In recent times there have been attempts by defence counsel to subpoena authority and police files relating to the investigation of complaints in the hope that there may be something in the files which may discredit police witnesses in criminal trials. These 'fishing expeditions' are disruptive not only to the authority and the police but also to the trials of criminal matters when the subpoenas are sought as a matter is to go to trial.

Information obtained by or on behalf of the Ombudsman in the course of an investigation cannot be disclosed except for the purpose of the investigation or to a royal commission. The same sort of protection is given to information obtained in the course of an investigation of a complaint about police conduct by new subsections (4) and (5).

Offences in relation to Complaints

Section 49(1) provides that it is an offence to make a false representation where the complaint would not, apart from the false representation, be liable to be investigated under the Act. The penalty for an offence under section 49(1), which is presently $2 000, is increased to $5 000 or imprisonment for one year, which better reflects the seriousness of the offence.

Similarly, the penalty for an offence under section 49(2) is increased to $5 000 or imprisonment for one year. The offence under section 49(2) is the offence of preventing or hindering a person making a complaint.

Variation of Assessment

There is no power for the authority to vary an assessment made under section 32 which the Commissioner has agreed

to. There have been instances where new information has come to light after an assessment had been agreed to by the Commissioner. When this happens it is desirable that the authority's assessment can be varied if need be in the light of the additional information, and section 50 is amended accordingly.

Statute Law Revision

The Parliamentary Counsel has done a statute law revision of the Act, which includes expressing the Act in gender neutral language. It is important to recognise that an independent and effective review of complaints against police will assist in maintaining public confidence in our Police Force. These amendments contribute to that goal.

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

Leave granted.

Clause 1: Short title

Clause 2: Commencement

Clauses 1 and 2 are formal.

Clause 3: Interpretation

Clause 3 inserts a definition of minor complaint into the principal Act. It provides that a complaint is a minor complaint that should be the subject of an informal inquiry if according to an agreement between the Authority and the Commissioner or a determination of the Minister—

1. it relates only to minor misconduct; or
2. the complaint is otherwise of a kind that warrants an informal inquiry only.

The Authority and the Commissioner may reach an agreement for this purpose and in the event of disagreement the Minister may determine the matter. The Minister must cause notice of an agreement or determination to be given to the Minister responsible for the administration of the police force and to be tabled before both Houses of Parliament within 15 sitting days of the date of the agreement or determination.

Clause 4: Substitution of ss. 9 and 10

Clause 4 is a drafting amendment to bring the principal Act into line with the *Public Sector Management Act 1995*.

Clause 5: Insertion of s. 11A

Clause 5 inserts a new section into the principal Act to provide that the Authority may delegate to a staff member of the Authority any of his or her powers or functions under the principal Act.

Clause 6: Amendment of s. 13—Constitution of internal investigation branch of police force

The proposed new section 22A provides that the Authority may raise matters for investigation on his or her own initiative. As a result, it is not accurate to refer in the principal Act only to complaints—matters may be investigated that have not arisen from a complaint. Clause 6 makes this consequential amendment to section 13 of the principal Act.

Clause 7: Amendment of heading to Part 4

Clause 7 is a consequential amendment—*see clause 6*.

Clause 8: Amendment of s. 16—Complaints to which this Act applies

In its current form section 16 of the principal Act allows complaints made to be made by members of the police force only to the Authority. It excludes complaints made by a member of the police force to another member. The amendment will allow a complaint to be made by a member to another member if it is in writing in a form approved by the Commissioner.

Clause 9: Amendment of s. 19—Action on complaint being made to Authority

Clause 9 is a consequential amendment.

Clause 10: Insertion of s. 21A

Clause 10 inserts a new section into the principal Act to provide for the informal resolution of minor complaints.

The proposed section provides that where the Authority determines that a complaint is a minor complaint that should be the subject of an informal inquiry, the Authority must notify the Commissioner of the determination and refer the complaint to a member of the police force. The complainant must be notified that such a determination has been made and told that they may, during the informal inquiry or within 14 days of receipt of particulars of the outcome of the informal inquiry, request that the complaint be formally investigated. The Commissioner must ensure that a report of the results of the inquiry and any action taken is prepared and delivered to the Authority as soon as practicable. At any time before or within 14 days after receipt of a report the Authority may determine that the complaint be investigated under the other provisions of the principal Act. Information obtained in relation to the subject matter of a complaint during an informal inquiry cannot be used in proceedings in respect of a breach of discipline before the Tribunal unless the proceedings are against a member of the police force who has allegedly provided false information with the intention of obstructing the proper resolution of the complaint.

The proposed section also provides that the Authority may delegate many of his or her powers under the section to the Commissioner and that these may be the subject of further delegation by the Commissioner.

Clause 11: Insertion of s. 22A

Clause 11 inserts a new section into the principal Act to provide that the Authority may, on his or her own initiative, raise a matter for investigation if it is a matter of public interest, concerns conduct of a member of the police force that may result in that member being charged with an offence or breach of discipline or is about the practices, procedures or policies of the police force. If the Commissioner disagrees that a matter raised by the Authority should be the subject of an informal inquiry, he or she may notify the Authority of that disagreement and if the matter cannot be resolved by agreement between the Authority and the Commissioner the Authority may refer it to the Minister for determination.

Clause 12: Amendment of s. 23—Determination that matter be investigated by Authority

Clause 12 makes consequential amendments to section 23 of the principal Act—*see clause 6*.

Clause 13: Amendment of s. 24—Effect of certain determinations of Authority

Clause 13 makes consequential amendments to section 24 of the principal Act—*see clause 6*.

Clause 14: Amendment of s. 25—Investigations by internal investigation branch

Clause 14 makes consequential amendments to section 25 of the principal Act—*see clause 6*. It also inserts a provision that provides that where a member of the internal investigation branch seeks information from a person for the purposes of an investigation, that person must not, if so directed in writing by the Authority, divulge or communicate to any other person the fact that an investigation is being or has been carried out or that he or she has been requested or required to provide information. The maximum penalty for the offence is $2 500 or imprisonment for six months. This provision does not prevent a person from whom information has been sought from consulting a legal practitioner or a member of the police force whose conduct has been under investigation from divulging or communicating particulars of the outcome of the investigation.

Currently, where a member of the police force about whose conduct a complaint has been made is given directions by a member of the internal investigation branch they must be told of the general nature of the complaint. The proposed amendment provides that they must be told the particulars of the matter under investigation.

The clause also inserts a provision that a person other than a member of the police force who furnishes information or makes a statement to a member of the internal investigation branch knowing that it is false or misleading in a material particular is guilty of an offence. The maximum penalty for the offence is $2 500 or imprisonment for six months.

Clause 15: Amendment of s. 26—Powers of Authority to oversee investigations by internal investigation branch

Clause 15 makes consequential amendments to section 26 of the principal Act—*see clause 6*. It also makes provision for the Authority to give directions directly to the officer in charge of the internal investigation branch as to the matters to be investigated, or the methods to be employed, in relation to a particular investigation under the principal Act. The Commissioner may, by writing, advise the Authority of his or her disagreement with such a direction and, in that event, the direction will cease to be binding unless or until the matter is resolved by agreement between the Authority and the Commissioner or by determination of the Minister. The Minister responsible for the administration of the police force must be notified, in writing, of any determination made by the Minister.

Clause 16: Repeal of s. 27

Clause 16 repeals section 27 of the principal Act. It required the internal investigation branch to maintain a register of complaints. The Authority does this under section 29 of the principal Act.

Clause 17: Amendment of s. 28—Investigation of matters by Authority

Clause 17 makes consequential amendments to section 28 of the principal Act—*see clause 6*. It also inserts a provision that provides that where the Authority seeks information from a person for the purposes of an investigation, that person must not, if so directed in writing by the Authority, divulge or communicate to any other person the fact that an investigation is being or has been carried out or that he or she has been requested or required to provide information. The maximum penalty for the offence is $2 500 or imprisonment for six months. This provision does not prevent a person from whom information has been sought from consulting a legal practitioner or a member of the police force whose conduct has been under investigation from divulging or communicating particulars of the outcome of the investigation.

Currently, where a member of the police force about whose conduct a complaint has been made is required by the Authority to provide information or attend before him or her they must be told the general nature of the complaint. The proposed amendment provides that they must be told the particulars of the matter under investigation.

Clause 18: Substitution of s. 29

Section 29 of the principal Act provides that the Authority is to maintain a register containing particulars of each complaint made to him or her or of which he or she has been notified under section 18. The proposed amendment provides that the register is also to contain particulars of each matter raised by the Authority for investigation on his or her own initiative.

Clause 19: Amendment of s. 31—Reports of investigations by internal investigation branch to be furnished to Authority

Clause 19 makes a consequential amendment to section 31 of the principal Act—*see clause 6*.

Clause 20: Amendment of s. 32—Authority to make assessment and recommendations in relation to investigations by internal investigation branch

Clause 20 makes consequential amendments to section 32 of the principal Act—*see clause 6*.

Clause 21: Amendment of s. 33—Authority to report on and make assessment and recommendations in relation to investigation carried out by Authority

Clause 21 makes a consequential amendment to section 33 of the principal Act—*see clause 6*.

Clause 22: Amendment of s. 34—Recommendations of Authority and consequential action by Commissioner

Clause 22 makes consequential amendments to section 34 of the principal Act—*see clause 6*. In its current form, section 34 provides that the Minister can only make a determination to charge a member of the police force with an offence or breach of discipline after consultation with the Attorney-General. The proposed amendment provides that consultation is to occur with the Minister responsible for the administration of the police force and the Director of Public Prosecutions instead of the Attorney-General.

Clause 23: Amendment of s. 35—Commissioner to notify Authority of laying of charges or other action consequential on investigation

Clause 23 makes a consequential amendment to section 35 of the principal Act—*see clause 6*.

Clause 24: Amendment of s. 36—Particulars in relation to matter under investigation to be entered in register and furnished to complainant and member of police force concerned

Clause 24 makes consequential amendments to section 36 of the principal Act—*see clause 6*.

Clause 25: Amendment of s. 39—Charges in respect of breach of discipline

Clause 25 makes a consequential amendment to section 39 of the principal Act—*see clause 6*.

Clause 26: Substitution of s. 45

In its current form, section 45 provides that where a party to proceedings before the Tribunal requests reasons in writing within seven days of the decision the Tribunal must give reasons in writing. The proposed amendment provides that the Tribunal must also give reasons in writing if the Authority makes a request within seven days of the Tribunal making a decision.

