LEGISLATIVE COUNCIL

Thursday 1 August 1996

The PRESIDENT (Hon. Peter Dunn) took the Chair at 11 a.m. and read prayers.

CRIMINAL INJURIES COMPENSATION (LEVY) AMENDMENT BILL

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

That the sitting of the Legislative Council be not suspended during the continuation of the conference on the Bill.

Motion carried.

JOINT COMMITTEE ON RETAIL SHOP TENANCIES

The Hon. K.T. GRIFFIN (Attorney-General) brought up the report of the joint committee, together with minutes of proceedings and evidence.

Report received. Ordered that report be printed.

STATUTES AMENDMENT (SENTENCING OF YOUNG OFFENDERS) BILL

Consideration in Committee of the House of Assembly's amendments:

Clause 30, page 7, lines 9 and 10—Leave out all words in these lines after 'is amended' and insert as follows:

(a) by striking out paragraph (b) of subsection (2);

(b) by inserting after subsection (2) the following subsection;

(2a) in imposing sanctions on a youth for illegal conduct—

(a) regard should be had to the deterrent effect any proposed sanction may have on the youth; and

(b) in the case of a youth dealt with by a court as an adult, or in any other case the court thinks appropriate (because of the nature or circumstances of the offence), regard should also be had to the deterrent effect any proposed sanction may have on other youths.

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

That the House of Assembly's amendments be agreed to.

The amendment from the House of Assembly relates to the issue of general deterrence. The amendments moved by the Legislative Council were considered by the House of Assembly. The issues raised by Council members were considered by the Government. It was clear from some of the matters raised that the amendments needed to be clarified in an endeavour to avoid the confusion which had developed and also to try to reinforce the view which the Government had in relation to the issue of general deterrence.

The amendment that now comes to us from the House of Assembly does a couple of things. It provides that, in the case of a youth dealt with by a court as an adult and in any other case the court things appropriate (because of the nature of the circumstances of the offence), regard should be had to the deterrent effect any proposed sanction may have on other youths. This makes it clear that the courts are not required to include a component for general deterrence in every sentence. The amendment requires the court, in the case of young offenders dealt with as adults, to consider general deterrence—to have regard to it. The form of the amendment has required that the reference to deterrence in section 3(2)(b) be removed from there and included in this new subsection.

As pointed out in the second reading speech, the amendment requiring the courts to have regard to general deterrence is seeking to restore the position that was thought to exist before the Supreme Court decision in *Schultz v Sparks*. That was the case which decided that general deterrence did not apply to the sentencing of young offenders. It is clear from the second reading speech of the Young Offenders Act 1993 that it was the Minister's intention that general deterrence should apply to the sentencing of young offenders. He said:

Under the current Children's Protection and Young Offenders Act, the primary emphasis is on the rehabilitative or welfare requirements of the child, while the need to protect the community and to hold young people accountable for their criminal acts is taken into consideration only 'where appropriate'. Unlike the adult system, the principle of general deterrence cannot be applied by the Children's Court when sentencing a young person. The Bill reverses this emphasis in order to ensure that the needs of victims in the community are given appropriate precedence.

As I indicated when we debated this earlier, *Justice Olsson v the Police*, which was a January 1995 decision, interpreted section 3 of the Young Offenders Act to mean that general deterrence was relevant to the sentencing of young offenders. He was actually persuaded to the contrary in the case of *Schultz v Sparks* which followed shortly after.

I just need to reiterate that the amendment does not seek to restore general deterrence across the board. Before *Schultz v Sparks*, if general deterrence applied, it applied in the sentencing of all young offenders. The Government considers that general deterrence should be considered when young offenders are dealt with as adults and that it may be appropriate in some cases only for a court to consider it when young offenders are dealt with as young offenders. In other words, we are giving the court some discretion. It is not mandatory but it is discretionary.

In 1990, the Parliament recognised that there was a need for general deterrence to apply to the sentencing of some young offenders when it amended section 7 of the Children's Protection and Young Offenders Act to provide that the court must, in exercising its powers under the Act, consider where the child is being dealt with as an adult for the offence and the deterrent effect that any sentence under consideration may have on the child or other persons.

This amendment is being made partly in response to pleas from the judiciary that the law be changed to allow them to give them proper place to general deterrence in sentencing young offenders. Over the years, the courts have been pointing out that there were young offenders who committed horrific crimes, who planned in cold blood to commit crimes, who showed no compunction for the crimes they committed, who were as dangerous and malevolent as professional criminals and who are evil.

This amendment is not agreed with by the Legislative Council. We will, without a doubt, be confronted by similar pleas from the judiciary to arm them with the sentencing powers that will allow them to impose appropriate sentences in all cases. It would be unfortunate if it got to that point, because the drafting which is now before us does provide a greater level of flexibility, puts beyond doubt the intention of the Government and what would be well received by the community at large—without the matter being dealt with in a gung-ho manner. No-one can suggest that, in dealing with this matter in debate, I have sought to be gung-ho about it; I have tried merely to ensure that flexibility is available to the court.

The Hon. CAROLYN PICKLES: When the Bill left the Legislative Council and went to another place, the shadow

Attorney-General, Mr Atkinson, the member for Spence, moved an amendment in an attempt to reach some kind of compromise. We are now at the stage where the only way the Legislative Council can consider that amendment is to move into a deadlock conference to try to sort it out behind the scenes, as it were. The member for Spence moved this amendment in an attempt to get some degree of cooperation along the path the Government wished to move. Certainly, we strongly reiterated our position on the issue of general deterrence. After all, it was the former Labor Government that moved the legislation in the first place; let us not forget that. We are not backing off from our position but attempting to reach some sort of compromise. At this stage we would prefer to move into a deadlock conference and discuss the issue to see whether some agreement can be reached on the wording.

The Hon. SANDRA KANCK: I do not think the Attorney will be surprised, based on the comments I made when the Bill was previously before this place, that I am also of the view that we have no alternative but to go to a deadlock conference. I asked the Attorney at that stage for some evidence that general deterrence has any impact on young people, I asked for evidence in my second reading speech, and I asked for that evidence in Committee and, at no stage, has that evidence been forthcoming, and nowhere in the literature can I find any evidence. We still await the report of the Juvenile Justice Advisory Committee, which might have been able to shed some light on that issue, but we do not have access to that documentation.

I read members' contributions in the House of Assembly to see why it had come to its decisions, and there was quite consistent reference to the recommendations of the select committee in 1993. Members kept saying that we should be making certain that we follow through with those recommendations and that the Bill that went through in October 1993 had those intentions. I was not a member of that Parliament. I have made my own decisions based on all the available information I can find and I stand by what I said previously: there is no evidence anywhere that general deterrence has any impact on young people.

The amendment put up by the Government in the House of Assembly still does not solve the problem. When we dealt with the matter before I believe the issue came down to the word 'must', and now the issue is the word 'should'. The word 'should' may not be quite as strong as 'must' but it almost approaches it, and I still do not see it giving flexibility to the judiciary that would otherwise be there. I will be holding steadfastly to the position that I took at the time this Bill left this Council previously.

Motion negatived.

DEVELOPMENT (MAJOR DEVELOPMENT ASSESSMENT) AMENDMENT BILL

Third reading.

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

That this Bill be now read a third time.

When the Bill was before the Council last night, the Hon. Mr Holloway moved an amendment to clause 14, 'Transitional provision.' I indicated that I would support that amendment in terms of the application of Supreme Court proceedings to various amendments where an application had been commenced before 30 July 1996. It is a safeguard amendment, in a sense, and the Government sees good reason for it. However, having indicated support for the amendment, I was unable to answer the question that the honourable member asked as to whether or not the Minister would be calling in the Collex project. I sought to defer third reading of the Bill, because it was such a specific question that the honourable member deserved the courtesy of a reply. I have spoken to the Minister this morning, and I can now give the unqualified guarantee that the honourable member is seeking: that the Collex development will not be called in.

I also understand that there had been some discussions between Labor Party representatives and the Minister yesterday, but the undertaking given by the Minister had not been conveyed to me and I was unable then to give an undertaking. Of course, I can give an undertaking if I wish, but I thought that I had better check. I am pleased that I did.

The Hon. P. Holloway interjecting:

The Hon. DIANA LAIDLAW: It would be embarrassing if I said something from which I had to back away. It has been a matter of only 12 hours. I thank honourable members for their cooperation in the meantime.

Bill read a third time and passed.

STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO) BILL

Consideration in Committee of the House of Assembly's amendments:

No. 1 Clause 23, page 6, line 13—Leave out '(as the Governor may determine)' and substitute ', as the Governor may determine (however, in the absence of a determination by the Governor, the oaths must be taken before the most senior puisne judge of the Supreme Court that is available)'.

No. 2 Clause 23, page 6, lines 16 and 17—Leave out '(as the Governor may determine)' and substitute ', as the Governor may determine (however, in the absence of a determination by the Governor, the oaths must be taken before the Chief Justice)'.

No. 3 Clause 24, page 6, line 35—Insert ', the Youth Court' after 'Relations Court'.

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

That the House of Assembly's amendments be agreed to.

Clause 23 amends section 7 of the principal Act and new subsection (2) provides that the Chief Justice is to take the judicial oath before the Governor or the most senior puisne judge who is available as the Governor may determine. There is a danger that those who arrange these things may forget to put a direction in the appointments as to who is to take the oath and there will need to be an additional confirmation by the Governor. Accordingly, the clause is amended to provide that, in the absence of a determination by the Governor, the Chief Justice will take the oath before the senior puisne judge.

The second amendment is similar to the last one. New subsection (3) provides that the puisne judges will take the oath before the Governor or the Chief Justice, as the Governor may determine. This subsection is amended to provide that, in the absence of a determination by the Governor, the oaths are to be taken before the Chief Justice. The amendment to section 28 of the Oaths Act provides that all registrars and deputy registrars of various courts are commissioners for taking affidavits. The Youth Court is not included in the courts referred to in the amendment and there is no reason why the Youth Court should not be included and the opportunity is taken to include it now.

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

Motion carried.

FAIR TRADING (MISCELLANEOUS) AMENDMENT BILL

Consideration in Committee of the House of Assembly's amendments:

No. 1 Clause 5, page 3, after line 24—Insert the following new section:

45C. The Governor may make regulations prescribing codes of practice to be complied with by persons who act as promoters of third-party trading schemes or supply goods or services as parties to such schemes.

No. 2 New clause, page 5, after line 34—Insert new clause as follows:

10. Section 97 of the principal Act is amended by striking out from subsection (3) 'this section' and substituting 'this Act'.

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

That the House of Assembly's amendments be agreed to.

These amendments are important. They are also interdependent. We are seeking to insert a regulation making power prescribing codes of practice to be complied with by persons who act as promoters of third party trading schemes or supply goods or services as parties to such schemes.

When I came to look at amendments which the Council had already passed, it occurred to me that we ought to try to cover the field in the sense that there may be general principles that should apply to those who are promoters of third party trading schemes or those who supply goods or services, and the appropriate way to deal with those principles is by way of a code of practice. It may be that it should even be more comprehensive than that. In relation to, say, one segment of the industry, it may be Smartcards for which we seek to promulgate a code of practice that deals with those in that class.

I was anxious to ensure that there was flexibility. Obviously, any regulations which are made will be the subject of review by the Legislative Review Committee and by members through the disallowance process. However, it is a useful power to have because the whole area of third party trading schemes is volatile. New ideas are being developed all the time and, rather than merely relying upon those parts of the law which we have already dealt with in the Bill, it would be helpful to have this additional provision. The amendments are interdependent. The second amendment is a matter of drafting to accommodate this additional regulation making power.

The Hon. ANNE LEVY: The Opposition certainly supports these amendments. I have not had a chance to check back with the original Act to which the second amendment refers, but from what the Attorney says it is just a technical or drafting amendment. I am happy to take his word on that.

With regard to the first amendment, there was discussion when the Bill was before the Council about codes of practice and the fact that breaking of codes of practice could be regarded as a breach of conditions that had been imposed in granting approval to a third party trading scheme. It would seem highly desirable that there be such provision for making a code of practice and, as the Attorney says, the fact that it will be done by means of regulation enables further parliamentary scrutiny of it should it be necessary at some later time. The Opposition supports these amendments.

The Hon. K.T. GRIFFIN: Section 97 deals with regulation making power and refers in subsection (3) to this section when in fact we want to encompass section 45C also. My understanding is that it is technical and I appreciate the support in relation to the substantive amendment.

Motion carried.

STATUTES AMENDMENT (UNIVERSITY COUNCILS) BILL

Adjourned debate on second reading.

(Continued from 31 July. Page 1917.)

The Hon. ANNE LEVY: The Opposition supports the second reading of this Bill, although it will move a number of amendments. I suppose one might ask why this Bill is before us at this time. I fully recognise the right of any Government to consider the composition of university councils at any stage—that is certainly within its rights—but the history of this Bill is worth indicating to other members of the Council. As I understand it, a businessman, who was a member of one of the university councils and who was also a good Liberal and friend of the Premier, said that he expected a university council to be run in the same way as a private business company. He became irritated when this did not occur. He ignored the fact that, whilst it must be run in a business-like way, a university is not a business because its core function is totally different from that of a business whose core function is to make money. This gentleman complained to the Premier, who indicated that university councils should be looked at in general.

So, the Government set up a review committee and chose as the chair of that committee someone who had previously stood for election to the council of the University of Adelaide but who had not been successful. One might perhaps think that the review was politically motivated in its setting up and that its chair was chosen so that, as a result, there would be opposition to democratic principles in the review. I do not wish to take up the time of the Council this morning in explaining or reiterating the values of our universities to South Australia and what, in fact, a university is about. Obviously, universities are about intellectual activity: they are the storehouses of intellectual activity for our community. They are concerned with teaching at a very high level; they are concerned with research, likewise at a very high level; and they are concerned with community service, recognising that they serve the communities which have set them up and which pay for them.