Clause 27: Amendment of s. 46—Appeal against decision of Tribunal or punishment for breach of discipline

Clause 27 makes a consequential amendment to section 46 of the principal Act—*see clause 6*.

Clause 28: Amendment of s. 47—Application to Supreme Court as to powers and duties under Act

Clause 28 makes a consequential amendment to section 47 of the principal Act—*see clause 6*.

Clause 29: Amendment of s. 48—Secrecy

In its current form section 48 prevents the Authority and the Commissioner from divulging information acquired under the principal Act without the permission of the Minister. This restriction is removed by the amendments proposed under the clause. Section 48 will continue to contain prohibition of unauthorised disclosure of information by past or present officers of the police force or persons acting under the direction or authority of the Authority. The current exception to this allowing disclosure in court proceedings or breach of police discipline proceedings is narrowed under the clause so that it applies only to proceedings in respect of an offence or breach of discipline relating to the subject matter of an investigation under the principal Act. The clause adds further exceptions allowing consultation with a legal practitioner in relation to a matter under investigation and disclosure by a member of the police force whose conduct has been under investigation of the outcome of the investigation. The clause also makes it clear that the Authority or the Commissioner cannot be required to disclose information acquired under the principal Act except where the requirement is made in proceedings in respect of an offence or a breach of discipline relating to the subject matter of an investigation.

Clause 30: Amendment of s. 49—Offences in relation to complaints

Clause 30 amends section 49 of the principal Act by increasing the maximum penalties under the section from $2 000 to $5 000 or imprisonment for one year.

Clause 31: Amendment of s. 50—Authority may revoke or vary determinations, assessments, etc.

Section 50 currently allows the Authority to revoke or vary a determination made by the Authority under this Act. The proposed amendment provides that the Authority may also revoke or vary an assessment or recommendation made by the Authority under this Act.

Clause 32: Amendment of s. 51—Authority and Commissioner may report to Ministers

In its current form section 51 provides that the Authority or the Commissioner may report to the Minister on any matter arising under the principal Act. The proposed amendment allows them to also report to the Minister responsible for the administration of the police force.

Clause 33: Amendment of s. 52—Annual and special reports to Parliament by Authority

Clause 33 makes a consequential amendment to section 52 of the principal Act—*see clause 6*.

SCHEDULE

Further Amendments of Principal Act

The schedule contains statute law revision amendments to the principal Act.

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

DE FACTO RELATIONSHIPS BILL

Consideration in Committee of the recommendations of the conference.

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

That the recommendations of the conference be agreed to.

The first amendment relates to whether or not the Act should extend to homosexual relationships. The conference finally agreed, with some reluctance on the part of some members but not on my part, that the Council should not insist on extending the operation of the Bill beyond *de facto* heterosexual couples to those involved in homosexual relationships. The reasons for that have been debated at length in this Council. Suffice to say that the Bill itself is a significant reform of the law relating to resolution of property disputes between *de facto* couples.

The Government believes that that is the area which should be the focus of the legislation and that if it were to extend to homosexual couples it then raises other questions about other relationships, for example, two brothers living together, two sisters living together, brother and sister, or

other persons who might be related but not in a sexual relationship living together, and issues which might arise in relation to distribution of property. As I said in the course of the debate on this Bill, the law already recognises in a number of areas *de facto* relationships between a man and woman. This Bill sought to address issues relating to those relationships rather than extending it.

The second amendment deals with the certified agreements. The Bill, as it left the Legislative Council, provided for the lawyers's certificate to include also a certification as to the disclosure of all material assets. There was concern, first, about the onus being on the legal practitioner and the consequence of that in terms of costs to the party if the lawyer was required to certify to that. It was therefore agreed in the spirit of compromise that there should be a modification to the provision so that no longer should the legal practitioner be required to give that certificate but only a certificate in relation to the assurances given by the party being advised by the lawyer that the party was not acting under coercion or undue influence. Notwithstanding that, a certified agreement now becomes an agreement which contains a provision which is called the warranty of asset disclosure, under which each party warrants that he or she has disclosed all relevant assets to the other. The consequence of that warranty being breached is an action for damages.

The third amendment related to the variation of a written agreement by an oral agreement. The Government is strongly of the view that, except in relation to certificated agreements, the variation of a written agreement should be permitted by an oral agreement, and if it was not there may well be significant injustice, remembering that disputes in relation to property, except in respect of certificated agreements, will ultimately end up in a court. If there had been a course of conduct and an oral agreement which had modified an earlier written agreement and the court was unable to take into account the modifications and the oral variation, it is quite likely that injustice would occur. So the Government was able to persuade the conference that the Government's original proposal ought to be maintained. The Government is pleased with the outcome of the conference. It will allow the Bill to continue and to become part of the law of this State, and that will facilitate the resolution of property disputes between *de facto* couples in a way which is less costly, less complex and likely to be less dramatic than under the law as it exists at present.

The Hon. CAROLYN PICKLES: I want to make it perfectly clear that I strongly supported the Bill, and the amendments that we have been successful in passing have strengthened it. However, I must say that I am very disappointed that the conference did not agree to include my amendment to extend the Bill to cover people living in homosexual relationships. Whether or not people like it, these relationships exist, and sooner or later members of Parliament in this place will have to recognise the validity of those relationships in law to ensure that they receive fairness before the law. In between the Bill being debated in this Council and the Bill going to another place and then subsequently to a conference, I received correspondence from the Archbishop of Adelaide, the Most Reverend Leonard Falkner, who in fact opposed the whole Bill but, more particularly, the issue to deal with homosexual relationships. However, he did raise an interesting point, that these sorts of relationships could be dealt with if one looked at the whole context of a domestic relationship.

I flag here that I am interested in looking at the possibility of introducing a private member's Bill that may well do just that. Nevertheless, there is a difference in the relationships between brothers and sisters, and uncles and aunts, and between a homosexual couple living in a *bona fide* relationship which they may well live in for many years. It is a question of the Parliament being prepared to recognise that those relationships exist and to ensure that fairness before the law is achieved for people, no matter what their sexuality. We recognise that in other legislation to do with employment. We recognise it in other ways, so I am not quite sure why we cannot particularly recognise it here.

The Hon. Sandra Kanck: It is an issue of morality.

The Hon. CAROLYN PICKLES: Yes, I think the morality issue has crept in here, although we did try to keep that out. I am keen to ensure that these people are not subjected to any form of discrimination, which I believe they are subjected to if we do not recognise their validity to have their own kinds of relationships. No matter how some people may object to those, they exist and they are often very true and valid relationships. As we know, many heterosexual relationships are not particularly long lasting and often end in violence and disaster. As members of Parliament, we are not here to judge whether one form of relationship is more valid than the other. This was an issue of fairness for me, and I do believe that a level of discrimination is inherent here. However, I was not prepared to risk the Bill being lost by insisting on my amendment, because we have made important progress.

I acknowledge the Attorney for moving this Bill in the first place. It is a Bill that is long overdue, and that is an indictment, too, on the former Labor Government. It should have introduced something along these lines. As I said in my second reading speech, we were optimistic that we could bring all these arrangements under the Family Law Act but that would, of course, require all States to agree. We would probably have to wait until hell freezes over before we could do that. As we have seen with the gun legislation, it is not an easy task. I acknowledge the Attorney for having the courage to introduce this Bill. It is long overdue and it is a good reform, but it does not go far enough.

The Hon. SANDRA KANCK: When this Bill was first introduced into this Chamber, I looked at the possibility of introducing an amendment to include homosexual relationships in its ambit. The Opposition beat me to the punch on it, but I certainly was very supportive of the Opposition's amendment. I am very disappointed that it has now been withdrawn as a result of a Government threat to withdraw the Bill if it did not get its way on this clause. As we all recognise, the majority of people who live in *de facto* relationships are heterosexual, and it is the women who have been getting the bad side of the breakdown of these relationships when it comes to property settlements. Given that, I felt that the cost of having the Bill withdrawn was just not worth it. I certainly was interested in exploring the morality issue that was obviously fuelling some Liberal members and was quite curious to read some of the contributions.

The Hon. Carolyn Pickles interjecting:

The Hon. SANDRA KANCK: Yes, exactly. Some of the contributions in the House of Assembly are amazing. The member for Lee (Mr Joe Rossi) introduced some quite astounding material into his speech, inferring that couples who lived in homosexual relationships may well be lying that they were homosexual and suggesting that they are somehow

involved in Social Security fraud. I could not see how he made that great leap in—

The Hon. Carolyn Pickles interjecting:

The Hon. SANDRA KANCK: It really defied any sort of thinking, but that is the way he thinks. He went on to describe *de facto* relationships, regardless of sexuality of the couples involved as 'deceitful, dishonest relationships'. I am not quite sure which planet he comes from. The member for Hartley suggested that until we have homosexual marriages—and knowing him, he would not support that anyway—we cannot consider *de facto* homosexual relationships in this legislation because there is no reference point. However, he failed to admit that if a Bill was introduced into this Parliament to recognise homosexual marriages it would have no chance because there would be no recognition of homosexual relationships to pave the way.

As I see it, we have done a two steps forward and one step back dance. We have put *de facto* relationships on this footing, and that is where we have gone two steps forward, but we have gone one step backward by making sure that homosexual relationships cannot be included. I acknowledge the Government for introducing the legislation in the first place. It has recognised the reality of *de facto* heterosexual relationships, but the sad thing is that the Government has been unable to recognise the reality of homosexual relationships.

The Hon. K.T. GRIFFIN: I do not accept that there is a level of discrimination in the decision which the conference took. The fact of the matter is that before this Bill was brought into the Parliament there were no provisions for dealing with the settlement of property disputes upon the break-up of a heterosexual *de facto* relationship other than through the law of constructive trusts. What the Government sought to do was to bring in legislation which provided an easier mechanism for dealing with that matter.

The Hon. Sandra Kanck: We think that's good.

The Hon. K.T. GRIFFIN: I know you do. I am just saying that, but that does not mean that, because homosexual couples have not been included, this legislation is in any way discriminatory. The fact of the matter is that there was no provision previously other than through the law of constructive trusts. The Government has decided in this one category to provide an alternative mechanism to deal with that. That does not mean that there is discrimination against other groups as a result of not acting in relation to them, because the *status quo* in relation to them is maintained.

The Hon. Carolyn Pickles: It could be said that heterosexuals have an advantage under this legislation.

The Hon. K.T. GRIFFIN: 'Advantage' is different from 'discrimination'. 'Discrimination' suggests that it is wrong or offensive and in some way to be decried.