There is no doubt that the current university councils have some shortcomings. Having been a member of one university council for a number of years, I have long felt that the introduction of some standing orders, similar to those which apply in this place, would improve the deliberations of that university council a great deal. However, while I have proposed this at various times, it has not received the approval of the majority of the members of that university council. On the whole, there is no doubt that our university councils have worked very well. Our universities in South Australia are highly regarded in the national comparisons which are made in terms of the research they produce, the quality of that research, the various measures of research which on a *per capita* basis are produced in national figures, the community service responsibilities which our universities undertake, and their commitment to access and equity. In a whole range of matters, our universities score well indeed. Some do better than others in certain areas—and I certainly do not wish to make invidious comparisons—but there is no

doubt that South Australia is and has been extremely well served by its three universities, and we should be proud of them.

The Bill before seeks as a result of the review to change the structure of university councils. There is a group of people who ask why the Government is doing this. They say that the principle of 'if it ain't broke, don't fix it' should be applied. In other words, unless the councils are manifestly inefficient and deleterious to the universities, they should not be changed. As I have indicated, I think the workings of university councils could be improved. I recognise the right of the Government to change the composition of university councils if that is its wish. However, for whatever reasons, the proposals before us have been derived. A number of changes are being made to university councils, which I support completely. One change is for a smaller council size. Two of our universities have had councils of over 30 members. In my experience, that large number in itself has not inhibited the efficient functioning of those councils, but I see no reason why smaller councils should not be equally efficient and equally competent in being the governing body of our universities. So, we support the Government's right to decide to have a smaller number of council members.

The University of Adelaide has been very concerned that one of the principles of the Bill before us is that democracy will be lost. Currently, at the University of Adelaide, all members of the council are elected by different electoral bodies, but all the other members—with the exception of *ex officio* members such as the Vice Chancellor—are elected. This has not applied in other universities and, if the Government wishes to introduce this selection process as opposed to an election process, we do not wish to move amendments to change that Government view.

Certainly, we are pleased to see that the selection at Adelaide University will still allow for the election of three external members of the council who will continue to be elected by the body of graduates of the university, as they have been ever since the founding of the Adelaide University well over 100 years ago.

Certainly there have been changes to the Bill from the time it was first circulated which retain the principles of university autonomy. Adelaide University has been very concerned not only with democratic principles but also with the principle that universities should be autonomous. This is one of the greatest safeguards for intellectual freedom, if there is autonomy within the governing of our universities.

The system proposed in the legislation does retain autonomy, particularly since amendments were moved in the Lower House to the original draft Bill, so that the universities will retain their autonomy. Interestingly, this request for maintaining autonomy came from the University of Adelaide. I understand that they did not come from the other two universities, but the Government has decided to grant the autonomy to all our universities as a result of the request from Adelaide University.

A number of council members will be selected by a selection panel. For Flinders University and the University of South Australia, 10 such people will be selected; for Adelaide University seven will be selected; and three will be elected by the body of graduates. Those selected by the selection panel will have certain criteria established for them, and I am certainly pleased to see that amendments in the Lower House have clearly set down that those who are selected must have a commitment to education, particularly tertiary education, and have commitments to principles of social justice and access and equity—which are all principles that have been extremely important to all our universities. It is important that these matters be kept in mind when selection of council members is occurring.

Furthermore, when they are selected, they will be appointed to the council by the council itself. Initially, the Government had proposed that they would be appointed by the Governor in Council—in other words, the Cabinet would approve their appointment. There is always the potential danger of political inference if such a process is followed. I am not suggesting there would have been, but potentially it is there, and to have the members appointed by the council itself ensures the autonomy of the universities.

Of course, the composition of the selection panel is critical. I am glad to see that the Government did not accept the recommendations from the review committee regarding the composition of the selection panel. As proposed in the review document, entitled 'Balancing Town and Gown', the selection panel would have consisted of people holding various statutory positions or prominent positions in the community and, as proposed in the review, would have resulted in the selection panel being virtually entirely composed of middle aged, middle class white Anglo-Saxon males. I am pleased to see that not only the universities but also the Government itself felt that selection panels of that composition would not be appropriate.

What we now have is a selection panel whose members will be chosen by the Chancellor of each university, but following guidelines which have been drawn up by the councils of the universities themselves. It will be interesting to see what guidelines the councils develop, but I would certainly hope that the guidelines will deal with matters such as gender balance and age distribution—in other words, to include one or more young persons, people of different cultural backgrounds and with different life experiences.

It will be interesting to see what guidelines the universities draw up themselves for their selection panels. It is certainly reassuring that even the Government would not accept the selection panel composition that was originally proposed in the review document 'Balancing Town and Gown'.

I indicated a short time ago that the criteria for selection of people for university council will have to follow statutory obligations of selecting people who have an interest in and knowledge of tertiary education and certain desirable social attitudes, and the Bill also indicates that there must be gender balance on the resulting university council. I presume that each selection panel will wait until the elected members have been elected by the various electoral bodies—such as the academic staff, the students and so on—and then make their selections to ensure a balanced council, including such matters as gender balance.

When the Government Bill was received by the Council of the University of Adelaide, the greatest possible enthusiasm was expressed for this clause indicating that there should be gender balance on the council, and this enthusiasm came particularly from a former Liberal member of Parliament, who was absolutely delighted to see such a clause in legislation.

I now turn to some of the matters in the Bill before us about which I am not very happy. It seems to me that the Government's proposals indicate a great distrust of academics—why, I cannot imagine. The academics in this State have served the State very well, and it is they, far more than the members of council of a university, who give the university its standing and its acclaim and, in consequence, it is hard to

see why this distrust of academics is reflected in the Government legislation. I say this because in each university the number of academics on council is to be three only.

Initially the Government said two only, but it has relented and increased the number to three. Given that until now there have been eight academics on the councils of Adelaide and Flinders universities, a reduction to three is a very great reduction, and it is proportionately a far greater reduction for academics than it is for any other group on the university council. The academics are obviously perturbed about this and feel hurt that the disproportionate reduction in the numbers of academics seems to indicate a distrust and dislike of academics on the part of the Government—totally unwarranted, I would say. There is no reason whatsoever why there should have been this disproportionately greater reduction in academics than in any other group on the council.

I also am a bit concerned that the Government did not accept the Opposition proposal in the Lower House of increasing the number of student representatives on council beyond that set out in the Bill. We must remember that currently there are five students on the Adelaide University Council and similar numbers on the other councils. Students, of course, are vitally concerned in the decisions a university council makes, and I can certainly remember back to the days when there was no student representation on council, or very little student representation on council, and there was perpetual unrest in the universities; the students felt their views were not being heard, were not being taken account of and, consequently, used other means to bring their opinions to the attention of the management of the universities.

It is very healthy that there should be adequate student representation on university councils. Certainly the representation which has been there in the past few years has served the universities and the students very well. The Government is proposing two student representatives only: one postgraduate and one undergraduate. I will certainly be moving an amendment to increase that number to three, with the stipulation that at least one representative must be an undergraduate student and at least one representative must be a postgraduate student. It can be extremely lonely for a student on the council when they first attend. Of course, student representation tends to change more frequently than does that of more senior members of the council, and I am sure the students gain by having companions present (if only to second their motions) to give each other support. Given the very large number of students at our universities, particularly of undergraduate students—though thankfully the number of postgraduate students is increasing also—we feel it is appropriate that there should be three students on each university council.

I will also be moving amendments regarding the definition of a quorum. There can be argument as to what the size of a quorum should be. That proposed by the Government is less than 50 per cent of the members of the council. In my experience it is far more usual to say that a quorum consists of a half plus one. Apart from the size of the quorum the Government is proposing that the quorum should have a minimum specified number of external members. It is interesting the Government does not specify that there should be a minimum number of internal members: it is concerned only with the minimum number of external members.

The Hon. R.I. Lucas interjecting:

The Hon. ANNE LEVY: In my experience external members of council are just as diligent in turning up to council meetings and contribute and have done their homework just as much as internal members of councils. I am sure the Hon. Bernice Pfitzner would agree with me in this, having shared a spot on the council of the University of Adelaide with me for a number of years. The universities themselves are very firm that all members of council are equal members of council, in the same way as when anyone is appointed to the board of a public company: whatever their background, their actions as a board member must be in the interests of the company and not in the interests of any particular group or constituency from which they come.

The same applies on the university council: no matter whether a member is elected by one of a number of particular constituencies or selected, as will occur with the new legislation, all members of council have a duty to the university. That is their first priority. When acting as members of the university council, their first responsibility is to the university and, in consequence, it makes no difference what their background is, and it is insulting to suggest, in determining a quorum, that there are different categories of members of university councils. There may be different categories in the way they become members but, once they are members, they should all be treated equally, and I will move amendments to that effect.

A further amendment I shall move relates to the presence of members of Parliament on university councils. Currently, Adelaide and Flinders universities have five members of Parliament, and certainly when the size of council is being reduced it seems—and I am sure every one would agree—that five members of Parliament would be too many on a smaller university council. However, we have a strong feeling that there should be two members of Parliament on each university council. I say this not just because the universities are set up under State legislation and the State has an obvious and continuing interest in the functioning of our universities, but also because I feel members of Parliament can bring a different perspective to the deliberations of a university council in a way which is of great benefit to the universities. Members of Parliament bring an experience, a background and a knowledge which can be gained only as a member of Parliament and which will be different from that which is the background and experience of all other members of the council. We suggest only two members of Parliament, one from the Government side and the other from the Opposition side, with no distinction as to whether they should come from one House or the other. It could be that both came from one or other of the Houses of Parliament or one from each. However, we feel that two are desirable.

When the council of the University of Adelaide was discussing the draft Bill, the matter of members of Parliament being members of the council was not raised by any of the members of Parliament who were present. In fact, when they were about to discuss this point, we offered to leave the chamber so that they could discuss the members of Parliament issue freely without our listening. However, the other members of the council did not accept that invitation, said that they were happy for us to remain, and proceeded to comment most favourably on the value of the contributions that they had had by having members of Parliament on the council. It was quite flattering, not that any individuals were named, but there were members of Parliament present during the discussion, and none of us took part in it.

For the first time, the legislation, according to the Government, will allow for the cooption of members to the university council. In the past universities have sometimes

felt that cooption would be desirable. However, it seems to be going overboard to bring in cooption at the same time as bringing in the selection of members of the council. The argument for cooption is that members of the board may lack a particular skill or qualification that the council feels it would be desirable to have amongst its members. In consequence, if cooption is permitted, they can find someone in the community with these attributes, skills or qualifications and make them a member of the council.

I agree with that proposition when the entire council is being elected, but when there is a selection process for a sizeable number of members of the council—seven for Adelaide and 10 for the other two universities—it seems to me that cooption is unnecessary. The selection panel can consider the skills, abilities and qualifications of the members of the council, decide that a particular skill or qualification is not present, and select someone accordingly. I fail to see the necessity for cooption when there is a selection process and the particular skills and attributes of individuals can be taken into account. I shall move that there not be coopted members on the council. In consequence, suggesting the addition of two members of Parliament to the councils will not enlarge them because they will not be the coopted members that the Government has suggested. I hope, therefore, no-one will suggest that my proposal will increase the numbers on university councils.

There are a couple of other matters to which I want to draw attention, one of which I have not had a chance to discuss with anyone as it was drawn to my attention only last night. I shall be moving an amendment to replace the word 'employees' in a couple of places with 'academic and general staff.' This relates to clauses which state that people who are selected by the selection panel cannot be employees of the university. For Adelaide University, where there is an election process for external members, the Bill provides that the elected external people cannot be employees of the university. I shall be aiming to replace the word 'employees' with the words 'academic and general staff.' I am not opposing the prohibition, but I can recall instances a number of years ago when the definition used by the Government would have caused considerable problems.

An employee is anyone who receives payment for any work done. For example, an eminent lawyer in Adelaide may be invited to give a couple of lectures in a particular course in which he has undoubted expertise. He will be paid for those two lectures. Under the definition in the Act, that makes him an employee of the university, so he would not be eligible to be selected to be a member of the council, nor could he be elected by the graduate body to be a member of the council. I feel that would be manifestly unfair. He would not be classified as an academic staff member on the basis of two lectures a year, so he would fall between the stools, because he could not become a member of the council either as a member of the academic staff or as a selected or elected external member. I hope that my amendment will be acceptable to the Government. It will not alter the principle; it will make clear that those who are excluded from particular processes are academic and general staff rather than employees.

I am not sure about the situation with Flinders and the University of South Australia. However, I know that Adelaide University requested the Government to make a number of amendments to the University of Adelaide Act on matters quite unrelated to the composition of the council and the governance of the university. The University of Adelaide keeps a list of minor, non-controversial changes to its Act which would facilitate efficient administration of the affairs of the university. It never feels that it is worth opening up the Act just for these matters, but whenever the Act is being opened up it requests that these matters be included. I know that the university requested of the Minister the inclusion of three non-controversial amendments on matters other than the composition of the council, and I understood that the Minister had received this request sympathetically, but the amendments do not appear in the Bill. I shall not be moving the amendments. I feel that the Government should discuss the detailed wording of those amendments with the universities, because I would not have sufficient technical information to move them, particularly as this is the last day of the session.