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: We can argue about the meaning of words, but in my view 'discrimination' has that connotation. In relation to the Hon. Sandra Kanck's statement that this Bill represents two steps forward and one step backward, I disagree. It represents two steps forward, but it represents no step backward. The issue of same sex—

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: We won't get into a big debate about that. We can deal with a variety of other issues if we want to extend the debate in that respect. In terms of homosexual couples, there is still an opportunity to deal with the settlement of property disputes through the law relating to constructive trusts. In my view, that is the appropriate way to deal with that issue, and that is the view of the Government. The moment you get into the recognition of same sex couples in the context of this legislation, in a sense you open up a Pandora's Box in relation to a whole range of other relationships, because this provides an opportunity for the courts to make orders relating to property which, in the normal course, may not be regarded as the property of another person. The domestic relationship of a *de facto* couple living as husband and wife, as though they are married when they are not married in law, involves a variety of other issues. If the Hon. Caroline Pickles introduces her private member's Bill, we will deal with that at that time, but for the moment I acknowledge the indication from both the Leader of the Opposition in this place and the Hon. Sandra Kanck that notwithstanding their own disappointment this is nevertheless an important reform for the law.

Motion carried.

CRIMINAL INJURIES COMPENSATION (LEVY) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 July. Page 1805.)

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their support for the increase in the levy. I note the Leader of the Opposition's intention to move amendments to implement certain recommendations made by the Legislative Review Committee in its report on the Criminal Injuries Compensation Act. Some criticism has been levelled at the Government for the time it has taken to implement the recommendations in the report. However, I remind members that I tabled a response to the report on 30 November 1995. I advised that, while the report was considered to be fair and balanced and while the Government would like to indicate support for the recommendations, the reality was that no funds were available to implement any recommendations that would add to the cost of criminal injuries compensation. That position has not changed.

The increase in the levy provided for in the Government Bill will not be enough to fund the changes to be moved by the Leader of the Opposition. The Legislative Review Committee acknowledged that its recommendations could result in increased costs to the fund. The Leader of the Opposition has suggested that her amendments will make the compensation scheme fairer without blowing the budget. I am not aware of the costings relied on by the Leader of the Opposition. However, as the Hon. Mr Lawson has indicated, the recommendations of the report were not costed by the committee. The Government considers that care should be taken in implementing the recommendations without a full appreciation of the cost implications.

It is worth noting that according to the Legislative Review Committee report South Australia is already at the higher end of the range when it comes to *per capita* expenditure on criminal injury compensation. For the year 1995-96, the Government's overall contribution to the fund from Consolidated Revenue was $9.6 million. It is difficult to know the full impact that the proposed amendments may have on the fund. Obviously, they would increase payments at a time when the Government and the taxpayers are not in a position to fund those increases. The Hon. Mr Redford has queried the compensation payments paid out and the administration costs of the fund. As forecast in the second reading explanation, the compensation payments totalled $13.6 million in 1994-95

compared with $13.2 million in 1993-94. However, the total paid out of the fund in 1994-95 was $14.6 million. This figure included *ex gratia* compensation payments of $159 000, $320 000 in grants to the Victims of Crime Service, as it then was, and other costs of $505 000. The total amount paid out of the criminal injuries compensation fund in 1995-96 was $13.3 million.

I think it is important to recognise that this scheme operates very largely on the basis of payments out of the Consolidated Account being made to those who are victims of criminal behaviour who are suffering serious injury and loss. Ultimately, what is paid to them is regarded as a contribution by the taxpayers towards helping these people to overcome the trauma of a criminal event that has affected their life. Obviously, there is a statutory right to a payment. I suppose it is a misnomer to call it criminal injuries compensation; it is more likely a recognition of a contribution by taxpayers of the consequences of criminal behaviour, some of which can be recovered from the offender, but only a small proportion is actually recovered.

The Leader of the Opposition has proposed amendments to link certain forms of compensation under the Act to the consumer price index. The amendments apply to compensation for grief under section 7(7)(c) and (8)(b) and the $1 000 multiplier in subsection 8(a)(ii)(B). These amendments go further than the recommendation of the Legislative Review Committee. The committee's recommendation related only to the multiplier of $1 000. The Government opposes linking the compensation to CPI adjustments. The amendments will have an ongoing impact on the fund as the figures would be indexed annually. The extent of the impact would depend on future increases in the CPI.

The Hon. Mr Redford has also sought information about the likely cost of changing the minimum amount of compensation payable from $1 000 to $500. I have been advised that lowering the threshold to $500 is likely to result in additional costs to the fund in excess of $300 000, with $200 000 of that sum being for the costs and disbursements incurred on each claim. In other words, for every claim where the victim receives $500, the legal costs and disbursements, which include medical reports, are likely to exceed $1 000. In fact, it has been suggested to me that the minimum award should be increased, following a recent court decision where a person was awarded $1 000 for very minor injuries which really constituted some bruising associated with mild psychiatric symptoms.

The Government is opposed to a change in the standard of proof in relation to the commission of the offence to the 'balance of probabilities'. If the standard is changed, the situation could arise where a claimant who proves on the balance of probabilities that an offence was committed could still make a successful claim even though the alleged defendant had been acquitted of the offence because the prosecution was unable to prove beyond reasonable doubt that the offence was committed. Such a result is contrary to the scheme of the Act, which is based on providing compensation for the victims of criminal offences, not civil wrongs.

The Hon. Mr Redford asked what would be the cost of changing the standard of proof to the balance of probabilities and whether it might lead to an increase in fraudulent claims. It is difficult to estimate the number of claims that might fall within this category and the consequential costs thereof. However, difficulties have already arisen with claims where intoxicated victims allege that they must have been assaulted when the injuries are equally consistent with the victim having fallen.

The Hon. Mr Redford has queried the experience interstate on the issue of fraudulent claims. I do not have this information available. For example, contact with the Victorian Criminal Injuries Tribunal shows that it does not keep figures on fraudulent claims. I am advised that at the pre-hearing stage it is not uncommon for a magistrate to indicate to a claimant that he or she does not appear to have sufficient grounds for a claim. However, these are not necessarily fraudulent claims.

The Legislative Review Committee indicated that South Australia is the only jurisdiction 'in which a claimant is explicitly required to prove the commission of the offence in which the injury was suffered was beyond reasonable doubt.' However, as pointed out in appendix A of the report, the Western Australia scheme would not, except in certain circumstances, allow a claim where the defendant has been acquitted.

My response to the Legislative Review Committee's report also dealt with the issue of reporting on the fund. I proposed that information about the operation of the criminal injuries compensation scheme should be included in the annual report of the Attorney-General's Department. I have requested that this information be included in the report for 1995-96.

The Hon. Mr Redford has suggested that consideration could be given afresh to how we assess compensation. He also referred to counselling. The fund provides grants to the Victims Support Service (formerly Victims of Crime). This service provides counselling and support to the victims of criminal offences. There have been suggestions, even from supporters of victims from time to time, that the so-called compensation ought to be abolished and the funds diverted to providing support services for victims of a wider range of criminal behaviour, but that is not a matter that the Government has endorsed.

The Legislative Review Committee report also recommended that an examination should be undertaken into the costs, benefits and viability of a compensation scheme where less emphasis is placed on monetary compensation and a higher priority is given and increased resources are diverted to the provision of adequate support services. This runs counter to the finding of a survey undertaken by the Office of Crime Statistics, the results of which were published in its 1995 research bulletin, *Criminal Injuries Compensation in South Australia*. The victims interviewed had two main criticisms of the then current scheme. These were that the levels of compensation were too low and the time taken to finalise applications. At the time that the survey was undertaken, the maximum payable was $10 000. Victims in the study were asked to nominate in order of importance the three areas which the Government should be developing to improve the position of victims of crime. Some 7.5 per cent of respondents mentioned more counselling services. I note that for some reason this result was not published in that research bulletin.

I also advise that consideration is being given in the Crown Solicitor's office to the operation of the Act and the possible need for amendments to it as a result of experience over recent years. The Government considers that any amendments proposed by the Leader of the Opposition should be debated in the context of other possible amendments to the Act rather than included in this Bill, which is intended to deal only with an increase in the levy. I thank honourable

members for their contributions and advise that, in the Committee stage, the Government will oppose the amendments moved by the Leader of the Opposition.

Bill read a second time.

In Committee.

Clause 1—'Short title.'

The Hon. CAROLYN PICKLES: I move:

Page 1, line 10—Leave out 'Levy' and substitute 'Miscellaneous'.

This amendment changes the title of the Bill to reflect the fact that, should the Opposition's amendments be passed, the Bill will do more than just increase the levy. I should like to take the opportunity to respond to some of the contributions made by honourable members. The main point that seemed to be made by the Hon. Mr Lawson and the Hon. Mr Redford related to costing. The Attorney-General has given us some detail, but it is a pity that the Legislative Review Committee did not call him or anyone from his department to ask about that very issue.

The Hon. K.T. Griffin interjecting:

The Hon. CAROLYN PICKLES: Did you give costings?

The Hon. K.T. Griffin: As far as I know, we did.

The Hon. CAROLYN PICKLES: Were costings given?

The Hon. R.D. Lawson interjecting:

The Hon. CAROLYN PICKLES: But you still went ahead. That is good. I am supporting your committee. Even if the amendments are not word for word what the committee said—and those recommendations raised matters of fairness—we are talking about improvements to the fairness of the scheme based on recommendations carefully considered after hearing a substantial body of evidence and we now understand that costings were given. So, despite the fact that there was the issue of costings, the committee went ahead and supported these recommendations. Secondly, the proposed amendments do not represent fundamental changes to the scheme. In the case of altering the standard of proof required there would be only a relatively minor number of claimants who would benefit from such a change. In relation to decreasing the qualifying amount of compensation, of course there will be an increased number of potential claimants, but the pay-out figures will be only in the range of $500 to $1 000 in each case. I acknowledge that there will be administrative costs associated with these extra claims.

In relation to the indexing of compensation amounts, by definition the increase in payouts merely creeps up incrementally at the rate of inflation, so we are not talking literally about drastic increases in the liabilities of the compensation fund. Thirdly, the Attorney has access to the statistics that he has referred to in the Council today and he has put some detail in there which presumably the Legislative Review Committee also had access to but chose not to take into consideration when making its recommendations. It obviously thought that its recommendations were so important that it wished to proceed with them. The Hon. Mr Redford also made the point that levies may need to be set at a level to cater for the amendments we have proposed, and it is open to members or the Government to set appropriate levy rates by amendment, if necessary, which will be entirely consistent with the objects of the Bill. I will deal with the other issues raised as we go through the other sections of the Bill.

The Hon. K.T. GRIFFIN: To some extent one should use this amendment as a test for other amendments, although I will certainly want to address remarks on those other amendments when we get to them. It is important for me to make some observations which will particularly refer to the CPI adjustments and to proposed new sections 2A and 2B. Obviously the Government rejects the proposition and will strenuously oppose the amendment proposed by the Leader of the Opposition. Whether or not 'miscellaneous' is substituted for 'levy' as a necessary consequences of the other amendments, notwithstanding I will presume for the moment that the weight of numbers will be against me.

New clause 2A inserts definitions of 'CPI' and 'CPI adjustment', which is consequential upon amendments in new clause 2B, which amends section 7, so that certain payments are indexed to CPI. The amendments apply to the compensation for grief under section 7, subsections (7)(c) and (8)(b), of the Act and the $1 000 multiplier in subsection (8)(a)(ii)(B). The Government opposes linking the compensation under these provisions to CPI. The increase to the multiplier would have an effect on the general damages component of payments from the fund. This figure is not kept separately. However, it has been roughly estimated that the CPI increase will apply to 60 per cent of total payments. These amendments would have an ongoing impact on the fund as the figures would be automatically adjusted on an annual basis.

Provisions dealing with payments for grief were first inserted in 1986. They provide for a solation payment identical to that in the Wrongs Act. The payment in the Wrongs Act is not linked to CPI. The Legislative Review Committee's recommendations did not extend to indexation of payments for grief. A number of commentators have considered the issue of solation payments. Most are agreed that payments of solation, whether made as payments for grief, bereavement or loss of society, are an arbitrary acknowledgment of an essentially unquantifiable loss. They are not intended to provide financial support. There is no rational basis for saying that a particular amount represents appropriate compensation.

Given the nature of the payment it is not seen to be any reason for linking increases in the payment to CPI as it is not an award to which the costs of living determinations are relevant. The same can be said of payments for non-financial loss. The amendment yet adds financial value to the non-financial loss by adding a CPI adjustment. Therefore, the amendments in clause 2A and new clause 2B, paragraphs (a) to (d) are opposed. Clause 2B(e) seeks to reduce the minimum threshold for payments under the Act from $1 000 to $500.

The Legislative Review Committee acknowledged that there is a good case for restricting or eliminating very small claims. One factor raised by the committee in support of a minimum was the incidence of legal and other expenses which tend to be disproportionately high where an award is small, for example, the previous minimum figure of $100. The Legislative Review Committee advised that it was unable to determine what number of potential claims would be eliminated by the minimum $1 000 set in the legislation, nor could it estimate the aggregate annual saving to the scheme in consequence of the change. However, it did advise that the figures for 1993 showed that 65 claims out of 813 were under $1 000, while in 1994, 135 out of 1 000 were under $1 000. It recommended that the minimum be decreased to $500.

A number of assertions were made to the Legislative Review Committee that many victims would miss out because of the minimum in the Act. Some assertions were made that the introduction of the points system would reduce

compensation for general damages to about one seventh. However, that has not proved to be the case. Consequently I have been advised that any victim who sustains an injury sufficient to require hospitalisation or even treatment at an accident and emergency department would reach the threshold if the minimum ambulance fee was charged.

As indicated in my second reading response, it has been suggested to me that the minimum award should be increased following the recent court decision. I also indicated that I have been advised that lowering the threshold to $500 is likely to result in additional costs to the fund in excess of $300 000, with $200 000 of that sum being for the costs and disbursements incurred on each claim. As I said before—and I will repeat it, because it is an important figure—for every claim where the victim receives $500, the legal costs and disbursements, and that includes medical reports which are very expensive, are likely to exceed $1 000. On this basis it is arguable that the committee's concern regarding disproportionate costs and disbursements applies equally to a minimum of $500 as to $100.

I will make one other observation in relation to the CPI adjustment. Members will note that the Bill before us before amendment seeks to increase the amount of the levy by approximately 10 per cent. That is the inflation since 1993 to the current date. That will raise about $280 000. If you acknowledge that something close to $13 million is being paid out and that 60 per cent of that might be affected by the CPI adjustment, even a 3 per cent increase is a substantial amount of money—several hundred thousand dollars. I have not worked it out exactly, but if you apply that logically you are increasing on an annual basis the costs to the taxpayers of this State by something which I think on rough figuring might be around $300 000 per year. If the Opposition and the Democrats want to do that, it is a matter for them, but the Government does not support it.

The Hon. R.D. LAWSON: Perhaps I should raise a couple of general matters on this clause through questions to the Attorney and, in defence of the Legislative Review Committee, perhaps I should answer some of the implicit criticism by the Leader of the Opposition of the committee's report. First, it should be remembered that the committee was asked to report upon suggested changes to the Act shortly after substantial amendments had been made in 1993. At the time the committee was asked to report, the full effect of those changes on the monetary operations of the fund were not known. There had been only a few months of operation of the new amended provisions, and it was not possible to predict with any certainty what the precise effect would be of the amendments.

It was suggested by the Hon. Michael Elliott and the proponents for change that further changes ought to be made. The committee, comprised of both Labor and Liberal members in equal numbers, was unanimous in its conclusions that, notwithstanding the absence of financial data, certain things seemed good in principle and that is why the recommendations were made. If any criticism was implicit in what the Leader was saying, it is not fair criticism.

As to the fund, I point out to the Committee that for six years payments made under this fund increased markedly from $1.1 million in 1989 to $13.2 million in 1994. The figures year by year show that the payments increased from $1.1 million in 1989 to $2.4 million, to $3.9 million, to $5 million, to $8.7 million and to $13.2 million. In 1995 the rise was not so marked and went from $13.2 million to $13.6 million. In the latest figures provided by the Attorney in his announcement of 15 July payments were $13.3 million for the year ended 30 June 1996. So, for the first time we have experienced a drop of some $300 000 in total payments under the fund. Can the Attorney explain why payments appear to have flattened out in the last three years, being all in the order of $13 million, having risen so markedly for the six preceding years?

Secondly, in the second reading explanation it is said that the amount collected from the criminal injuries compensation levy was $3.07 million in 1994-95 but in the following year 1995-96 collections were predicted to be $2 819 000. Why are collections falling when one would have expected, in relation to this type of matter, that collections would rise year by year?

The Hon. K.T. GRIFFIN: To some extent one might attribute the levelling off of payments to the points system coming into effect. We have to remember that there is frequently a two or three year time frame for the flow-through of any amendments in legislation, and it may be that the levelling off is partially the effect of the points system. Although the number of claims is increasing, it is difficult to discern the exact reason for that. Comprehensive statistics have not been kept in the Crown-Solicitor's Office about this but, when the new computer systems go in, we will be better able to try to identify reasons and more carefully plot trends.

In relation to the levy, the most recent figure for 1995-96 has been provided to me, but there is no explanation why that has fallen. It may be that Community Services played a greater part in it; there may have been a higher number of defaults served out in the prison system. Since the end of the financial year we just have not had the time to have a look at whether or not there is some explanation for that fall.

I recollect that the number of expiation notices issued by police took a dramatic dive over last year or during the latter part of the previous financial year, and that obviously has an impact, because the levy is imposed upon expiation notices as much as it is upon convictions. That is supposition about the cause for the decline. It may be that the drop in the number of expiation notices in that period was largely the reason for the lower collection, remembering that there is a time lag between the issuing of expiation notices and the collection of the levy or, if the expiation notice is not paid, for the matter to go through the court system.

The Hon. CAROLYN PICKLES: I find it rather curious that the Hon. Mr Lawson, who is the Chairperson of the committee, brings in a report, which is a very good report, of which I am not at all critical. On the one hand he says, 'Yes, there were costings, and on the other hand they were not accurate costings,' for some reason because the changes had not—

The Hon. R.D. Lawson interjecting:

The Hon. CAROLYN PICKLES: You said they were, or you could not get them.

The Hon. R.D. Lawson interjecting:

The Hon. CAROLYN PICKLES: I am not sure what you are saying but, if there were costings, you knew precisely how much this scheme was going to cost. If you do not support it, why did you put your name to it? Sometimes you have to put your money where your mouth is, and that is what we are about. We believe that these amendments are fair and overdue and we are supporting the recommendations made very strongly in this report. I find it curious that the honourable member is no longer prepared to back up the recommendations in the report of the committee that he chaired.

The Hon. K.T. GRIFFIN: It is interesting that the Leader of the Opposition now raises the issue of CPI adjustments. The previous Government brought in a proposal to amend the criminal injuries levy. It wanted to increase it from $5 to $10 on expiation notices. The Australian Democrats and the then Liberal Opposition said, 'No, we will give you inflation.' I am locked into that, and that is why I brought forward the legislation on the basis of inflation.

The previous Government wanted to increase the levy but it did not want to increase all the other figures in the legislation, although it did take the step of increasing maximum compensation to $50 000. However, it also brought in the scaling system directed towards trying to control costs and also to recognise that there needed to be some responsible approach to criminal injuries compensation. There was all sorts of speculation then about the effect of the so-called 'point' system coming into effect, but very largely that has not come to fruition. So, it is rather curious that now in Opposition the Leader of the Opposition and her Party are beginning to insist that they want to increase various figures by inflation with a consequent cost to the budget, I might say, and to the taxpayers of this State, when in office the former Government was not really keen on taking this course of action.

The Hon. CAROLYN PICKLES: It is now 1996 and the honourable member is in government, and the Hon. Mr Lawson is the Chairperson of a committee that has made these recommendations. Labor members in this Chamber were also members of that committee, as was Mr Clarke, a member of another place, and he has spoken most strongly for these recommendations because he believes that the report should be implemented. How long will we continue to say that we can never change our mind about something that happened in 1993 or 1893? We are saying that this is a good idea and that we do not believe that the increased costs will be excessive. The Attorney has outlined how much it will add to his budget. I think he mentioned an increase per annum of $300 000. Is that right?

The Hon. K.T. GRIFFIN: That is right. If you increase all these, on the estimates which the Crown Solicitor has given, 60 per cent of the payouts will be affected. The calculation is something between $250 000 and $300 000, and that will escalate because it will happen every year: this year $300 000, next year $600 000. There is no point in increasing the levy.

The Hon. CAROLYN PICKLES: If the Government wants to introduce an amendment to increase the levy by CPI, then do so. I think that might well solve the problem.