If we had more time, the matter might be different. I ask the Minister why these incidental and non-controversial amendments have not been included as the university requested, seeing that they would certainly make the administration and management of the university more efficient and much simpler for the university to undertake? There is a great deal more that I could say about universities in this State. Again, because this is the last day of the sitting, I am sure members do not want lectures on what important and valuable institutions universities are. I will refrain from that, but I would not want it to be thought (if anyone ever reads *Hansard*) that I am not fully aware of the extremely important role played in South Australia by our three magnificent universities. I support the second reading.

The Hon. BERNICE PFITZNER: Being a relatively new member of the University of Adelaide Council and being a graduate of that university, I would like to make a contribution concentrating on that university. In speaking to the Bill I note that Minister Such has taken on some of the recommendations of the review done on university governance in July 1995 chaired by Mr Alan McGregor.

The Hon. Anne Levy interjecting:

The Hon. BERNICE PFITZNER: I note that the Hon. Anne Levy in giving some background with regard to the council has perhaps cast aspersions on the Chairman, but I find it difficult to accept that the Chairman would not have acted professionally in reviewing university governance. The McGregor Review recommends that the university councils function as governing bodies rather than as managerial bodies. As one of five members of Parliament on the council I note that the present council works under the existing Act, which provides:

> [the council] shall have the entire management and superintendence of the affairs of the university.

This will then be a major shift for the council as it has a lot of management input at present and perhaps not enough input of policy, strategy and review. As a member of the University of Adelaide Council, I believe this change will be most welcome and I hope that the enormous pile of paperwork that council members have to wade through at present monthly will be condensed accordingly, perhaps to fit in with the governing concept rather than a managerial one.

I also welcome the reduction in the number of council members from 35 to about 20. I note that the university prefers Indian law, that members be elected by the university Senate, rather than being appointed by the Government or elected by the staff. I note in the Bill that seven members will be appointed by the council on the recommendation of a selection committee; three members will be elected by the

Senate and, if the council so deems, one person co-opted by the council; three members of the academic staff elected by the academic staff; two members of the general staff elected by the general staff; and two students of the university, of whom one should be an undergraduate and one a postgraduate.

I also note that the university's submission to the Minister expressed its desire to maintain the five members of Parliament and, as the Hon. Ms Levy said, it is nice to be appreciated by other council members. However, I am aware that the McGregor review, in recommending against retaining members of Parliament, contains a provision for the co-option of people to be council members and perhaps that is a satisfactory compromise. This will ensure that those who are chosen also will be committed to the task of being a council member, which I know from experience, if done conscientiously, is a very time-consuming task. The composition of the council should have a balance of not only academics (which is the natural trend), but also of people with economic background as universities are increasingly getting involved in entrepreneurial business activities.

I also note that the selling of education is one method of being financially self sufficient and joint ventures are another method of expanding into other areas. As we are in the East Asian area, our tertiary students are to a large extent Asian. Asian students prefer Australian universities at present, not only because of our geographical proximity but also due at one stage to the Colombo Plan of the 1950s and 1960s. Many Asian parents have fond memories of their own student days in Adelaide and have sent their children back to universities in Adelaide and other Australian cities. I came to the University of Adelaide during the Colombo Plan era and, although not a Colombo Plan student myself, I studied with many Colombo Plan students who I know have sent their children back to Adelaide. So, I think the council should also have members with an empathy with Asian countries. At present we do have Dr Harry Medlin, who has great empathy with Asia and who has done much to foster the *alumni* ties of the university.

Having done undergraduate and postgraduate studies at the University of Adelaide , I am pleased to note that the university has scored highly on what is known as the Brennan index, which is one of the methods used to assess the quality of a university in terms of teaching, research and community service, with particular emphasis on research. The University of Adelaide is one of only five universities awarded top ranking. Other universities were Melbourne, Queensland, Western Australia and New South Wales, and Adelaide is ranked second in the 1996 Brennan index. As the university is 122 years old, it has many fixed ideas and ways of doing things. The university's response to this Bill has been constructive, but also perhaps a little defensive. I suppose that when a university is 122 years old it can be excused for having these sorts of feelings. Generally, the response to the Bill has been most constructive. In closing, I wholeheartedly support the Bill because it streamlines the role of the council and I am sure the university will accommodate such changes with enthusiasm once it sees that the council will have a smaller group of members, more committed, more skilled in policy making and with better lines of communication. I support the Bill.

The Hon. M.J. ELLIOTT: I support the second reading. The issues have been more than adequately canvassed by the Hon. Anne Levy, the Minister and the Hon. Bernice Pfitzner and so on this last day of the sitting I will not give an action replay on their comments, other than to indicate that this has been one of those Bills where, until the last three or four days, there has been virtually no activity in the community. I was approached about the Bill a week ago and asked what I was going to do and I said, essentially, there had been no request for change and everyone seemed happy.

It did not mean that I had not had any correspondence previously, but it had been low key. In the past couple of days all hell has broken loose and, when you are locked in the House and involved with other debates and you have telephone calls from people desperately wanting to talk to you to put various viewpoints, it makes the whole situation incredibly difficult. Nevertheless, without going through all the issues that have been canvassed by others in the second reading, I sat down yesterday morning and produced a checklist of the various issues which had been raised with me and those which I considered needed further attention. I then checked with the House of Assembly, and it seemed that almost all the issues that I had identified as needing attention were fixed up in the Lower House.

That is probably an unusual event in the House of Assembly, where the Government and the Opposition cooperate with each other, and where the Government listens to the Opposition. The Minister is to be complimented for showing a lot more flexibility than almost any other Minister I have seen in this Parliament for some time. He showed a great deal of reasonableness. Most of the issues have been picked up, but I have not seen the final form of the Bill or any further amendments.

The Hon. Anne Levy interjecting:

The Hon. M.J. ELLIOTT: It is not a criticism. I have not seen what further amendments will come forward, but on my understanding most of the issues that were of concern to me have been addressed. However, in Committee there may be still one or two amendments that I may be prepared to consider.

The Hon. R.D. LAWSON: I support the second reading of this Bill. The McGregor report recommended changes to university governance, and in this respect its findings mirrored closely those of the Hoare report, which was commissioned by the Australian Government. The McGregor report was in some senses disappointing because it seems that the case for changing university governance was not very strongly argued therein. It was assumed, as I read the report, that reducing the size of the university councils was necessarily a good thing.

I happen to agree, from my own personal perspective based on my experience as a member of the council of Flinders University, that that council was too large. However, I would have preferred to see from the McGregor report an examination of university governance in places other than Australia and a more reasoned case for reduction as well as a case which established that a smaller university council would produce more satisfy outcomes.

The Hon. Anne Levy: Good standing orders would help.

The Hon. R.D. LAWSON: Indeed. The Hon. Anne Levy interposes that good standing orders would help. Certainly Flinders University council has been well chaired while I have been on it by the Chancellor, Sister Diedre Jordan. However, there are difficulties managing any meeting comprising what is often more than 25 people. Management of the agenda at any university council meeting seems to be a critical function.

I have served under two university Vice Chancellors who, in effect, have the management of the agenda of the university. I do not want to single out either of those Vice Chancellors as in their own way they have been excellent Vice Chancellors. I do not single out any strengths or weaknesses of either of them, but my experience told me that the way in which the agenda is managed at a university council has a great deal of effect upon the outcomes achieved and the success and usefulness of the deliberations of council.

I have read some of the contributions made in another place on this Bill, and I was intrigued to read the speech of the member for Hart, who is a member of the council of the University of Adelaide. Whilst his contribution was no doubt delivered in good spirit, it seemed to betray a fundamental misunderstanding apparently on his part of the functions and responsibilities of a member of a university council. The story that the honourable member told was I am sure not at all atypical of parliamentary members of university councils. He spoke of the difficulties of attending a meeting, especially when one is not overly familiar with the matters to be discussed, the substantial agenda and the difficulty in keeping up with developments.

There is no doubt that being a member of a university council is an onerous responsibility as well as a significant privilege. It is incumbent on any member of a university council to become familiar not only with the agenda of council meetings but also with affairs within the university and issues that are concerning the staff and students of the university—issues that are academic, general and financial—and that requires not merely an examination of the council papers whenever a council meeting is called but also familiarising oneself with a large number of topics and discussing matters with a broad cross section not only of members of the council of the university but also of the university community generally.

I do not believe that, generally speaking—and I am not singling out the member for Hart or any other member or side of politics—the university councils have been terribly impressed with the overall standard of parliamentary representation on university councils. No doubt there are exceptions, but the comments I make are based upon discussions with representatives of all three university councils over a number of years. Personally, I think there should be parliamentary representation on university councils. However, I do not believe that experience shows that parliamentary members of university councils ought to be there merely by reason of the fact that one Party or other within the Parliament nominates them to that position. They ought to be there by reason of a selection process because independent arbiters consider that they have value to add to the deliberations of the council. I believe that we will continue to have parliamentary representatives on university councils, because some members will be able to demonstrate that they have the capacity, the willingness and the energy to devote to university affairs.

Whilst it is true that universities are creatures of State legislation, it seems to me to be an anomaly that there are no Federal parliamentarians on university councils. Clearly, Federal funding is a substantial component of universities. The Senate in particular—and also the House of Representatives—deals from time to time with issues of higher education. So, it seems to me that universities would have benefited if Federal parliamentary representatives from either side were members of university councils. It seems to me that representation on a university council is something that ought to be compulsory in the education of at least most senators. I made a submission to the McGregor committee which reviewed university governance. I urged that committee to recommend the continuance of parliamentary representation on university councils. My own feeling, without examining the matter in a great deal of detail, was that four parliamentary representatives (as was the case on the Flinders council) were too many, but that two representatives would be entirely appropriate.

The Hon. Anne Levy: That's what I'm suggesting.

The Hon. R.D. LAWSON: The Hon. Anne Levy says that that is what she is suggesting in amendments that she proposes to move. However, notwithstanding the view that I formed and submitted to both the Minister and the McGregor committee, I am now of the view that the best and most satisfactory arrangement is one under which parliamentary members will be selected on merit, if at all. Amendments have been made to the Bill as originally introduced by the Minister which in my view improve it and which, in particular, make it consistent with the reasonable requests of Flinders University in relation to that university. With those brief remarks, I support the second reading.

Bill read a second time.

POULTRY MEAT INDUSTRY ACT REPEAL BILL

Second reading.

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 provides for the repeal of the *Poultry Meat Industry Act 1969*.

In June 1995 the then Minister made a statement informing chicken meat processors and growers in South Australia of the Government's intention to repeal the Act and that deregulation of the chicken meat industry should take effect from 1 July 1996.

The decision to repeal the legislation followed a long period of consultation with the industry which included the release of a green paper in 1991 and a white paper in 1994 as well as many discussions with both processors and growers.

The amendments to the *Poultry Processing Act 1969*, which established the Poultry Meat Industry Committee and renamed the Act to be the *Poultry Meat Industry Act*, were enacted in 1976. These amendments which relate only to chicken meat production and the relationships between chicken meat processors and contract growers were enacted at a time following a period of instability in the industry. At the time all states except Tasmania enacted similar legislation as there was a concern that processors would act in an oppressive manner which could disadvantage growers. At the present time there are two major processors (Inghams Enterprises Pty Ltd and Steggles Ltd) and 77 contract growers. A third processing company Joe's Poultry Processors has indicated that it intends to sign contracts with growers for the supply of live chickens for processing.

When the legislation was enacted the conditions under which growers grew chickens and the prices they received were determined on a batch by batch basis. The *Poultry Meat Industry Act* has been in place for almost 20 years and contracts between processors and growers are now an established feature of the industry in South Australia. It is worth noting that contract chicken production is well established in Tasmania and New Zealand without specific legislation relating to the arrangements between chicken processors and their contract growers.

South Australia supports the National Competition Policy and will be required to review all legislation which restricts competition. There are aspects of the *Poultry Meat Industry Act* which could be used to restrict entry of new growers into the industry and prevent processors from increasing their production as well as authorising exclusive dealing which could be viewed as anti-competitive. This could also apply to the way the Committee operates in regard to growing fee determination and preparation of contracts. The Act

could operate to restrict interstate trade in live chickens contrary to section 92 of the *Commonwealth Constitution Act*.

In making the decision to repeal the Act, the Government has been mindful of the implications arising from National Competition Policy and also that reviews in Queensland and New South Wales during 1991/92 recommended that similar legislation in those States should be repealed. In any event, under National Competition Policy, the Act would have to be reviewed by the Government by the year 2000.

Growers have expressed concern that they will be disadvantaged because they consider themselves to be in a relatively weak bargaining position compared with the processors who could use their market power to reduce growing fees, alter contract conditions and increase the proportion of chickens grown on company farms. They are also concerned that there will be no legislative barriers to entry into the industry and that new growers will then be able to enter the industry which could result in the under utilisation of specialised growing facilities which may not be readily adapted for other purposes.

In the Government's view efficient growers are not at risk of being replaced. Growers are and will remain important participants in this industry as they own the specialised facilities which are required to grow the numbers of chickens for the modern chicken meat industry. The costs of establishing farms are very high. Industry estimates that it costs at least $500 000 to build two sheds capable of growing 60 000 birds a batch and this cost is a considerable barrier to new entrants and to companies wishing to establish their own growing farms. Processors have invested heavily in highly specialised breeding, hatching and processing facilities and depend on contract growers for a regular supply of the required numbers of good quality birds of the right size.

Chicken meat industries in other countries have developed without this type of legislation. In New Zealand the industry operates on a similar manner to the Australian industry without legislation and it is understood there is no shortage of people wishing to enter the industry which is an indication that the industry is successful enough to attract new entrants wishing to obtain contracts with the processing companies.

The intention to repeal the Act on 1 July 1996 was announced in June 1995 with the aim of providing a transition period to enable the industry, and particularly the contract growers, to prepare for deregulation. During the period since the announcement the Government has held a number of discussions with processors and growers, has arranged for a meeting of processors and growers with representatives from the Australian Competition and Consumer Commission and has commissioned a report on the industry at the growers' request.