The Hon. M.J. ELLIOTT: I am not certain whether I understood what the Attorney-General said, but I thought he said that the Wrongs Act was not indexed to CPI.

The Hon. K.T. Griffin: Solatium in the Wrongs Act is not indexed.

The Hon. M.J. ELLIOTT: I was informed that awards of compensation under the Act—and this is talking about victims of motor vehicle accidents—were linked to CPI, and that the award has risen from $1 000 in 1988 to $1 600 today.

The Hon. K.T. Griffin: What does that relate to?

The Hon. M.J. ELLIOTT: That is in relation to the multiplier. I suppose I am saying that the concept of CPI linkage has been present in other legislation.

The Hon. K.T. GRIFFIN: With respect, that is different because that was put into the Act when the previous Government brought in legislation to reduce the entitlement (and I repeat that) of citizens who were injured in a motor vehicle accident. A cap was put on non-economic loss, and that was indexed to take into account inflation because it was depriving people of rights which they then had.

If the Criminal Injuries Compensation Act did not exist, those who are injured as a result of criminal acts would have to sue the criminal, and they would be most unlikely to recover because we recover only several hundred thousand dollars a year from the wrongdoers.

In 1969 the then Attorney-General, Robin Millhouse, brought it in: it was $1 000 and it has increased from there. This legislation is not seeking to remove rights: it is in fact seeking to give rights which otherwise the citizen would not have, whereas with motor vehicle legislation it escalated, and the inflation factor, which is related to the escalators and to the multiplier, is really related to the context of that legislation removing citizens' rights in relation to common law damages.

The Hon. M.J. ELLIOTT: I really think that whether or not the legislation relating to the Wrongs Act was taking away a right is beside the point. The point is that under that Act the Government put an initial valuation on a unit of $1 000 and said, 'If $1 000 is a fair thing this year, then a fair thing next year is the same value,' and the same value next year is not $1 000: it is $1 000 plus CPI. It is saying, 'What is a fair thing today will be a fair thing next year by indexing it to CPI.' If we are saying, under this piece of legislation, that a particular amount is a fair thing, then the fair thing next year, according to that same logic, is that amount plus CPI.

I do not think it matters whether or not certain rights are taken away in relation that piece of legislation because in each case we are talking about what is a fair amount, and a linkage to CPI is an obvious thing to do; otherwise next year you will be saying, 'What we gave you last year was more generous than it should have been,' because in the next year you would effectively be taking CPI off the real value.

The Hon. K.T. GRIFFIN: The fact is that under the motor vehicle scheme motorists pay into the compulsory third party bodily insurance scheme and, if there is an increase in awards calculated actuarially, and that results in an additional cost to the fund, it is recovered from motorists. There you have the direct link between an injury and a person who is responsible for that injury covered by insurance.

In this case the taxpayers of South Australia pay. If you like, there is no commensurate payment, except a small payment from those who happen to commit some offence, most of which never result in an injury or a criminal act that will be the basis for a claim against the Criminal Injuries Compensation Fund—for example, motorists of this State, those who smoke cannabis, and those who commit other offences for which expiation notices are issued, except parking offences which are exempt.

So, you have no relationship, in my view, to the persons who actually are protected by the operation of the scheme. I suggest that there are significant differences between the two, and I do not think you are comparing apples with apples or like with like.

The Hon. M.J. ELLIOTT: There are two arguments: the first is what is a fair thing and, if you say that $1 000 is a fair thing now, I will say to you that in 12 months, logically, $1 000 plus CPI is a fair thing.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: This Parliament is actually putting a figure on what is a fair thing, and that is what the Act in essence does.

The Hon. R.D. Lawson: At the time the Act was passed.

The Hon. M.J. ELLIOTT: That is right.

The Hon. R.D. Lawson: Knowing what the budget was at that time.

The Hon. M.J. ELLIOTT: Let me finish that. I said there were two arguments. Morally, if you say, 'This is a fair thing now,' in a year that amount of money should retain its true value in real terms, and that is adding CPI. The Minister is saying, 'But it will now cost us an extra $300 000.' He is ignoring the fact that, in real terms, it is not costing an extra $300 000 because the reality is that the Government take follows CPI very closely as well.

An honourable member interjecting:

The Hon. M.J. ELLIOTT: It follows it very closely in a number of ways; in fact, the Government tends to lift all its charges by CPI and says, 'Look, this is not a real increase,' and that is an annual ritual. The fact is that one way or another—

The Hon. Carolyn Pickles: It is not a new tax.

The Hon. M.J. ELLIOTT: It is not a new tax. I am not criticising the Government for that. I am saying that in real terms the Government seeks to maintain its take in real terms by adjusting to CPI. It does not have to raise the tax percentages. If the economy follows CPI, then the take that the Government has follows CPI. For the Minister to say that this will cost us an extra couple of hundred thousand dollars is true and false at the same time. In real terms, Government take tends to follow CPI very closely as well. By denying CPI, you are saying that you will take a couple of hundred thousand dollars away from this system next year. That is the reality of what you are doing. If you refuse to index to CPI, in effect, you are saying that you will take several hundred thousand dollars out of the system next year, in real terms. That is what you are arguing for.

The Hon. K.T. GRIFFIN: You have to remember that this is a bottomless pit.

An honourable member interjecting:

The Hon. K.T. GRIFFIN: It is a bottomless pit. We have no control over the number of claims. If we can keep the crime rate down and the community can operate to do that, that helps. But there is no control over the number of claims; It is an automatic take on the budget.

The Hon. M.J. Elliott: The last three years have been stable; we were given that evidence.

The Hon. K.T. GRIFFIN: Well, it may have been, but who knows what will happen. There may be more claims and more awards. The number of claims is actually going up. Now every time someone is injured as a result of a criminal act they get a pamphlet which tells them about their rights in relation to criminal injuries compensation. There is always that prospect that it will keep going up, and if not in the short term then certainly in the longer term. Ultimately it will be something which the taxpayers of the State will have to fund. It is as simple as that, because it is a direct charge on the Consolidated Account. All I am saying is that you have to recognise that this piece of legislation creates a statutory entitlement. If there were no legislation, then those who are injured would not be entitled to anything. What the legislation seeks to do is to at least provide some support for people who have been injured rather than requiring them to go and sue the accused, the defendant or the offender because they will get nothing. There has to be a balance in this; you cannot have it all ways.

The Hon. R.D. LAWSON: It seems to me that there is another argument in response to the Hon. Michael Elliott. He says, for example, $1 000 was fixed as a fair thing, and if inflation occurs $1 000 is not a fair thing next year. That is not actually what was fixed. The sum of $1 000 was fixed in the legislation not because it was a fair thing in some abstract sense but because it was the appropriate amount at that time, having regard to the state of the fund, the state of the State's finances, and so on. It is an arbitrary figure. It was not a figure that was fixed as a fair thing to be adjusted from time to time. The previous Attorney in the Government formed by the Party of which the Leader was member identified precisely this problem when he was making the 1993 amendments and was being asked about the possibility of indexation. He said:

> I think a Government of whatever persuasion would have to consider the matter in the future, depending on the status of the fund.

The Labor Party rejected indexation on that occasion.

The Hon. G. Weatherill interjecting:

The Hon. R.D. LAWSON: I do not think it was actually in response to a particular question, it was actually a statement made by the then Attorney. The problem then is the same as the problem now. It is not a matter of having, in some abstract sense, to maintain the value of the payment.

The Hon. CAROLYN PICKLES: I reiterate that in these amendments the Opposition is implementing the recommendations of the committee that the Hon. Mr Lawson chaired. We thought that in 1996 terms they were fair and reasonable ones, and that is what we are doing. The Government is rejecting them because of cost. We are arguing that times change over three years—funnily enough—and we consider that there should be an increase in line with CPI. We think that is fair and reasonable, and we urge members to support our amendment.

The Committee divided on the amendment:

AYES (10)

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

NOES (9)

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

PAIR

Roberts, R. R.	Redford, A. J.

Majority of 1 for the Ayes.

Amendment thus carried; clause as amended passed.

Clause 2 passed.

New clauses 2A and 2B.

The Hon. CAROLYN PICKLES: I move:

Page 1, after line 15—Insert new clauses as follows:

2A. Section 4 of the principal Act is amended by inserting after the definition of 'court' the following definitions:

'CPI' means the Consumer Price Index (all groups index for Adelaide) published by the Commonwealth Statistician under the Census and Statistics Act 1905 of the Commonwealth;

'CPI adjusted' in relation to a specified sum, means that the specified sum is, in each calendar year subsequent to 1996, to be increased by the same percentage as the percentage increase in the CPI from the CPI in the September quarter of the year 1996 to the CPI in the September quarter of the relevant year;.

2B. Section 7 of the principal Act is amended—

(a) by striking out from subsection (7)(c) 'in the case of a spouse or a putative spouse or $3 000' and

substituting ', CPI adjusted, in the case of a spouse or a putative spouse or $3 000, CPI adjusted,';

(b) by striking out from subsection (8)(a)(ii)(B) 'the number so assigned by $1 000' and substituting '$1 000 (CPI adjusted) by the number so assigned';

(c) by inserting in subsection (8)(b)(i) '(CPI adjusted)' after '$4 200';

(d) by inserting in subsection (8)(b)(ii) '(CPI adjusted)' after '$3,,000';

(e) by striking out from subsection (10) '$1 000' and substituting '$500'.

In the first of these amendments based on the 1995 report of the Legislative Review Committee, we seek CPI indexing for all types of compensation provided for under the Act. The mechanism used here has been used in other legislation, notably the Wrongs Act in relation to damages for injury in motor vehicle accidents. The reason for the amendment is obvious: the amounts of compensation awarded year after year are being eroded in real terms simply due to inflation.

I acknowledge that the Legislative Review Committee simply recommended the indexing of the multiplier which in turn determines the amount of compensation paid to a run-of-the-mill claimant in the vast majority of cases. The Opposition proposes indexing of the maximum as well, although in real life it is virtually impossible to get to that maximum figure under the 1993 amendments. We have also recommended indexing of compensation for items such as the grief experienced by a parent or spouse when someone is murdered. There can be no reason in principle why such amounts of compensation should be treated differently to the awards of compensation for physical injuries to a victim. The amendment is a simple measure to ensure that the amounts which Parliament deemed to be adequate compensation in 1993 will retain their currency. These arguments were canvassed in relation to clause 1, which was passed, and we do not wish to canvass them further.