Growers were concerned that following the repeal of the Act they would no longer be able to negotiate growing fees collectively with processors as such action could be in breach of trades practices legislation. Growers have been encouraged to seek an appropriate authorisation from the Australian Competition and Consumer Commission. This initiative has also been supported by the processors. Growers were initially reluctant to apply for authorisation due to concerns about the likely costs involved. However, both processors have indicated that they are prepared to submit the necessary applications and to provide the necessary financial support.

The Government, at the request of the growers, appointed Mr Des Cain, who has considerable experience in the Western Australian chicken meat industry to report on the South Australian chicken meat industry with the aim of providing a basis for a voluntary chicken meat industry code of practice. It is anticipated that the code of practice will address areas in the relationship between processors and growers not covered by contract and establish procedures to reduce the likelihood of disagreements occurring and proposing ways to deal with them should they arise.

Mr Cain's report did identify inefficiencies in the South Australian industry and recommended measures to increase overall efficiency but his report did not indicate that any benefits could be gained from continuing with the legislation.

Growers are concerned that they will be disadvantaged by deregulation but the Government's view is that the legislation has achieved its purpose and has supported the development of a modern chicken meat industry in South Australia.

Growers will have the same protections as are available to other business people who are required to enter into contractual relations. These protections include the provisions of the *Trade Practices Act*, the rules against misrepresentation, and the ability of a contracting party to negotiate that particular terms are included, which might include terms allowing access to an arbitration process should disputes over the contract arise.

The Government does not consider that there is a need for it to be involved in the commercial activities between processors and growers nor does it consider that the *Poultry Meat Industry Act* is still necessary for a mature industry.

I commend the Bill to honourable members.

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

ELECTORAL (DUTY TO VOTE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 4 July. Page 1632.)

The Hon. M.J. ELLIOTT: I rise to oppose the second reading. I am sure that it would come as no surprise to the Attorney-General that the Democrats take this view. This Bill is another variation on a theme in two previous Bills relating to the requirement for people to attend the polling place. We do not have compulsory voting in South Australia, merely compulsory attendance. This variation is the worst of the three that have been put forward so far, because under this system a person can apply to have their name taken off the role. I do not think the Government has thought this through, because there are a number of ramifications.

The first and most obvious one is that, whilst the Government might want to put forward an argument about whether or not people might want to exercise their right to vote on a particular day—and I argue that they already have that right because it is only attendance that is required—what will happen now is that a person will take themselves off the role and it will become far less flexible. You cannot just make a decision that you do or do not want to vote. You have to take yourself off the roll, and you have to go through procedures of getting back on. You get incensed by the nonsense with which someone is carrying on during an election campaign or you get convinced that perhaps you do want to vote and you are no longer on the roll. It offers less flexibility than simply the option to choose on a day whether or not you decide to attend the polling place. Of the variations that have been offered, this one is certainly the worst.

What made me realise that there were even greater problems is that I was sitting on a train only a few weeks ago talking to a person who said that they had just been put on jury duty. At that stage, this person had not been allocated to a case or anything. I was discussing what this all meant, and so on. One thing this person said was, 'Well, if I didn't come I'd face a $1 000 fine.' We in this society do have a number of obligations put on us, and I have argued that before in relation to compulsory attendance at the polls.

One requirement is to make oneself available for jury duty. If you do not do that, you face a $1 000 fine or three months in gaol. If one compares that with the requirement to attend a polling place—and any reasonable reason can get you off the fine—one sees that there is no comparison in terms of the level of penalty that one faces. I do not think that the Attorney-General would suggest that jury duty should be an optional thing; I have not heard him make that suggestion. If one is called up for jury duty, it is compulsory and it is an expectation and an obligation within our society.

The requirement to attend the poll is also not an unreasonable requirement and expectation of a participatory democra-

cy where we are seeking to get truly representative Government. I have argued before that we get truly representative Government only if we try to ensure that everyone votes. However, I will not go into that argument further. I do make the comparison of a $1 000 fine or three months gaol for not doing jury duty and a trivial fine, by comparison, for failure to attend the polls.

While I was reading the Juries Act just to check the level of fine and confirming what I had been told, I came across something even more interesting. I had not realised—but I suppose it would be obvious if I had thought about it—that for jury duty the names come from the electoral roll. So what the Attorney-General is doing in his Bill is giving people a chance to opt out of the electoral roll and immediately absolve themselves of any requirement to do jury duty as well.

I cannot believe that the Attorney-General had not thought through that ramification. Quite plainly, he was so busy just trying to get a Bill that looked a little different so that he could run this yarn about the Democrats and the Labor Party, and voluntary and compulsory voting, that he had not even thought through the ramifications of the Bill. People could take themselves off the electoral roll and not then have to do jury duty. There has never been any flexibility before in making oneself available for jury duty, because it was expected that one would be on the electoral roll.

So, the Minister was going to provide an 'out' on jury duty as well. If anybody lined up, they would be lining up not to come off the roll not because they did not want to vote but because, for most people, jury duty can be quite onerous. The majority of people would say that that is a reasonable expectation in a society—although most would rather not do it themselves.

As I said before, not surprisingly, the Democrats oppose the Bill, because the essence is the same: it is trying to ensure that some people vote and some people do not. It will not produce genuinely representative democracies to which the Democrats are absolutely committed. When one compares it to the obligations under the Juries Act, one sees that the obligations for attendance at a poll are far less onerous than a similar requirement to do jury duty if one is called in.

Of course, we ultimately have the consequence that people pull themselves off the electoral roll and are no longer available for jury duty—an option which currently is not available. Quite clearly, the Attorney-General just had not thought this Bill through sufficiently before he wheeled it in. The Democrats oppose the second reading.

The Hon. K.T. GRIFFIN (Attorney-General): I note the contributions of members. It does not surprise me that the Australian Democrats and the Australian Labor Party are opposed to giving people a choice about whether or not they should attend at a polling booth and exercise a vote. Whilst I expect that this will be defeated at the second reading stage on the indication of the speeches which have now been made, the Government will persist with it in the next session and after the next election. It is part of our policy, and we will continue to push it. The Hon. Mr Elliott made some reference to the issue of jury duty.

The Hon. M.J. Elliott: Duty.

The Hon. K.T. GRIFFIN: You said 'jury duty', not I. I am just using the words to which you referred. What we were seeking to do with respect to the amendment which gives electors an opportunity to remove their names from the rolls is really, again, to provide a choice as there is in relation to enrolment. There is a choice; you do not have to enrol under the State legislation. It is mandatory at the Commonwealth level, but at State level it is voluntary. If it is voluntary to enrol, it ought to be optional that you can remove yourself from the roll if you wish to be so removed, because presently there is no power to get yourself off the electoral roll. The fact that it may affect the roll from which jurors are selected—

The Hon. T. Crothers: Why do you want to introduce voluntary voting when, as you have just said, people already have the right to opt out of it?

The Hon. K.T. GRIFFIN: They don't have the right to get off the roll. They have a right to decide whether or not they will go on the roll but, once they are on the roll, even if they change their mind, they can't get off it.

The Hon. T. Crothers: Why are you introducing voluntary voting?

The Hon. K.T. GRIFFIN: Because that gives people the opportunity to be on the roll and, if they are on the roll, to make a choice. But once they are on the roll, there is no choice: that is the issue. With respect to the electoral roll, which is the basis for the selection of jurors, it is not a matter of concern that if people take themselves off the roll they will therefore be excluded from the opportunity to be called up for jury duty. Already, when one is on the roll, there is the option to be removed from the summons for jury duty. Already, there are a number of exemptions under the Juries Act to have one's name either removed or, when summoned, to seek to avoid the summons, and then even on the day when one is being empanelled there is an opportunity to withdraw for a variety of reasons. So, I do not put any weight or credibility on the argument advanced by the Hon. Mr Elliott. I am disappointed about the responses but, as I said, we will persist.

The Council divided on the second reading:

AYES (9)

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

NOES (10)

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

PAIR

Davis, L. H.	Nocella, P.

Majority of 1 for the Noes.

Second reading thus negatived.

[Sitting suspended from 1.3 to 2.15 p.m.]

MUSIC EDUCATION

A petition signed by 2 097 residents of South Australia praying that this Council will restore the allocation of music teachers on Eyre Peninsula to the level applying in 1995, as a matter of social justice and to honour the commitment given by the Premier, and make these positions permanent was presented by the Hon. R.I. Lucas.

Petition received.

PAPERS TABLED

The following papers were laid on the table:

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

Disciplinary Appeals Tribunal—Report, 1995-96

By the Minister for Consumer Affairs (Hon. K.T. Griffin)—

Residential Tenancies Act 1995—Rules—Document Authorised to be given to a Person

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

Committee appointed to examine and report on Abortions Notified in South Australia for the year 1995—Twenty-Sixth Annual Report
Food Act 1985—Report, 1994-95
Regulation under the following Act—
South Australian Housing Trust Act 1936—Water Limits.

HINDMARSH SOCCER STADIUM

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a ministerial statement by the Minister for State Government Services in the other place on the Hindmarsh Soccer Stadium.

Leave granted.

HEPATITIS G

The Hon. DIANA LAIDLAW (Minister for Transport): I seek leave to table a ministerial statement by the Minister for Health in the other place on hepatitis G.

Leave granted.

HOUSING TRUST WATER LIMITS

The Hon. DIANA LAIDLAW (Minister for Transport): I seek leave to table a ministerial statement by the Minister for Housing, Urban Development and Local Government Relations in the other place on the reintroduction of regulations with regard to Housing Trust water limits.

Leave granted.

QUESTION TIME

TEACHERS' DISPUTE

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

Leave granted.

The Hon. CAROLYN PICKLES: Today's industrial action by teachers is a sad reflection on the performance of the Minister for Education and Children's Services. Yesterday the Minister told the Council that he had initiated action in the Industrial Commission to remove confidentiality provisions which apply to negotiations with the teachers. The Minister then told the Council that the South Australian Institute of Teachers had refused to compromise on its $230 million salary and conditions claim. The Minister said:

> The only way the Government can see the truth being revealed is to put all the cards on the table.

This claim by the Minister is incorrect and, given the Minister's claim that he is fully informed of negotiations, the Minister knows that what he said was incorrect. The teachers' union made an offer to the Government 10 days ago which included substantial concessions and which the Minister's own department has costed at between $130 million to $150 million. In his statement today, the President of the Teachers Institute said:

> Some of his [the Minister's] statements suggest that he is as ill-informed about the negotiations as he is about his education portfolio.

My questions to the Minister are:

1. Does the Minister concede that his statement that teachers had refused to reduce their claim from $230 million was incorrect?

2. Is the Minister still using the public relations firm Stephen Middleton Public Relations to wage a campaign against the Institute of Teachers, and did that firm recommend the lifting of the confidentiality agreement?

3. Why has the Minister never attended any of the negotiations in this dispute and, in view of the disruptions to education being caused by the Minister's inability to resolve this matter, will he step aside from the dispute?

Members interjecting:

The PRESIDENT: Order! Before the Minister answers the question, far be it from me to defend the Minister, but I must say that the first paragraph of that question was all opinion. I have asked members not to include opinion in their questions; it does not help the question and provokes long, protracted answers.

Members interjecting:

The PRESIDENT: Order! I ask members to be a little careful.

The Hon. R.I. LUCAS: The Leader of the Opposition has put five or six questions to me, so obviously I will need to, in a comprehensive way, address those five or six questions. The answer to most of the questions is 'No.' 'No', I will not stand aside as Minister; 'No', I will not agree that the statements I made yesterday were misleading in any way, and I intend now to detail why they were not misleading. I am now able to put more information on the public record than I was able to yesterday. The teachers' union leadership today has released an inaccurate and untruthful press statement indicating that the union movement had been prepared to compromise during the negotiations.

The simple reality is that there are now claims from the Government and the union, and the only way independent third parties will be able to judge the truthfulness or otherwise of the claims is to put on the public record all that has gone on. The Government was prepared to do so, but last night Janet Giles and the leadership of the union movement, surprise, surprise, would not support the Government application to lift the confidentiality restrictions, and why not? It is because the union is terrified to have the facts put on the public record. The Government is happy to do that, but the union leadership refused to support the Government application. Why? It was too scared. What is it too scared of? It is too scared to have the facts revealed. The only party that is prepared to be honest about this is the Government, because we will put everything on the table. Janet Giles and the leadership of the union movement will not support the release of that sort of information because they know that what they have claimed this morning is incorrect and untruthful. This allegedly compromised proposition for a 15 per cent to 15½ per cent pay increase, all of which is to be paid by November this year, was to, in effect, apply only until term one next year. It was to last until term 1 of next year to

get all of the 15 per cent to 15½ per cent salary increase paid by November of this year. Then, in term 1 of next year, what was to happen? We were to start everything all over again because they were not prepared—

An honourable member interjecting:

The Hon. R.I. LUCAS: That is enterprise bargaining, so it is acknowledged that that is the union's position. This was not a compromise position. In effect, the claims made by the leadership of the union movement today are grossly misleading and untruthful. The union has not withdrawn its Federal award claim for $230 million. As soon as they got this, in term 1 next year they would have been charging off for a Federal award or another agreement of $230 million, or even higher.

The advice I have is that I am able to respond in general terms to propositions put by other parties. I can now indicate that one of the reasons why we could not reach an agreement with the union was that the Government refused to pay a salary increase of $350 a week to teachers and up to $600 a week for some principals at a total cost of $650 million to the taxpayers of South Australia. That is one of the reasons why I, on behalf of taxpayers, refused to agree to those propositions. The taxpayers cannot afford a salary increase of $350 a week for most teachers and up to $600 a week for some principals at a total cost of $650 million.

The Hon. T.G. Roberts: No wonder we have a dispute.

The Hon. R.I. LUCAS: Exactly. The Hon. Terry Roberts says it is no wonder that we have a dispute. By way of that interjection, he acknowledges that the intransigence, obstinacy and stubbornness of the union leadership has meant that resolution of the dispute has not been possible. I have no criticism of the vast bulk of our teaching force and staff, because they are being misled by their union leadership. The vast bulk of our teachers and staff deserve a well merited pay increase, but they are being misled by the union leadership. I am also able to indicate—

Members interjecting:

The Hon. R.I. LUCAS: I will go anywhere if they ask me.

Members interjecting:

The PRESIDENT: Order!

The Hon. G. Weatherill: Can we make a suggestion?

The Hon. R.I. LUCAS: I am always happy with suggestions from the Hon. Mr Weatherill. He, together with the Hon. Trevor Crothers, is one of the more sensible members of the Labor Opposition. I am taking further industrial and legal advice, but I can indicate that in the negotiations the Government further compromised and increased the shape and scope of the offer to the teachers. I am taking further industrial and legal advice on the exact details. It may be that within 24 to 48 hours I shall be able to indicate where the Government had compromised even further on the public position of the 12 per cent pay increase at a total cost of $93.6 million.

The Hon. T.G. Cameron: All the compromises have been on our side.

The Hon. R.I. LUCAS: All the compromises have been on the Government's side. There has not been one compromise on the Federal award claim of $230 million by the leadership of the union. That is why the Government is saying, 'We will never willingly agree to a $230 million Federal award salary and conditions claim on the taxpayers of South Australia.' The sooner the union leadership understands that, the better it will be. The union leadership has continued to mislead its members by saying that in some way through industrial action the Minister for Education and Children's Services and the Premier will be forced to pay the $230 million. They have been saying that to their members for the past 12 months, and their members for the past 12 months have been protesting and taking industrial action.

The Hon. Carolyn Pickles: Two years.

The Hon. R.I. LUCAS: The Hon. Carolyn Pickles indicates two years. They can go on as long as they want, but that does not give the Premier or me the $230 million that they want. The only way that the dispute will be resolved is if the $230 million is reduced. They do not deserve a $230 million salary and conditions claim paid for by the taxpayers of South Australia, but they do deserve a significant salary increase which the Government is attempting to pay.

The Hon. R.R. Roberts: You're an illegitimate negotiator in every sense of the word.

The PRESIDENT: Order! The Hon. Ron Roberts will not use language like that.

The Hon. R.I. LUCAS: I think he still thinks that he is in a workshop at Port Pirie, Mr President. The taxpayers of South Australia cannot afford the $230 million. We will be able to reveal a further indication of where the Government has been prepared to compromise.

I think I have comprehensively answered all the issues but the last issue about who appears in the negotiations. As I have indicated every month for the past 2½ years, including during the most recent 12 months of the dispute, I have met the leadership of the union movement and on a number of occasions we have discussed the particular issue—

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: Just a minute. We have discussed the particular issue—

The Hon. Carolyn Pickles: I'm not going to shut up.

The Hon. R.I. LUCAS: I did not say to shut up. I said I would address that in a minute. I am not sure if you have selective hearing, but I did not say 'Shut up.'

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: I did not say 'Shut up.'

The PRESIDENT: Order! I suggest that the Minister should get on with his answer and not reply to interjections.

The Hon. R.I. LUCAS: The negotiations continue. I meet the Institute of Teachers on a regular basis. I have another meeting on Friday with the institute. As I said, even through the darkest hours of this dispute, I have continued to meet the leadership of the union movement in a genuine attempt to try to continue negotiations and discussions on a whole variety of issues, but on occasions including the issues involved in this dispute.

The last advice I had—and I will check—was that the last service that was provided by the public relations company was two to three months ago in May this year. I will take further advice to see whether that situation has changed.

GRAPE PICKERS

The Hon. R.R. ROBERTS: I seek leave to make an explanation before asking the Attorney-General, representing the Minister for Industrial Affairs, a question about grape pickers.

Leave granted.

The Hon. R.R. ROBERTS: On 26 March this year I asked a series of questions about rates of pay for grape pickers employed in the southern wine district by a company called Ned Kelly Enterprises. In due course I received a lengthy response from the Attorney-General which answered

the substance of the questions. In his answer, the Attorney-General pointed out that the majority of casual grape pickers, including those employed by Ned Kelly Enterprises, are not covered by award provisions and the Department for Industrial Affairs had no jurisdiction to advise workers about rates of pay. The Attorney also stated that the department had a targeted strategy aimed at identifying high risk areas for inspection and education about the requirements of legislation, including wages and other conditions of employment matters. The Attorney-General stated:

> Information received from a variety of sources to the Department for Industrial Affairs assists in prioritising targets, and at this stage the fruit picking industry is not considered a high risk industry either for occupational health and safety or wages and conditions of employment.

Obviously something has changed since the answer was given, because I understand that the Department for Industrial Affairs has undertaken an investigation into wages and working conditions for grape pickers in the southern region. A report about these matters has been presented to the Minister. However, attempts to obtain a copy of the report by independent parties has proven unsuccessful, with the Government refusing to release it under freedom of information. I understand that the *Southern Times* newspaper has been informed that the report will not be released to it because information relating to occupational health and safety matters cannot be released under the confidentiality sections of the Occupational Health and Safety Act. It seems that what is good for the goose is not good enough for the gander.

When the Minister for Industrial Affairs felt it worked to his political advantage to release details of a confidential WorkCover claim, he had no hesitation in giving Santa a good kick in the groin but, when it comes to protecting the elves from exploitation, the perpetrators of any shoddy practice are protected by the Government under the privacy provisions. Will the Minister for Industrial Affairs table in this place a copy of the department's report into the grape picking industry in the southern area, with any confidential material, or material that may result in legal action, removed? If he will not do that, why will he not do that?

The Hon. K.T. GRIFFIN: I will refer the question to the Minister for Industrial Affairs in another place and bring back a reply.

WATER RESOURCES MANAGEMENT

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 total resource management.

Leave granted.

The Hon. T.G. ROBERTS: Over a period of time I have asked a number of questions in this Council about environmental matters affecting and impacting on the South-East (Upper South-East and Lower South-East). The Government has put out a water resources management draft Bill for people to scrutinise and comment on. This is an admirable way to go in framing legislation and comments are starting to come through telephone calls and correspondence to my office. I have asked questions in this Council about competitive land use, complementary land use, retention of native vegetation, forestry management and a number of other matters related to the protection of the environment in that region of South Australia. Many comments made in the correspondence and in telephone calls to me are that the draft Bill presented and discussed in the community does not take into account the total resource management attitude or a projected position and looks at water in isolation. Most people in southern areas or the South-East are concerned that, if water is looked at in isolation, the total land management packages and total resource management will not be looked at and there will not be a satisfactory outcome to the potential and real problems that the South-East now faces. My questions are:

1. When will the Government look at the total resource management package?

2. Will it do it before it introduces the Water Resources Management Bill?

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

NATIVE VEGETATION

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

Leave granted.

The Hon. M.J. ELLIOTT: On 28 May I asked a series of questions about the level of native vegetation clearance—both legal and illegal—occurring throughout South Australia. I have recently received a response from the Minister which raises further questions about the follow-up of reports of breaches of the Native Vegetation Act. Conservationists have highlighted dwindling resources at the Native Vegetation Branch at the Department of Environment and Natural Resources as a major factor affecting the proper monitoring of clearance issues. The Minister's response shows that the number of breach reports submitted for action has reduced by about half from 1991-92 when there were 68 breach reports, to 37 reports in 1994-95.

When the figures were compiled just before the end of 1995-96 only 21 reports had been recorded, a reduction of more than 60 per cent over five years. Only two fines were imposed as a result of breach reports submitted in 1994-95, and in 1995-96 none had been imposed when the figures were compiled. Under the Native Vegetation Act there is a requirement for research into native vegetation funded by the Native Vegetation Fund for heritage agreements and the preparation of heritage agreement management plans. There has also been a call for a register of clearances—both legal and illegal clearance reports—to enable proper follow-up of clearance reports. My questions to the Minister are:

1. What has been the annual staffing level of the Native Vegetation Conservation Section over the past five years, for each of those five years?

2. What reasons can the Minister give for a drop of more than two-thirds in the level of breach reports submitted to the department?

3. What role has staffing levels played in the decrease of numbers of breach reporting and prosecution initiation?

4. What resources, including funding and personnel, have been available over the past five years for following up reports of illegal clearances and for research into native vegetation funded by the Native Vegetation Fund?

5. Will the Minister support the establishment of a register of clearances, both legal and illegal clearance reports, to enable better follow-up of clearance reports?

The Hon. DIANA LAIDLAW: I will refer that series of questions to the Minister and bring back a reply.

RED HEN RAILCARS

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

Leave granted.

The Hon. T.G. CAMERON: Mr President—

The Hon. Diana Laidlaw: Have you ridden in one?

The Hon. T.G. CAMERON: I am old enough to have ridden in one.

Members interjecting:

The PRESIDENT: Order! The Minister will not interject. The Hon. Terry Cameron.

The Hon. T.G. CAMERON: I could reply to that interjection, but I will not.

The PRESIDENT: It is best that you don't.

The Hon. T.G. CAMERON: I was recently contacted by Mr Michael Kohler, who is a member of the Steamranger Management Committee. Mr Kohler has informed me that Adelaide's red hen railcars are coming to the end of their use after more than 40 years of faithful service to South Australian commuters. The red hen rattlers used to be the backbone of Adelaide's passenger rail fleet. They were introduced on 6 October 1955, replacing the Barwell bull railcars which had been operating on metropolitan lines since 1926. At their peak in the 1970s—

Members interjecting:

The Hon. T.G. CAMERON: The Hon. Legh Davis would have ridden on that bull railcar. At their peak in the 1970s there were 148 powered cars and 37 non-powered cars.

Members interjecting:

The Hon. T.G. CAMERON: Thank you. They were made locally at the Islington Workshops and none were air-conditioned. They have been gradually phased out as the new 3000s and 3100s have replaced them.

Members interjecting:

The PRESIDENT: Order!

The Hon. T.G. CAMERON: Thank you for your protection from the Hon. Mr Davis, Mr President, because it is much appreciated.

Members interjecting:

The Hon. T.G. CAMERON: I cannot hear myself think, with you rattling away on the back bench. At present only six red hens are left in service and they will soon be gone. Mr Kohler is hopeful that the State Government will either give or lease at a peppercorn rent two or three of the cars to the Steamranger Management Committee so that they can be preserved and continue to be part of the State's heritage. Mr Kohler informs me that for the past eight weeks he has attempted to contact the Minister on numerous occasions both by letter and telephone to discuss the matter. Regrettably, the Minister has as yet to acknowledge Mr Kohler's correspondence. My questions to the Minister are:

1. Will the Minister make available some of the remaining red hen railcars to the Steamranger Management Committee so that this important part of South Australia's heritage can be preserved? If not, why not?

2. Will the Minister consult with her office staff to ascertain why Mr Kohler's letters and repeated phone calls were ignored?

The Hon. DIANA LAIDLAW: Mr Kohler's correspondence and phone calls have not been ignored. I have been working with the History Trust and TransAdelaide to achieve what he seeks and I did so well before the issue was raised with me by Mr Kohler, mainly because Port Dock Railway Museum, various railworkers within TransAdelaide and the History Trust have also approached me about this issue.

The traditional practice, which we inherited, has been that one such railcar is given to what was earlier the Mile End Railway Museum, now the Port Dock Railway Museum. TransAdelaide did comply with that policy, and one of the red hens was given to the History Trust which, for some extraordinary reason, decided to give it to SteamRanger at a time when SteamRanger does not have sufficient cover at Mount Barker for the number of rail cars and locomotives in its possession, either leased or purchased.

I have been trying to broker between TransAdelaide, the History Trust and the Port Dock Museum for another railcar, which is an exception to longstanding policy. Because the Port Dock Museum also wants it in working order—and that is not an unreasonable request—the value of the railcar is considerably over the value of a railcar not in working order and simply used for scrap. So, TransAdelaide is seeking the purchase of the second or third railcar, having complied with its policy of giving one railcar for nothing to one of these historic railway organisations.

I decided over the weekend, having considered all the correspondence between all the agencies, that I would be able to provide some funds to ensure that the Port Dock Railway Museum was able to 'purchase' in working order the railcar that it is seeking. I have not yet had time to convey that decision to the Port Dock Railway Museum, but I know that it will be one that it receives with considerable pleasure.

In the meantime, SteamRanger has one of these red hens, and I do not envisage, unless SteamRanger can pay for more, that the representations from Mr Kohler will be able to be realised. He is seeking three or four such railcars. Every railway museum around Australia is seeking one of these railcars, as are railway historic associations. Yorke Peninsula, Victoria, Queensland and New South Wales are all seeking one. We could find that we are providing them all over Australia, and that is why TransAdelaide, formerly the STA, has this longstanding policy, which I have agreed to in principle, and therefore arranged for the 'purchase' of the second railcar to go to the Port Dock Railway Museum. It means, however, that all further railcars that historic railway associations wish to acquire will have to be purchased and not provided to them at no charge.

The honourable member noted that six red hens are still in service. They are being used very little at the moment, but we anticipate that in October there will be no red hens on the metropolitan rail system in Adelaide. That will be a cause for considerable celebration for most people, particularly those on the Gawler and Belair lines who have tolerated the old red hens for a long time—well over what many people would see as a reasonable time for their continuing in use. By October the number of new 3000 series railcars will total 50, and those 50 have been purchased over 2½ years.