New clause 2B reduces the minimum amount of compensation under subsection 7(10). At present, the court cannot award compensation at all if the proper amount of compensation would otherwise come to less than $1 000. Numerous claimants would miss out altogether because the injury is not sufficiently serious, but that is not to say that the impact of the crime on that person is trivial. The crime may be a minor assault with a small amount of property damage, but the cost of medical treatment could still put the victim out of pocket, and they may be left scratched and bruised and even quite beaten. It is conceivable that damages could be less than $1 000 in these circumstances, and it is a hard thing to say that the victim should have no compensation whatsoever even though they have suffered more than a trivial injury, albeit a slight injury. True it is that the Labor Government raised the qualifying amount to $1 000 in 1993, but the Legislative Review Committee's examination of these issues last year was the first comprehensive review of the criminal injuries compensation system following the 1993 amendments. A refinement of the system in accordance with the committee's recommendations is therefore in order to ensure that the revised scheme is operating fairly.

With respect to the Hon. Mr Lawson's contribution, I think that, in part, it was somewhat pedantic. Perhaps that is a consequence of his legal training rather than an attempt to backpedal from the committee's recommendations. For instance, I have suggested that the committee found injustice, and the committee specifically said:

It has the potential to exclude many claims worthy of recompense.

I would have thought that that could mean that there is an injustice inherent in this scheme. I believe that if the claims are excluded from being worthy of recompense then there is an injustice, and this amendment seeks to remedy that.

The Hon. K.T. GRIFFIN: The amendments are opposed. I have already given the reasons in the debate on the previous amendment.

The Hon. R.D. LAWSON: The Leader describes the report of the Legislative Review Committee very flatteringly as the first comprehensive review of the criminal injuries compensation scheme. This was not a comprehensive review of the criminal injuries compensation scheme, and it did not purport to be. The committee's terms of reference were not to undertake a comprehensive review of the criminal injuries compensation scheme. The committee was given six narrow terms of reference fixed in the resolution proposed by the Hon. Michael Elliott. Its primary term of reference was to examine the effect of the introduction of the amendments to the scheme in 1993. A number of other matters were raised, one of which, I admit, was whether the award of damages should be indexed to inflation. But it was not a comprehensive review of the scheme. As has been previously mentioned, the committee did not have all the financial information and data to enable it to cost the effect of any of its recommendations.

The second point that I make is that, as I read it, I am being accused by the Leader of the Opposition of seeking to resile from the recommendations of the report. I do not resile from them. I think the recommendations of this report are fair and reasonable, albeit with limitations. If the State had the funds to make available to this scheme, all the funds that in an ideal world might be wanted for the scheme, I would certainly be in favour, after appropriate costing, of making the amendments. However, the simple fact is that the Opposition has not sought to cost the amendments that it proposes to impose upon the scheme and upon the State generally. It has not come up with any figures.

The Hon. T. Crothers interjecting:

The CHAIRMAN: Order! The honourable member will have a chance to have his say if he gives me the nod.

The Hon. R.D. LAWSON: I am not running away from the recommendations of this committee, but these recommendations have clear limitations—they are acknowledged in the report and I have acknowledged them here—and nothing has been said to suggest that, at this time, there are available for this particular purpose the funds which would undoubtedly be necessary to meet the amendments proposed.

The Hon. CAROLYN PICKLES: The terms of reference of the Legislative Review Committee, which I think cover most things, are:

That the Legislative Review Committee be required to examine and report on the following matters:

(1) the effect of the introduction on 12 August 1993 of the amendments to the Criminal Injuries Compensation Act;

(2) the adequacy of compensation being provided to victims of crime;

(3) whether the required burden of proof be changed from 'beyond reasonable doubt' to 'upon the balance of probabilities';

(4) whether the award of damages be indexed to inflation;

(5) the manner in which the Attorney-General has been exercising his discretion to make *ex gratia* payments; and

(6) other related matters.

I should have thought that would provide scope to write a very thorough report, which I believe has been written.

The Hon. T. CROTHERS: I wish to comment on a couple of statements made by the Hon. Mr Lawson. I do not know whether he was listening. but the Attorney-General, relative to an earlier amendment, said that it was unfortunate that statistics were not being kept in the main in respect of criminal injuries and the compensable amounts that were paid for them. I have considerable time for the Attorney-General's propriety and have no doubt that what he said would have been 110 per cent correct. The Hon. Mr Lawson said that the Opposition has never done its homework on statistics which would prove the case that it was seeking to make with regard to these amendments.

An honourable member interjecting:

The Hon. T. CROTHERS: I think he did. A check with *Hansard* will prove whether I am right or wrong. I point out that on a number of occasions during Question Time Opposition members have asked the Government to produce figures in respect of different matters, only to be refused with the remark, 'We are not going to do your work for you.' That is politics and I accept it. However, readers of *Hansard* must understand that not only do we have limitations, but we have limitations imposed upon us by the Government for its own reasons. Even if what I have said is not so—but it is—how can the Opposition put together a set of credible statistics which, one way or the other, would support its case or the Government's case in rebuttal when the basis of what the Attorney-General said is that unfortunately such statistics have not been kept? I rest my case.

The Hon. R.D. LAWSON: More to the point of this clause and the blanket attempt to index compensation, I point to the anomaly that will be created if the amendment is passed. Under section 23A of the Wrongs Act an amount is payable to the parents of a person wrongfully killed. The surviving parents of such a child, where the death occurred prior to the commencement of the 1974 amendment, are entitled to an amount not exceeding $1 000, or, where the death occurred after the commencement of that Act, an amount not exceeding $3 000. That figure is not indexed; the $3 000 has been fixed. That is the payment made by way of solatium for the suffering caused to parents by the death of a child. Why should the parents of a child who is killed receive a figure that is not indexed, whereas the victims of crime will receive an indexed amount?

Likewise, section 23B of the Wrongs Act provides that an amount not exceeding $4 200 is payable to the surviving spouse of a person wrongfully killed by way of solatium for the suffering caused to a spouse by that death. Again, that figure is not indexed. As has been pointed out, the multiplier for the calculation of pain and suffering under the Wrongs Act is an indexed amount, but the payments for solatium are not.

The Hon. M.J. Elliott interjecting:

The Hon. R.D. LAWSON: It is not an oversight. I have already pointed to the comment that was made by the former Attorney-General when this issue was raised previously. The figures in the Wrongs Act are not subject to any blanket indexation.

The Hon. CAROLYN PICKLES: If the Hon. Mr Lawson wishes to move an amendment along those lines, we shall be very happy to consider it.

The Hon. K.T. GRIFFIN: South Australia is the only State in Australia where solatium is payable. It has been suggested to me that that is an anomaly that we ought to address. However, I do not intend to address the repeal of payments for solatium.

The Government is considering escalating by about 10 per cent the levy that is imposed upon those who commit offences which do not result in what might be regarded as criminal offences, and that is likely to raise about $280 000 in a year. The Hon. Mr Elliott interjected earlier that if we want to index that he will be happy to support it. I do not accept his offer. I think it is preferable to come back to Parliament on each occasion when we want to increase it and have Parliament deal with it. I know that has its downside, such as the debate which is now going on, but I think it is appropriate to bring it back to the Parliament rather than deal with it by some automatic process. Fines and other payments are not automatically indexed.

Whilst the Crown Solicitor has said that it is estimated that the CPI increase would apply to 60 per cent of total payments, there is no saying what the multiplier effect may be if we increased the multiplier by the CPI. Even on 60 per cent of present payments, it is about $250 000 to $300 000 a year, so why bother. It is important that taxpayers, who are already paying $9.6 million towards criminal injuries compensation, should be entitled to expect that those in respect of whom levies are payable might bear a little more of the burden.

The Hon. T. CROTHERS: I want to take up the point on which the Attorney-General has touched about the taxpayer paying additional money for criminal injuries compensation. Those of us who have been here as long as I have will recall that this Government, and the former Labor Government of which I was a proud backbencher, put into play the right of the State to seize the assets of people involved in criminal activities. I refer to the assets which are annually seized by proper authorities from people involved in the drug trade. However, they are not the only people who have their property and moneys confiscated if it is proved that those assets have emanated from the pursuit of criminal activities.

The Hon. R.D. Lawson interjecting:

The Hon. T. CROTHERS: When the Hon. Mr. Lawson dubs me QC with the silver blade, I will accept the degree that he would award me. However, I would love to know how much additional revenue the State raises each year relative to the seizure of assets and moneys that have been garnered together by people who have been found guilty in our courts of being involved in criminal activity because it seems that, unless you can get the full figure—and whilst I understand what the Attorney is saying that additional moneys have to be met out of the taxpayers' purse—that might be just simply a slant on the area from where the money can originate. It seems that other alternatives are open to the Government if it is found that the cost of criminal injuries compensation is becoming heavy on the public purse. I say that knowing that this Government is a great proponent, as indeed was the previous Government, of the principle of user pays.

If the Attorney can possibly give me the figures of how much revenue the State generates in a full financial year from assets and other financial elements that have been confiscated due to criminal activity conducted by a proven felon, perhaps the Opposition might be constrained to look at it. However, unless we see the full picture, which so far has been pruned into obfuscation by the Government's activities, then how can we do anything else but what we are currently doing? In respect of the comments made by the Attorney, why did we change the position? Our position has changed to some extent because the methods of revenue raising by the Government

have changed in respect to the garnering of moneys and assets which can realise moneys from people involved in criminal activity.

The Hon. K.T. GRIFFIN: To give the figures, in 1994-95 the Consolidated Account paid $10.481 million; levies were $3.074 million; levy fees, $192 000; recoveries from offenders $461 000; confiscation of profits receipts, $274 000; and interest $191 000. In 1995-96 recoveries from offenders totalled $664 000 and levies $2.929 million. We recovered some legal fees of $2 000, interest was $54 000, confiscation of profits in the last financial year was $178 000 (lower than the previous year), and appropriation from Consolidated Account $9.605 million. So, the recoveries from confiscation of assets are minimal compared with the total cost of criminal injuries compensation. There will be new legislation dealing with crimes confiscation of assets in the next session. I will try to make it easier to recover ill-gotten gains. I hope that in the light of what the honourable member said, he and his Party will support it when it comes in. It does not contribute a significant amount to the Criminal Injuries Compensation Fund.

New clauses inserted.

New clause 2C—'Proof and evidence.'

The Hon. CAROLYN PICKLES: I move:

Insert new clause as follows:

2C. Section 8 of the principal Act is amended by striking out from subsection (1a)(a) 'beyond reasonable doubt' and substituting 'on the balance of probabilities'.

At present the commission of the criminal act said to result in the victim's injuries must be proved beyond reasonable doubt. This provision creates unfairness in those cases where, for some reason, the offender was never convicted. This could be, for example, because the accused has pleaded guilty to a lesser charge on the basis that the prosecuting authority would not proceed with prosecution of the offence which was said to cause injury. There are child sexual abuse cases where the prosecutor recommends that the matter not go to trial because of insufficient evidence against the accused person, even though there may be ample medical and psychiatric evidence to suggest that the abuse probably did take place.

It is noted in the contribution made by the Hon. Mr Lawson that there would be not very many cases where this amendment would make a difference, but we say that it is important to achieve justice in those limited number of cases. The usual standard of proof in civil cases, that is, including compensation or damages for personal injuries, is proof on the balance of probabilities. Therefore, we say that this is the standard of proof that should apply here. For the purpose of the legislation this would provide fair compensation to those injured as a result of the crimes being committed.

The report of the Legislative Review Committee noted the position in other jurisdictions as follows:

In all other jurisdictions in Australia the relevant legislation requires an application for criminal injuries compensation to prove the whole of his or her case on the balance of probabilities.

In other words, South Australia is the only jurisdiction in which a claimant is explicitly required to prove the commission of the offence in which the injury was suffered beyond reasonable doubt and the committee's recommendation was:

The committee recommends that the requirement for proof of the commission of an offence beyond reasonable doubt be removed and that an applicant be required to prove all elements of a claim under the Act on the balance of probabilities. Subsection (1)(a) of section 8 of the Act should be repealed.

The Hon. K.T. GRIFFIN: The Government opposes the amendment. This was the subject of consideration and recommendation by the Legislative Review Committee in its review of the Act. It is the Government's view that the current wording of the provision must remain as it is. In 1982 as Attorney-General I introduced an amendment to make it clear that the standard of proof in relation to the commission of the offence would be beyond reasonable doubt.

The question of the standard of proof had been raised by Mr Justice Mohr in *Barsch v McIlroy and the State of South Australia*. It had been argued in that case that under the then wording of section 8, that is, before the 1982 amendment, the offence could be proved on the balance of probabilities, despite the fact that the original complaint had been dismissed or one aspect of the case had been found not to be proved. While indicating that this argument had superficial attraction, Mr Justice Mohr indicated that such an approach would run contrary to reason and to the scheme of the Act (page 509).

Mr Justice Mohr suggested that if this was the case compensation could be recovered under the Act in circumstances which could only give rise to a civil liability. For example, an injured person knowing full well that criminal liability could not be established beyond reasonable doubt could take the course of laying a private complaint for assault, having it dismissed and then pursuing an application under the Act by establishing on the balance of probabilities that he or she had been assaulted. I agree with the comment of Mr Justice Mohr that such a result would run contrary to the scheme of the Act, which depends for its efficacy on the fact that an offence has been committed. If the standard is changed a situation could arise where a claimant who proves on the balance of probabilities that an offence was committed could still make a successful claim even though the alleged defendant had been acquitted of the offence because the prosecution was unable to prove beyond reasonable doubt that the offence was committed.

Further, it should be remembered that the moneys provided to victims under the Act cannot properly be characterised as compensation payments in the same style as a damages payment from a defendant to a plaintiff arising from a negligent act or omission; that is, it is not intended that the payment put a person back into the same position as he or she may have been before the injury but is an award of last resort.

In this instance the State has agreed to pay the victim moneys under certain terms and conditions as a recognition by the community of the harm which has been suffered by the claimant at the hands of a criminal. It is not correct to assert that a claim for a criminal injuries compensation is a civil claim for damages and should therefore be proved to the civil standard only. For those reasons the Government opposes new clause 2C. I refer particularly to the report of the Legislative Review Committee on the Criminal Injuries Compensation Act. The Leader of the Opposition is keen to use it as the basis for her amendments. It refers particularly to the retention of the higher standard of proof in relation to the commission of the offence when the Act was amended in 1986. It is important to note that the retention was defended by the then Attorney-General (Hon. Chris Sumner) in the following terms from what I presume is a reference to *Hansard* in the report:

The requirement that a causal connection between the commission of the offence and the injury in respect of which compensation is sought must be established beyond reasonable doubt has been criticised by the Law Society and individual legal practitioners. In a civil claim for compensation the causal connection between the behaviour complained of and the injury only has to be established on the balance of probabilities. The higher burden of proof imposed by section 8 places an additional burden on victims of crime. The deletion of the reference in section 8(1a) to the causal connection between the commission of the offence and the injury in respect of which compensation is sought will result in deserving victims recovering compensation who otherwise would not be compensated. The result will be that the commission of the crime must be established beyond reasonable doubt but that the injury sustained as a result of the offence will only need to be established on the balance of probabilities.

That is an appropriate reference. I repeat for the benefit of the Leader of the Opposition that, whilst it may be 10 years from 1986, it was the view of the Government of which she was a part that there should be no change in the burden of proof, and I ask her, even if she supports (as she is doing) this amendment, to reflect upon the conduct of the previous Government and perhaps have a change of heart in relation to this amendment ultimately when it gets to the consideration of it at a deadlock conference.

The Hon. M.J. ELLIOTT: I can only say that things would never change if the Government kept on saying, 'The previous Government did such and such and that justifies our not changing, either.' It is worth looking at the reasons why something was done, but it does not mean that you do not examine it again. Certainly, I am informed that there are a number of cases where there is absolutely no doubt that a person has been a victim but a conviction has not been recorded. I am told that a problem has arisen out of changes made to the laws relating to self defence. I am told that it is far easier for a person now to get off a charge of assault than it was a couple of years ago.

The Hon. K.T. Griffin: The same burden of proof applies.

The Hon. M.J. ELLIOTT: I am sorry: I am saying that I have great confidence in the advice that I have been given. In recent times that has been occurring, and there is no doubt in regard to date rape and child sex abuse that people are currently not receiving compensation that any reasonable person would say they should receive. However, the fact is that currently it is not occurring.

The Hon. CAROLYN PICKLES: The Attorney sets great store in quoting the former Attorney-General (Hon. Chris Sumner), who was a very good Attorney, but he is quoting from a report made 10 years ago. We have different people in this place; we have a different shadow Attorney and, if you can persuade the shadow Attorney-General of the validity of your arguments in a deadlock conference, I wish you luck. I believe that these recommendations—

The Hon. L.H. Davis: Don't you have the confidence to make the decision yourself?

The Hon. CAROLYN PICKLES: I have made a decision and I will tell you why I am making it. I am making it based on the recommendation of the Hon. Mr Lawson QC and his committee which he is now trying to squib out of. He is now trying to say that he does not really agree with these recommendations, yet he sat in committee for I do not know how long and made recommendations from which I will quote and which enabled the committee to reach its conclusions, as follows:

The criminal standard of proof is an onerous one, and rightly so. However, the committee considers that application of the same onerous standard to claimants for compensation is not warranted. It is not applied elsewhere in Australia and the committee is unconvinced that it eliminates or even discourages spurious claims. It is reasonable to expect that even with a less rigorous filter the courts will not award compensation in the absence of an appropriate degree of satisfaction that a claimant's injuries arose from criminal (as opposed to non-criminal) activity.

They moved on to give their recommendation, which I have already quoted, and that is why we have moved the new clause.

New clause inserted.

Clause 3 passed.

New clause 3A—'Annual report.'

The Hon. CAROLYN PICKLES: I move:

Page 1, after line 25—Insert new clause as follows:

3A. The following section is inserted in the principal Act after section 14b:

Annual report

14c (1) The Attorney-General must, on or before 30 September in each year, present to the President of the Legislative Council and the Speaker of the House of Assembly a report on the operation and administration of this Act during the previous financial year.

(2) The President and the Speaker must cause copies of the report to be laid before their respective Houses as soon as practicable after it is received.

The amendment requires the Attorney to report annually to Parliament on the operations of the Victims of Crime Compensation Scheme. There is no good reason why this amendment should not be imposed. It is a matter of accountability, opening up the Victims of Crime Compensation Scheme to scrutiny on a regular basis to see if it is doing the job that it is intended to do. Perhaps we will not need any more references being made to the Legislative Review Committee. The amendment reflects the recommendation contained in the Legislative Review Committee's report, which we support.

The Hon. K.T. GRIFFIN: The amendment is opposed. In my response to the Legislative Review Committee report I proposed that a report, setting out the operations of the scheme could be included in the Attorney-General's Department Annual Report. I have asked for this to occur for the 1995-96 annual report. In addition, since the Attorney-General's department has adopted accrual accounting for the 1996-97 financial year the Criminal Injuries Compensation Fund will be considered as an administrative fund of the department. Consequently, for 1996-97 and onwards, under accrual accounting, a financial statement of the CIC fund will be reported as an appendix to the department's own financial statement.

The format of the CIC fund financial statement would be on an accrual accounting basis showing revenues, expenditure, assets and liabilities. Given these moves to include information about the operation of the Criminal Injuries Compensation Fund into the Attorney-General's Department Annual Report, the Government does not see the need for an amendment to the Act to require the Attorney-General to prepare a separate report on the operation and administration of the Act.

The Hon. M.J. ELLIOTT: I am interested in having a closer look at what the Attorney is now proposing. As this matter will come back to us, I will support the amendment at this stage. I indicate that I am open to an alternative suggestion in this area.

New clause inserted.

Title passed.

Bill read a third time and passed.

ELECTRICITY CORPORATIONS (GENERATION CORPORATION) AMENDMENT BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendments.

FIREARMS (MISCELLANEOUS) AMENDMENT BILL

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

NATURAL GAS (INTERIM SUPPLY) (MISCELLANEOUS) AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

This Bill will amend the *Natural Gas (Interim Supply) Act 1985*.

The Natural Gas (Interim Supply) Act was enacted to put into place gas supply arrangements that replaced the gas sales contracts at that time, voided the PASA Future Requirements Agreement (which provided for a continuation of gas supply to the State) and reserved 546 PJ of gas for use in South Australia.

At the time of the enactment, South Australia was facing a gas supply crisis. The existing contracts expired in 1987 and there were insufficient supplies to meet the requirements of the PASA Future Requirements Agreement.

In addition to reserving gas supplies for the State, the Act provides the Minister with powers to restrict the production and sale of natural gas from outside the Cooper Basin region. In particular, the Act provides for the Minister to determine the use of ethane from the Cooper Basin and restricts the Natural Gas Authority of South Australia (NGASA) from interstate trading in gas.