The anticipated cost of the total new series of railcars is $126 million. This is a good outcome, because the anticipated cost, when first ordered during the time of the Hon. Frank Blevins as Minister of Transport (at least four or five years ago), was $160 million. The cost over the full program has now been determined to be $126 million. So, taxpayers have been well served by this initiative, and passengers utilising TransAdelaide new series 3000 railcars will be well served when the last red hens are out of the system.

Members interjecting:

The PRESIDENT: Order!

CHARACTER REFERENCES

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

Leave granted.

The Hon. L.H. DAVIS: A recent article in the Australian *Financial Review* highlighted a judgment in Britain's highest court, the House of Lords. This judgment established that employers have a duty of care to prepare accurate references. The judgment noted that employers may face significant damage payouts if they negligently fail to do so. The *Financial Review* took up this matter with a number of major Australian legal firms, which believe that Australian courts are likely to adopt the same principle.

A spokesperson for solicitors Clayton Utz said that it was a matter of grave concern that industrial tribunals routinely encouraged employers to give employees favourable references to settle unfair dismissal claims. Clearly, if the House of Lords' decision was accepted by Australian courts, employers could in future be liable if glowing references given by them were at variance with a employee's capacity and/or performance.

The Hon. A.J. Redford: Or honesty.

The Hon. L.H. DAVIS: Yes, honesty is often a matter that leads to dismissal and, notwithstanding, a glowing reference is still given. I am sure that members of the Legislative Council would be well aware of what is all too wide a practice in both the public and private sectors of giving a glowing reference to flick on an under- performing, difficult or dishonest employee, as my colleague the Hon. Angus Redford mentioned. It is a game that could well be styled, 'Pass the passenger'. Is the Attorney-General aware of this House of Lords' decision? Does he have any views on this matter, particularly with respect to its implications in the public sector in South Australia, and are there any implications for both employers and employees as a result of this decision?

The Hon. K.T. GRIFFIN: I suppose one might contemplate that decision of the House of Lords and wonder whether a reference should be given, whether properly drafted or drafted in glowing terms. If you give no reference you then have no prospect of being liable for what you may or may not write. Certainly the House of Lords' case in *Spring v Guardian Assurance* has been drawn to my attention. The House of Lords did hold that the employer owed a duty of care to its employees in relation to the giving of a reference and the obtaining of information upon which the reference is based. As a consequence an employer might be liable for damages suffered by its employees and former employees as a result of a negligently prepared reference. If you look at some of the possibilities which have been raised, at least in newspapers such as the *Financial Review*, to think of what the possible implications might be sends something of a chill down one's spine.

However, some comfort should be derived from the fact that there is no authority on this point in Australia, although the High Court has taken a somewhat more expansive view of the law relating to tort than have English courts. I suppose it is quite likely that at some time in the foreseeable future the High Court may make a decision similar to that of the House of Lords. In Spring's case, the employee sued his employer as a result of a bad reference. There is, of course, the problem of an employer giving an unwarranted glowing reference. This raises the question of whether a person who suffers loss as a result of employing a person on the basis of a glowing reference which was untrue could sue the person who provided the reference. That question has not actually been addressed by Spring's case but, whilst that would require an expansion of tort liability, I suppose it is always possible that that can occur.

I suppose employers do have a dilemma. They have an employee who is not particularly competent and they want to move on that person, so they give a glowing reference. Any employer who relies upon that reference without making their own referee and other checks is probably not a particularly wise or cautious employer in this day and age. However, some people do rely solely on written references. I suppose it is easier to give such a reference than to say no, particularly in the context of potential wrongful dismissal claims. There is also the problem of defamation, which has been raised in some of the commentaries on the House of Lords' case. Defamation relates particularly to references which might not be accurate and which might undermine the reputation of a former employee in the mind of his or her peers. I suppose that, in those circumstances, that employee is unlikely to use the reference.

This issue could well be developed further by the courts in the foreseeable future. The Government has not given any consideration to the way in which this issue should be addressed. I have not done anything more than acquaint myself with some of the issues. I do not think it is something upon which the Parliaments of the States and Territories or the Commonwealth can effectively legislate. The law of negligence is a difficult concept, and whilst, from time to time, people talk about capping or in some way limiting the scope of that concept, human beings are quite ingenious and might well find ways around any legislative constraints.

MEDICAL CONSENT FORMS

The Hon. ANNE LEVY: I seek leave to make an explanation before asking the Minister representing the Minister for Health a question about consent forms under the Consent to Medical Treatment and Palliative Care Act.

Leave granted.

The Hon. ANNE LEVY: Some time ago, this Parliament passed the Consent to Medical Treatment and Palliative Care Act, which enabled people to give advanced directives as to the care they wished to be taken of them in certain circumstances. It also enabled them to give a medical power of attorney to someone who could make decisions on their behalf when they were incapable of doing so under certain circumstances. The Act also provided for a registrar to hold these forms if anyone wished to have them collated, and it gave rights to medical practitioners and so on to have access to this register in certain circumstances.

A few weeks ago, the Minister for Health put out a press release indicating that the Government had cooperated beautifully with the private sector—in other words, with the organisation known as Medic Alert—and that Medic Alert would keep this register. I am not aware of what financial arrangements, if any, were made between the Government and Medic Alert for the Government's passing this job on to that organisation. However, I find that if anyone wishes to fill out one of these forms and register it, as they are entitled to do, Medic Alert will charge them $55. There are no conces-

sions for pensioners or the unemployed or in cases of hardship. In no way am I blaming Medic Alert for this—it is a commercial organisation and it is not its job to undertake community service obligations—but complaints have been made to me that $55 is a great deal to find for someone who is unemployed or a pensioner or in tough circumstances in order to register their form. I am sure that this Parliament did not intend use of the rights given under the Act to be dependent upon the financial circumstances of people. My questions are:

1. What financial arrangements were made between the Government and Medic Alert when the Government handed over to that organisation the responsibility for keeping the register of forms filled in under the Consent to Medical Treatment and Palliative Care Act?

2. Will the Government assume a community service obligation and subsidise Medic Alert so that concessional rates can be offered for pensioners, the unemployed and people in poor financial circumstances?

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

TRADE UNION TRAINING

The Hon. A.J. REDFORD: I seek leave to ask the Minister for Education and Children's Services representing the Premier a question about trade union training.

Leave granted.

The Hon. A.J. REDFORD: Pursuant to clause 27 of the Clerks (SA) Award 1990, employees who are members of the Federated Clerks Union shall be entitled to leave without loss of pay to attend trade union training courses conducted by the Trade Union Training Authority. In fact, the provision is a successor to a similar clause first inserted in 1985, and similar provisions now exist in relation to public sector awards. In the Industrial Commission in 1985, the Federated Clerks Union argued that the provision was necessary because 'employers derive benefits from their employees' attendance at such courses' and, further, that the courses would give 'information to help them deal with occupational health and safety problems in their work environment'.

Further, a Mr Clarke, the FCU Secretary, gave evidence. The now member for Ross Smith gave evidence that the training can be used to 'develop a greater awareness and understanding of occupational health and safety problems'. The decision to grant the award by the Full Industrial Commission made it clear that the leave was to be for genuine purposes only associated with improving industrial relations and productivity in the workplace between the employer and the employee. Mr President, you will no doubt be aware that the workplace legislation before the Federal Parliament would seek to do away with this sort of award provision. The proposals by the Federal Minister for Industrial Relations recognise the potential for this type of leave to be abused.

It has now come to my attention that the PSA/CPSU is holding a training seminar on Wednesday 21 August next, entitled 'Sexuality in the Workplace'. The brochure advertising it states that 'union members are entitled to paid union training leave'. Indeed, the title might make one think—with some imagination—that the course, in the words of the Deputy Leader of the Opposition, will 'develop a greater awareness and understanding of occupational health and safety problems'. However, the brochure also says:

> We'll be looking at. . . setting up support networks and caucuses for gay and lesbian union members. Carolyn Pickles MLC will address the seminar on *de facto* relationships currently before the Legislative Council.

One might wonder what the De Facto Relationships Bill has to do with occupational health and safety or the improvement of industrial relations. A cynic might think that the seminar is being used for a blatant political purpose. In the light of that, my questions to the Premier are:

1. What is the cost in lost work time to the South Australian taxpayer of these union sponsored training seminars?

2. Having regard to the nature of this seminar, does the Government support the Federal Government's proposals for industrial relations reform?

3. Is there any benefit to the South Australian public servants' employment responsibilities in hearing about the De Facto Relationships Bill?

4. What is the Government's view on the use by public sector unions of their members' union contributions in learning about *de facto* relationships?

The PRESIDENT: Order! The honourable member again had opinion in that question. Those types of questions are not conducive to getting good answers. I have observed that silly questions get silly answers.

Members interjecting:

The PRESIDENT: Order! The Hon. Ron Roberts will come to order.

The Hon. R.I. LUCAS: I do not think it is a silly question. The honourable member has raised a series of questions that deserve a considered response. Clearly, from the reaction he has attracted from members of the Labor Party, he has hit a raw nerve in relation to some of his questions. I shall be very pleased to refer the honourable member's questions to the Premier (who may well wish to consult the Minister for Industrial Affairs on some aspects) and to bring back a considered reply thereto.

SAMCOR SALE

In reply to **Hon. R.R. ROBERTS** (9 July).

The Hon. K.T. GRIFFIN: The Deputy Premier has provided the following response:

1. At the request of the Treasurer, the Crown Solicitor conducted an investigation into the sale process. The investigation did not reveal that Better Beef Limited improperly attempted to obtain commercially sensitive information about SAMCOR's operations and the sale process. Like other bidders, Better Beef Limited was given information about SAMCOR's operations and the sale processes, but this process was strictly controlled by the Asset Management Task Force. Other than the travel to Canada, the investigation did not reveal that Better Beef Limited offered the General Manager any gratuities.

While the acceptance of such an offer of travel in the course of a sale process is undesirable, to offer the travel is not corrupt or unlawful, and the travel was undertaken with the knowledge of the Chairman of SAMCOR.

2. The Crown Solicitor advises that there is little possibility of legal liabilities arising as a result of the sale processes being abandoned. The sale process was conducted on the basis that the Government reserved the right at any time during the sale process to withdraw the assets from sale and in doing so, the Government accepted no responsibility for losses incurred by any potential purchaser arising from the withdrawal of SAMCOR from sale.

In reply to **Hon. R.R. ROBERTS** (10 July).

The Hon. K.T. GRIFFIN: The Deputy Premier has provided the following response:

The honourable member's question is abusive and is indicative of his disregard for proper parliamentary standards.

The investigation referred to by the Honourable Member has been concluded. The investigation did not reveal that any information was improperly passed on to Better Beef Limited. The General Manager of SAMCOR, Mr Lilley, was involved in a policy or executive role during the sale preparation phases. His role in that capacity could not have involved or resulted in any preference to any bidder. The General Manager's role in a formal Committee for the sale ceased upon advertisement of the business for sale. Whilst he has been involved in providing bidders with access to SAMCOR's facilities and answering questions in relation to its business operations, this has been under the supervision and direction of the Asset Management Task Force. The General Manager has not had any involvement in the receipt or evaluations of any bids received and has not been provided with the details of any tender.

It is most unfortunate that the actions of the General Manager may have led to some perception that the sale process has been unfair. The investigations that have been undertaken show that there has been no actual unfairness. In particular, the General Manager was not involved in any consideration of the Bids or in any discussions concerning them.

It is clearly undesirable that the General Manager received free travel from Better Beef Limited during the bidding process for SAMCOR. It must be pointed out, however, that the Chairman of SAMCOR was aware that the General Manager had travelled to Canada at Better Beef's expense.

BALFOUR WAUCHOPE BAKERY

In reply to **Hon. M.J. ELLIOTT** (11 July).

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

1. Due to Banker/Customer confidentiality I am somewhat constrained in my ability to respond with customer specific information in relation to the Balfours matter.

In seeking to give Parliament a detailed explanation of the Government's actions respecting this matter I sought a release from the principals of the Balfours company which would have enabled me to disclose client information. After initially indicating that such a release would be granted I was later informed that authorisation would be refused.

However, it is important to note that the Government has not been involved in the sales process which has been controlled by the Wauchopes as owners, and their advisers. The Government, through its instrumentalities, the former State Bank of South Australia, and now the South Australian Asset Management Corporation ('SAAMC') has been seeking to recover debts owing by Balfours, and thereby fulfilling its obligations to the taxpayers of South Australia. However, I can assure you that the actions of SAAMC have not been precipitous and culminated after months of negotiations and assistance.

2. SAAMC has not been involved in any negotiations involving incentives being offered.

3. SAAMC has not been pushing for a fire sale and in fact the timetable for sale has been controlled by the directors.

Response to Supplementary Question

I am advised that the total indebtedness to SAAMC exceeds the amount of $8 million you have referred to and is in fact more than $11 million.

The original debt has been reduced largely as a result of both asset and property sales. However I refer to the statement made by the R & M, Mr Bruce Carter of Ferrier Hodgson at the time of his appointment.

'The total debt due to South Australian Asset Management Corporation (SAAMC) was approximately $11.5 million, not the $9.3 million referred to by Balfour principal Mr David Wauchope. A further $3 million was owed to unsecured creditors 'Former shareholders have received substantial payment for their shares over recent years and interest has been paid on their outstanding vendor finance. This has been primarily funded by increased debt on Balfours'.

Mr Carter said SAAMC had provided effective extra funding of $1.3 million in December 1995, and a further $400k in March this year. An amount of $100k was repaid in May. This funding was in addition to the general State Government support given to Balfours over the last two years.