The current known reserves of ethane in the Cooper Basin region have been fully committed—part has been allocated for mixture with methane to form part of the sales gas stream, part has been injected to assist with second order oil recovery and the remainder has been sold to ICI in NSW. However, if further ethane is discovered in any new reserves of petroleum in the Cooper Basin it will become subject to the obligation provided by the Act requiring Ministerial approval for its use.

Although it is the Government's intention to remove itself from the gas contractual stream, the restriction the Act places on NGASA to only allow it to sell gas to South Australian customers is anti-competitive.

In its current form the Act prohibits the production of gas in South Australia outside of the South Australian portion of the Cooper Basin without the specific approval of the Minister. The Act required the developers of the Katnook gas fields to seek additional Ministerial approval prior to production commencing. This need for Ministerial approval is seen by the ACCC as an impediment to a competitive market.

The Natural Gas (Interim Supply) Act is viewed by the Commonwealth and a number of the other States as a significant impediment to free and fair trade in gas. Under the Council of Australian Governments' Agreement of February 1994, repeal of anti-competitive legislation is expected prior to the introduction of gas reform.

Review of the Act is also required under the Competition Principles Agreement 'Legislation Review' obligation.

Currently the State has contracts for the supply of gas to the end of 2005. The South Australian Cooper Basin Producers are currently negotiating with South Australian gas end users for the sale of up to 300 PJ of natural gas from the Cooper Basin. Once these negotiations have been completed, expected by the end of 1996, and the Government is satisfied there is no longer the need to identify "reserved" gas as provided for by the Act, the *Natural Gas (Interim Supply) Act 1985* will be repealed.

In summary, the amendments proposed conclude all of the responsibilities of the South Australian Government under the February 1994 CoAG Agreement to repeal anti-competitive legislation by mid-1996.

I commend the Bill to Honourable Members.

Explanation of Clauses

Clause 1: Short title

Clause 2: Amendment of s. 3—Interpretation

This clause is consequential to the repeal of sections 10 and 11. The expressions deleted are only used in those sections.

Clause 3: Repeal of s. 6

Section 6 discharged the Gas Sales Contract. The clause has done its work and is repealed.

Clause 4: Repeal of ss. 8 to 11

In repealing sections 8, 9 and 11, the anti-competitive provisions of the Act are removed.

Section 8 generally reserves ethane in the reserves of petroleum in the Cooper Basin for the needs of industrial, commercial and domestic consumers in this State.

Section 9 requires the Authority to apply gas received under the Act to satisfy the needs of industrial, commercial and domestic consumers in this State.

Section 11 prohibits the production of natural gas under a petroleum production licence except—

- from the Cooper Basin region;
- for the purpose of supplying petroleum in pursuance of contractual obligations that existed at the commencement of the Act;
- where the production is an unavoidable consequence of production of crude oil;
- during the drilling or testing of a well;
- for a purpose approved by the Minister;
- for a purpose incidental to any of those referred to above.

Section 10 made the P.A.S.A Future Requirements Agreement void. The clause has done its work and is repealed.

Clause 5: Insertion of s. 16—Expiry of Act

New section 16 provides that the Act will expire on a date to be proclaimed.

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

WESTPAC/CHALLENGE BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

The purpose of the bill is to facilitate the transfer of the assets and liabilities of the Challenge Bank ('Challenge'), located in South Australia, to its parent, the Westpac Banking Corporation ('Westpac').

Challenge Bank Limited ACN 009 230 433 is a company incorporated in Western Australian and is a company within the meaning of the Corporations Law and is a company limited by shares.

Westpac Banking Corporation ARBN 007 457 141 is a body corporate constituted by an act of the Parliament of New South Wales.

Westpac carries on the business of banking throughout Australia and elsewhere in the world and Challenge carries on the business of banking principally in Western Australia and Victoria whilst having assets and liabilities situate in other States and Territories of Australia.

On 22 November 1995 the Treasurer of Australia consented, pursuant to Section 63 of the *Banking Act 1959* of the Commonwealth, to the amalgamation of the banking business of Challenge with that of Westpac.

On 19 April 1996, the Managing Director and Chief Executive Officer of Westpac, Mr Robert Joss, wrote to the Premier seeking the South Australian Government's sponsorship of legislation to facilitate the transfer of the Challenge banking business to Westpac following Westpac's acquisition of 100% of Challenge's issued share capital on 21 December 1995.

Members will be aware, from issues raised in the context of the Advance Bank/BankSA acquisition, that under the present Reserve Bank of Australia policy of one banking authority for each banking

group, Challenge is required to surrender its banking authority within a reasonable period of time. In addition, following an acquisition of one bank by another, the full benefits of the acquisition cannot be realised until there is full legal integration of the banking operation of the two banks. For these reasons therefore, with the exception of certain excluded assets, it is proposed that the assets and liabilities of Challenge in Australia will be transferred to its parent company, Westpac. In order to facilitate the transfer of the Challenge banking business, it is proposed that enabling legislation be passed in the States and Territories where Challenge conducts its business.

Westpac is seeking to have the relevant legislation in force by 1 October 1996.

The Bill will transfer to Westpac the assets and liabilities of Challenge with the exception of the goodwill owned by Challenge in South Australia. The name Challenge Bank will after legislative integration of the assets and liabilities of the two entities, no longer be used in South Australia. The trademarks in respect of the name of Challenge and the logo's used by Challenge will not be transferred to Westpac pursuant to the legislation but will not be used by Westpac in South Australia.

Challenge has approximately 25 employees and two branches in South Australia. The Government understands that Challenge employees will become employees of Westpac and the branches will become Westpac branches.

The assets being transferred by Challenge to Westpac in South Australia comprise:

Loans and receivables which for stamp duty purposes can be divided into two major groups:

1. Loans secured by mortgages and corporate debt securities;
2. Unsecured loans comprising leases, hire purchase agreements and other facilities.

Interest in real property as a lessee, furniture and fittings including computer equipment and a motor vehicle.

In South Australia, Challenge Bank has approximately 3 700 loan accounts and 1 500 deposit accounts.

The bulk of Challenge's banking operations are conducted in Western Australia. With only two Challenge branches operating in South Australia the Government is of the view that the absorption of these branches into Westpac's South Australian banking operations will not lead to any significant diminution in competition or consumer choice between banks in South Australia.

The merger of Challenge's South Australian operations with that of its parent, Westpac, can be regarded as a post acquisition reconstruction to comply with the present Reserve Bank policy of one banking authority for each banking group.

Westpac's banking operations in South Australia are significant. In addition to maintaining a significant branch network, Westpac recently established its national loan centre at Lockleys, which created hundreds of permanent jobs for South Australians.

The Bill itself is conventional and largely follows the form of legislation which has been enacted in respect of other bank mergers. The legislative approach to effect such mergers has in the past and will likely for some time in the future continue to be adopted because of the large number of accounts and other assets and liabilities required to be transferred.

In the absence of this type of legislation it would necessary to contact every customer of Challenge for the purposes of gaining their authorisation to transfer their accounts to Westpac. Even with the relatively small level of Challenge's banking operations in South Australia, the work involved in preparation of documents and contacting parties concerned would be a totally unproductive and expensive exercise for the bank. It would also cause great inconvenience to customers of the bank.

I commend the Bill to the House.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for the commencement of the South Australian Act at the same time as the Western Australian Act.

Clause 3: Interpretation

This clause contains the definitions required for the purposes of the new Act.

Clause 4: Act binds the Crown

The Act is to bind the Crown not only in right of South Australia but also in all its other capacities.

Clause 5: Territorial application of Act

The new Act is to apply not only within the State but also outside the State to the full extent of the legislative power of the State.

Clause 6: Application of Act in relation to banking business transferred under the Victorian Act

The new Act is not to apply to banking business transferred under the Victorian Act.

PART 2

VESTING OF CHALLENGE'S UNDERTAKING IN WESTPAC

Clause 7: Vesting of undertaking

This clause provides for the vesting of the undertaking of Challenge in Westpac.

Clause 8: Effect on contracts and instruments

This clause deals with the effect of the vesting on contracts and instruments to which Challenge is a party.

Clause 9: Transitional provisions

This clause deals with the effect of the transfer on various kinds of rights and liabilities and on various legal relationships.

Clause 10: Business name

This clause authorises Westpac to carry on business in South Australia during the transition period under the name *Challenge Bank Limited*.

Clause 11: Legal proceedings

Clause 12: Amendment of Court documents where Westpac erroneously made a party

These clauses deal with legal proceedings by or against Challenge and provide for their continuance in appropriate cases by or against Westpac.

Clause 13: Evidence

This clause deals with evidentiary questions arising from the vesting of Challenge's undertaking in Westpac.

Clause 14: Construction of references

This clause provides that references to Challenge in written documents are, in appropriate cases, to be read as references to Westpac.

PART 3

GENERAL

Clause 15: Payment in lieu of State taxes and charges

This clause requires Westpac to pay to the Treasurer an agreed amount to be in lieu of the taxes and charges that would otherwise have been payable to the State if the assets and liabilities had been transferred by conventional means.

Clause 16: Effect of things done under this Act

This is a saving provision preventing adverse consequences under the terms of contracts and other instruments.

Clause 17: Service of documents

This provides that service of a document on Challenge or Westpac is to be regarded as service on the other.

Clause 18: Excluded assets

This absolves persons dealing with Challenge or Westpac from inquiry about whether a particular asset is an excluded asset.

Clause 19: Certificates may be issued

This empowers the Chief Executive of Westpac to issue certificates certifying how property referred to in the certificate is affected by the operation of this Act.

Clause 20: Certificates in relation to charges

This enables Westpac to satisfy the requirements of section 268 of the Corporations Law by lodging a certificate with the ASC certifying the vesting of Challenge's undertaking in Westpac under the new Act.

Clause 21: Other property

This clause facilitates the registration of the vesting of property in Westpac under the new Act.

Clause 22: Certificates conclusive

This makes a certificate issued under the new Act conclusive evidence in the absence of proof to the contrary.

Clause 23: Application of banking laws

This clause preserves the effect of laws governing the conduct of banking business except to the extent that they are necessarily excluded by the new Act.

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

GOVERNMENT BUSINESS ENTERPRISES (COMPETITION) BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendment.

LOCAL GOVERNMENT (WARD QUOTAS) AMENDMENT BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendment.

STATE EMERGENCY SERVICE (MISCELLANEOUS) AMENDMENT BILL

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

ADJOURNMENT

At 5.40 p.m. the Council adjourned until Tuesday 30 July at 2.15 p.m.