He said these funds were provided to support Balfours because the directors and shareholders has assured SAAMC that the business could be sold as a going concern or equity raised within three or four months.

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

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

The South Australian Asset Management Corporation (SAAMC) is a secured lender to Balfours and has not been directly involved in the management plans of the company. SAAMC is unaware of any other arms of Government being involved in an export management plan.

QUESTIONS, REPLIES

The Hon. R.I. LUCAS: On behalf of Ministers, I indicate to members that, where possible during the coming break, if there are outstanding answers to questions that we have not been able to reply to this week, Ministers will endeavour to correspond with members and bring back a reply, as we generally do. Then, when the next session starts, we Ministers will seek leave to have those replies inserted in *Hansard* without our reading them.

DOCTORS, OVERSEAS

The Hon. P. NOCELLA: I seek leave to make a brief explanation before asking the Minister representing the Minister for Health a question about overseas trained doctors.

Leave granted.

The Hon. P. NOCELLA: I understand that the Ministerial Council on Immigration and Multicultural Affairs in May this year dealt with, amongst other things, the subject of overseas trained doctors. This situation exists in Australia, as well as in South Australia, and it affects a considerable number of individuals who were trained overseas as doctors and who in some cases have practised medicine, professionally, for some years. For a variety of reasons, sometimes they are unable to find recognition for their qualification and/or employment.

Of course, they were largely gratified when the announcement was made that the council recommended that State Ministers should take steps to introduce measures that would make it possible for overseas trained doctors to be employed in South Australia where appropriate. I have been approached by some overseas trained doctors recently who have been waiting for announcements on this subject. I understand that to this date nothing has been announced. Will the Minister inform this Council of what steps have been taken and, if none has been taken, when they will be taken?

The Hon. DIANA LAIDLAW: I will refer the honourable member's question to the Minister and bring back a reply. I alert the honourable member to the fact that I have been advised that these matters are the subject of High Court proceedings in Victoria.

PREMIER'S OVERSEAS DELEGATION

The Hon. G. WEATHERILL: I seek leave to make a brief explanation before asking the Minister representing the Premier a question about overseas travel.

Leave granted.

The Hon. G. WEATHERILL: It has been brought to my attention that the Premier is taking a delegation to countries such as Cyprus, Italy, Greece, France, China and Hong Kong in the next break.

An honourable member: That's a good trip.

The Hon. G. WEATHERILL: Yes, a very good trip. It also has been suggested that he would obviously take the parliamentary secretary (Hon. Julian Stefani) because he speaks two languages, namely, Italian and English. It has also

been suggested that the Hon. Bernice Pfitzner might get a guernsey, because the Premier is going to Hong Kong and China. Who else is going on this delegation? Given that we should be showing a united front to these countries, the Premier should consider some Opposition members going there. We in this Parliament can assist the Premier—

Members interjecting:

The PRESIDENT: Order!

The Hon. G. WEATHERILL: We have the Hon. Anne Levy, who speaks French and the Hon. Trevor Crothers, who speaks French. Will the Premier consider taking some Opposition members to assist him to show a united front in these countries?

The Hon. R.I. LUCAS: I am sure the Premier will consider it and quickly reject it as a nightmare. I am sure that the prospect of having to travel with some of the members mentioned by the Hon. Mr Weatherill would be too much for most people—the Premier included. I have seen some novel ideas to try to get a trip, the Hon. Mr Weatherill, but this is one of the more novel ones. We are interested in lateral thinking from the Opposition, and we are getting it. Indeed, the honourable member is so lateral on this proposition that he is almost horizontal.

The Hon. L.H. Davis: He could be the Whip to the delegation.

The Hon. R.I. LUCAS: Yes, he could be the Whip to the delegation. Having been a member of this Parliament for some 14 years, I waited for John Bannon, Lynn Arnold or a Labor Premier to invite me, as an Opposition member, to travel overseas in the interests of unity.

Members interjecting:

The Hon. R.I. LUCAS: Maybe the invitation is still coming—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS:—or perhaps there's something wrong with me personally; I am not sure. But I was still waiting. As I said, I conclude by saying that I am sure that the Premier will consider it and quickly reject it.

CRIMINAL INJURIES COMPENSATION (LEVY) AMENDMENT BILL

The following recommendations of the conference were reported to the Council:

As to Amendment No. 1:

That the House of Assembly do not further insist on its disagreement thereto.

As to Amendment No. 2:

That the Legislative Council do not further insist on its amendment.

As to Amendment No. 3:

That the Legislative Council do not further insist on its amendment but makes the following amendment in lieu thereof:

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

Insertion of s.14c

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

Annual report

14c.(1) The administrative unit of the Public Service responsible, under the Attorney-General, for the administration of this Act must, on or before 30 September in each year, present a report to the Attorney-General on the operation and administration of this Act during the previous financial year.

(2) A report required under this section may be incorporated in the annual report of the relevant administrative unit.

(3) The Attorney-General must, within 12 days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

And that the House of Assembly agree thereto.

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 recommendations from the conference relate to three issues. The first is the title to the Bill and, because it will now deal with one additional issue, it is not appropriate to relate only to the levy, so it will be the Criminal Injuries Compensation (Miscellaneous) Amendment Bill and that is, I think, uncontroversial.

Amendment No. 3 deals with the annual report. I indicated that the Government intended to include in the report of the Attorney-General's Department for each year details of the operation of the Criminal Injuries Compensation Fund and the Act. There was, in fact, no need to pass any statutory requirement for a report but the Government was prepared to concede that that was, in any event, the decision of the Government and the intention of Government, and that therefore we were comfortable with having it referred to in the statute. The amendment which has now been agreed to by the conference provides for a report on the operation and administration of the Act, and allows it to be incorporated in the annual report of the relevant administrative unit which, in this instance, is the Attorney-General's Department.

Amendment No. 2 was the most controversial. The Government introduced this Bill on the basis that it would deal only with the levy and that it would seek to impose upon offenders an increase in the levy, whether through conviction or by expiation notice, in the case mainly of road traffic offenders, if the offence is expiated, from $6 to $7 and with commensurate increases for other summary offences where there is a conviction and for indictable offences where there is a conviction. The Opposition and the Democrats sought to provide for a CPI indexation of the entitlement of a spouse and also of the steps, which are presently set out in 50 steps, of $1 000 each, or a scale. The Government indicated that it was not prepared to support that proposition, nor were we prepared to support the change in the burden of proof from beyond reasonable doubt to the balance of probabilities.

The information which I have already indicated to the council and did indicate to the conference was that lowering the threshold, which was also one of the proposals in the amendments from $1 000 to $500, is likely to cost about $300 000 in a year, of which $200 000 would be for legal and medical fees, and $100 000 would be for victims. In relation to the escalation of the $1 000 steps by inflation, in a full year at 3 per cent the estimated cost was at least $300 000. In relation to the changing of the burden of proof to the balance of probabilities, I indicated that there were inadequate records to enable us to make a judgment of that, plus we did not always have information about the advice which legal practitioners had given to their clients, that they would not perhaps be able to achieve the current burden of proof beyond reasonable doubt.

There are a variety of issues that could be canvassed in respect of these amendments, but I indicate that, whilst I do not give a 100 per cent guarantee that legislation will be

introduced, it is certainly my present intention, although it still has to run through Cabinet and the joint Liberal Parliamentary Party, to introduce a Bill with some amendments to the Criminal Injuries Compensation Act to deal with a number of issues which have been raised with me in the time since I have been Attorney-General in relation to the administration of this Act.

There will not be an escalator or inflation factor included in the Bill, nor will the threshold be reduced to $500, nor will the level of payment to a spouse or putative spouse be changed. We are focusing only in the Government's Bill on increasing the amount of the levy by inflation since it was last dealt with in 1993 in order to place a burden onto offenders to make a further contribution towards the Criminal Injuries Compensation Fund which, in the last financial year, cost the taxpayers of this State $9.6 million.

The Hon. CAROLYN PICKLES: As I indicated in the second reading debate, the Opposition sought to bring into this legislation the recommendations of the Legislative Review Committee. We thought that they were sensible recommendations. The Government has pointed out that there is a cost component that is unacceptable to the Government contained in the amendments moved by the Opposition. We are disappointed that we cannot proceed with these amendments. We are pleased that the Government has agreed to insert a clause that makes it quite clear that there will be, by way of report from the Attorney-General's Department, a provision to report annually to Parliament. Although the Attorney has not said that he will definitely bring in the legislation, we will certainly be looking at that very closely. We believe that the amendments we introduced were fair and we would like to think that the Government would consider the amendments of the Legislative Review Committee in the fullness of time.

Motion carried.

ROAD TRAFFIC (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 July. Page 1804.)

The Hon. DIANA LAIDLAW (Minister for Transport): There was some discussion during the debate about consultation with various representatives of the union movement and the workplace at large. This issue has been around for some time. In fact, it featured in a discussion paper circulated in October 1993. That paper was circulated to the Earthmoving Contractors Association (now the Civil Contractors Federation), the UTLC, the Local Government Association, the State Transport Authority (now TransAdelaide), the Police Department, Australian National, ETSA, EWS (now SA Water), the South Australian Gas Company, Telecom, and what is now AWU FIMEE. That discussion paper comprehensively put the case for the proposal outlined in this Bill. The replies received by the Department of Transport from all agencies and organisations that I have outlined, including many individual councils which chose to respond, were positive.

I have received further advice within the Department of Transport from Mr Jules Miller, the AWU representative on the communications group, which is the consultative group for the department and agencies, organisations and the AWU, that, notwithstanding the time between when the discussion paper was first circulated in 1993 and now, employees of the department are in favour of having the ability to use the 40 km/h or the existing 25 km/h speed limits for work sites. All we are seeking to do is to provide greater flexibility for workplaces to determine the safety conditions that should apply when they are working on the roads. I should have thought that everybody in this place would embrace with the same enthusiasm and concern what the workplace wanted in terms of safety. This Bill takes out the inflexibility in the present Act which limits to 25 km/h the speed limit at a work area. We are indicating that there are instances where, according to a code of practice, the workplace should have the ability to make the choice. This is a facilitating measure for the workplace to decide what is in its best interests.

I respect the fact that contact has been made by both the Hon. Sandra Kanck and the Hon. Terry Cameron with the present secretary of the AWU FIMEE, and Mr Bob Sneath in initial responses has indicated that he was not aware of the issues. The AWU FIMEE joint branch secretary, Mr John Dunnery, wrote to the CEO of the Department of Transport advising support in principle for the proposal in the discussion paper.

The Hon. T.G. Cameron: He has not been the secretary for two years.

The Hon. DIANA LAIDLAW: Yes, but the AWU FIMEE indicated support for this measure. This support has been repeated by the AWU representative on the communications group, which is the consultative forum for the department and other agencies and organisations and the AWU. Mr Jules Miller would have been aware that the views expressed by the joint branch secretary in correspondence in January 1994 are still current.

I have no difficulty in providing people with greater choice in making their own decisions about their own safety. I do not accept the amendment put on file by the Hon. Terry Cameron which will restrict the capacity to make those decisions at the workplace, because it will reduce their flexibility and capacity to operate.

There is to be a code of practice, the provisions of which have been drawn up. They provide various safety conditions at different times, and there is a range of practices that the workplace can choose from. Some are particularly detailed situations, so it is strange that one or two circumstances should be picked out and sought to be placed in the Act which are out of context with the whole code of practice. That is why such detail is not in the Act at present. I am not quarrelling with the good intentions of either the Hon. Terry Cameron or the Hon. Sandra Kanck, but they are whims to have them included, whereas they should be dealt with comprehensively and in the context of the code of practice.

Honourable members raised other issues, including the reference to the Australian Customs Service. The Hon. Terry Cameron made a number of comments about the Australian Customs Service and I understand he is satisfied with the responses he received from the Department of Transport on this matter and I will not further take up the time of the Council in putting those matters on the record now.

Bill read a second time.

In Committee.

Clause 1—'Short title.'

The Hon. T.G. CAMERON: As to the Minister's comments about the consultation process I wish to correct some of the impressions that the Minister erroneously created in her reply. True, a consultation process has occurred on this matter. It is an extremely complicated matter and I understand that the consultation process has been under way since 1991.

I agree with the Minister that it has been a fairly wide ranging and extensive consultation process. By way of advice to the Minister, when the Government sets up committees which affect worker safety, unless they are properly representative of the work force, the sorts of problems that we are now running in to eventuate. I have seen a list of all the people on the committee and from memory there were about 15 or 16 management representatives and one or two from the workplace.

It is all very well to invite the Local Government Association to have representation but, unless representation is invited from the local government outside work force, one can hardly argue that the consultative process is inclusive to the extent that it includes a broad cross-section of the work force that is going to be affected by the legislation. About 4 000 employees in local government are in the outside work force and the overwhelming majority—about 90 per cent—will spend time working in and around the workplace. I am surprised that the consultation process has been going on for five years on this matter and, despite the Opposition and major unions expressing serious concerns about the movement from a 25 km/h limit to a 40 km/h limit in certain circumstances, for reasons best known to the Minister the Bill has to be rammed through the Parliament this afternoon.

The impression was also created that the Opposition is opposing major parts of the Bill. That is not the case. I would be happy to run through the initiatives, but I am conscious that members may be anxious to get out of here at some stage and so I will not try to repeat my flower farm debate of some months ago. The impression was created by the Minister that we are opposing major sections of the Bill, but nothing could be further from the truth. Most of the initiatives sought by the Government in the Bill are being supported by the Opposition. All the amendments to sections 40 and 134 are being supported and most of the initiatives that the Minister is seeking to achieve will be supported. Any suggestion that the Opposition is attempting somehow to restrict the flexibility that the Department of Road Transport has on this matter is a nonsense.

Specifically, our concerns revolve around the application of the 25 km/h speed limit in certain situations and we have attempted to pick this up in our amendment. I spent 10 years with the union and I would impress on the Minister that ordinary working class people—

The Hon. Diana Laidlaw: Are you speaking to an amendment?

The ACTING CHAIRMAN (Hon. T. Crothers): Such statements are generally made in the second reading debate. If the honourable member wishes to speak in the Committee debate, he ought to be addressing the clauses of the Bill or directing questions to the Minister.

The Hon. T.G. CAMERON: I support clauses 1 and 2 and I will reserve the remainder of my remarks for clause 3.

Clause passed.

Clause 2 passed.

Clause 3—'Signs indicating work area or work site.'

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

Page 1, after line 15—Insert:

(aa) by inserting before the definition of 'public authority' the following definition:

'hazardous work area' means a work area—

(a) where—

(i) workers may be working on a part of a carriageway for vehicles proceeding in a particular direction and there is no adjoining marked lane outside the work area for vehicles proceeding in the same direction; or

(ii) workers may be working less than 1.5 metres from vehicles proceeding on a carriageway,

and the work is carried out on foot and not exclusively through the use of vehicles; or

(b) where an unusually high level of hazard for workers or persons using the road is created as a consequence of the existence of the work area;

This amendment is designed to insert a new definition of 'hazardous work area'. As I said earlier before I was pulled up, we are not attempting to severely restrict the flexibility that the Government is trying to get into this Act. My amendment would, in effect, still mean that the Government was getting its 40 kilometre roadworks speed limit, its 80 kilometre buffer zone at roadworks, removing the workers symbol from the 25 kilometre zone, the deletion of the 25 kilometre derestriction sign, and so on.

The amendment which I have moved and asked the Minister to consider has been taken directly from the document 'Department of Road Transport—Safety at Roadworks—Proposed Changes to Speed Limits at Roadworks Sites'. So, we are supporting not just the amendments that the Government is seeking in this Bill: the amendment that we are seeking to insert into the Bill defines a hazardous area and would still in fact, as I understand it following advice I have received from Parliamentary Counsel, provide flexibility within that 25 kilometre an hour zone.

There have been a number of attempts over the past few decades, all at the initiative of the Liberal Party, to extend the 25 kilometre an hour speed zone. On this occasion it is proposing that it go to 40 kilometres and has prepared a very detailed code of practice for the guidance of workers at roadworks sites. At this point we have no idea whether or not these draft guidelines will be implemented as currently set out or changed at some later stage. I guess that is part of our concern.

In relation to my amendment, I ask the Minister to look at the restricted nature of when a 25 kilometre a hour zone would be used. I submit to the Minister that, because of the narrow application, we are seeking simply to insert the Government's own draft guidelines into the Act to ensure that any attempt to vary that minimum protection that would be put in the Act to protect workers in those situations required parliamentary approval. That seems to be the sticking point. The Opposition, and I understand the Australian Democrats, support the entire thrust of the initiatives that the Government is seeking here: we are only seeking a small amendment to provide some protection for road workers.

The Hon. Diana Laidlaw interjecting:

The Hon. T.G. CAMERON: I do not know what you are trying to prove, either, but I want to make a point. For the life of me I cannot understand it.

The Hon. Diana Laidlaw interjecting:

The ACTING CHAIRMAN: Order! The Hon. Mr Cameron has the floor.

The Hon. T.G. CAMERON: For the life of me, I cannot understand why this is being rammed through this afternoon. A number of representations have been made to the Minister, as they were to me and to the Australian Democrats. I am aware that the Minister has a letter from Mr John Dunnery, and he is a personal friend of mine. However, he left that union some time ago. Bob Sneath has taken over, and he was not fully aware of the full details of all this and he would like the opportunity, as I guess most trade union secretaries would—particularly when it affects a large section of their

union membership—at least to sit down and perhaps be given just a small opportunity to engage in the same consultation process that the Government has undertaken.

I understand that the original initiative to set up this committee and examine this matter was an initiative of the previous Labor Government. It is to be congratulated for that, and I congratulate the present Government for going on with it and finishing off the job. The end result is not too bad. However, we would like the provisions relating to the use of the 25 kilometre an hour speed limit to go into the Bill.

I am sure the Acting Chairman would remember his days as a trade union official when members of the union would come up to one and say, 'We are entitled to so and so conditions.' One would say, 'That is right.' They would ask whether it was in the award or whether it was just because the boss gives it. One would then explain the difference between its being a custom and practice of the employer and its being in the award. Every time, from my trade union experience, trade union members would say that they want the security of its being in the award. That is what they are expressing on this occasion: they want the security with this limited applicability and for it to apply only when the workers are working in and around the work site and it is not possible for them to be given proper protection.

The Department of Road Transport, the Minister, the police and every other group on that consultative body supports the Labor Party's amendment. I have actually plagiarised it from the Department of Road Transport's draft guidelines that are to apply when the Bill goes through. The sticking point appears to be not what we are trying to do here but what kind of security or guarantee we will have that the 25 kilometre an hour speed limit will be retained. I should have thought that the Government would be happy with its increased flexibility. It has its buffer zones and its 40 kilometre an hour zone, and one can only hope that, with the increased flexibility that the Government has got, and provided that good common sense will prevail on the job when these signs are put out, the contractors working for the Department of Road Transport apply the same diligence to the erection of traffic signs and safety signs as do permanent employees of the Department of Road Transport. I understand that the Australian Democrats may have something to say about that subject at a later date.

The sticking point here is not what either the Bill or the code of practice will say. We seem to be relatively on all fours, as far as that is possible when dealing with the Minister, but the sticking point is whether it will go into the Bill or whether it will float around somewhere in the code of practice. The Opposition supports the Government's quest for flexibility. We are giving the Government everything it wants except we are putting up our hand and saying, 'Hang on a minute.' In certain situations with this narrow applicability we would like to say 'No.' In those situations, the 25 km/h zones get up. It may well be that elsewhere in relation to 40 km/h zones and the other amendments that the Government seeks, it will get that flexibility.

To paint the Opposition as being inflexible and in some way or other opposing and trying to hold this up is quite an erroneous impression to create. The Australian Labor Party and the Democrats have worked together positively and consulted with each other and the Australian Workers Union. Bob Sneath has asked me to put on the record his appreciation of the fact that the Australian Democrats met with him and gave him a decent hearing on a matter of great concern to the union. I have fulfilled that obligation to Bob Sneath.

Great play has been made of the fact that somehow or other the Opposition and the hierarchy of the trade union have got out of step with the rank and file members. I spent some time discussing this matter with Bob Sneath and Jules Miller, both of whom were present when we had a joint meeting with the Australian Democrats. I have no hesitation in saying that the express wish of the Australian Workers Union and Jules Miller—who, I understand, is a member of this committee—is that all the matters relating to the 25 km/h speed limit go into the Act. My understanding is that Mr Miller included that in his letter to the Minister, but she must have overlooked that part when she read out that letter to the Council—selective reading, I suspect. The Opposition strongly opposes the move to extend the speed limit exemption to 40 km/h. The Opposition seeks support for its amendment, although I could not speculate on the percentage of times on which a 25 km/h or a 40 km/h zone would be used in relation to the specific nature of our amendment.

Perhaps I can sum up by saying this: if the Department of Transport picks up the guidelines that it recommends to the Minister and the Minister accepts them and they are adopted, the effect of our amendment on what will happen on the job is minimal. Will it end up in some code of practice where it can be varied by a ministerial or departmental direction or will we put it in the Bill so that the next time the Liberals come to this place and seek to lift the limit from 40 km/h to 50 km/h or vary the 25 km/h limit to 30 km/h—because it seems that after every decade or so they are trying to lift the limit—they will have to come back to this Council to get that approval.

The Hon. SANDRA KANCK: I indicated in my second reading speech that until I heard the Hon. Mr Cameron's comments I had not considered the Bill to have much consequence. As a result of what he said, my office contacted the union. On that basis, I placed some amendments on file. As the Hon. Mr Cameron has said, subsequently I met with the union to discuss its concerns further. This issue turned out to be much more complex than I originally thought. I have had discussions with the Minister and the Hon. Mr Cameron in the interim, and it would appear that some of my amendments are in conflict with those of the Hon. Mr Cameron. I will defer to the Hon. Mr Cameron's amendments, because he assures me that they meet with union approval. I also understand from the Minister that she believes that some of the matters I have raised should be in the code. Therefore, I ask the Minister: what is the status of the code, how enforceable is it, and to what extent is it simply up to someone and how they are feeling on a particular day?

The Hon. DIANA LAIDLAW: A code of practice is enforceable because it comes under the rules provided for in other sections of the Road Traffic Act. Section 25 of the Road Traffic Act provides for rules, and the rules are the code of practice. The signs you see around the city and country today relate to the code of practice coming back to the provision in the Act that relates to rules. So, they are enforceable in that sense. It is a code of practice in the sense that it is a practice that contractors or the Department of Transport apply when they are out on the road. The honourable member indicates that she supports this amendment. I will not take issue with it further as it is not of great relevance to me whether it is in the Act or the code of practice. What seems silly to me is that, for some extraordinary reason, the Hon. Mr Cameron has pulled this piece out of the code of practice rather than seeking to have it in the context of all those safety provisions that are in the code of practice. The provisions in terms of the

proposed speed limit around work sites (25, 40 or 80 km/h or whatever) are all safety measures. I grant the honourable member that this is one, but they have all been developed over some time since they were first proposed as safety measures by the former Government, but I am relaxed about the amendment.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 1, after line 21—Insert:

(ab) by striking out from subsection (2) 'may' and substituting 'must';

(ac) by inserting in subsection (2) 'and in accordance with this Part' after 'with the approval of the Minister';

This is a matter that I have raised in respect of quite a bit of legislation. I think the Minister would be aware that I am often wary about the word 'may'. I think that the word 'may' is sometimes too relaxed. In this amendment, we say that they 'must' place signs on the road. The second paragraph clarifies that and makes it in accordance with this part of the Act. I think it is fairly self-explanatory.

The Hon. DIANA LAIDLAW: The Government supports the amendment.

The Hon. T.G. CAMERON: The Opposition supports the amendment.

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 1, line 23—Insert: ", by" after 'and substituting "on'.

This is simply a drafting amendment, which seeks to make clear that the power under section 20 of the Act to set special speed limits in relation to work areas and work sites will extend to restricting the speed of vehicles moving by such an area and not just vehicles moving on or towards the area by the site. The current Act and the Bill arguably do not make this point as clear as it should be made, and it is only in terms of clarification that we move it. However, if it helps make the Act clearer, it is a good thing.

The Hon. T.G. CAMERON: Are there any consequential flow-ons from that amendment?

The Hon. DIANA LAIDLAW: No, just clarification.

Amendment carried.

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

Page 1, after line 28—Insert:

(ab) in relation to a hazardous work area—a maximum speed not exceeding 25 kilometres an hour; or

The amendment is self-explanatory.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 2, after line 2—Insert:

(d) by striking out from subsection (3) 'the authority, the contractor may exercise the powers conferred on the authority by this section' and substituting 'the authority, this section applies to the contractor in relation to those works in the same way as it applies to the authority'.

The Hon. DIANA LAIDLAW: We support the amendment.

Amendment carried; clause as amended passed.

Remaining clauses (4 and 5) and title passed.

Bill read a third time and passed.

FRUIT AND PLANT PROTECTION (ENFORCEMENT) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 6 June. Page 1564.)

The Hon. R.R. ROBERTS: The Opposition rises to support this legislation but, in indicating its support, I will mention some areas of concern. I will outline also some of the discussions that have taken place between myself, the present Minister for Primary Industries and the Democrats in respect of a couple of issues. At this stage, the Opposition claims absolute victory on behalf of the fruit industry of South Australia and those people who rely on horticulture and the fruit fly free status of South Australia. I first became involved in this exercise in 1994 when I was made aware of a situation that exists at Oodlawirra in the north of the State, which inspects most of the trucks travelling to South Australia from northern New South Wales, Queensland and Broken Hill.

I was advised that this was the busiest fruit fly inspection site in the State and that it consistently detected at least 50 per cent more fruit fly than any other site in South Australia, despite the fact, as was pointed out to me in my initial contact, that the site operated for only 16 hours a day for a few months of the year (from 1 September to the end of March). Residents living in the area indicated to me that this system had no basis of commonsense whatsoever, and it was clear to me, given the importance of the fruit fly free status of South Australian horticultural products, that something needed to be done about it. I made a number of approaches and the matter came to the attention of the South Australian press.

I can remember that, during an interview with Simon Royal of the ABC, I pointed out the importance of horticultural products to the export earning income of South Australia and indicated that the system at Oodlawirra was obviously set up to fail horticulturists in South Australia. I remember Simon Royal commenting that it seemed a stupid system, and I also remember responding, I thought cooperatively, by saying, 'Yes, and it was probably a system that was introduced by the Labor Party,' to which he said, 'How do you feel about that?' I said, 'Well, it is really not a question of who's to blame, but how we fix the problem.'

Unfortunately, I did not receive the same degree of cooperation from the previous Minister for Primary Industries, the Hon. Dale Baker, who took, I thought, a very immature approach to this issue. He proceeded to blame the Labor Party in all sorts of announcements and showed no intention to cooperate to overcome what was a serious problem. He pointed out that it would probably cost an extra $40 000 to man Oodlawirra through that high incident period between 10 p.m. and when the site reopens the following morning. During that time there are thousands of vehicles going through there, carrying holiday-makers and fruit.

South Australia did have a series of fruit fly outbreaks, as consistently occurs, unfortunately, in South Australia. South Australia has a very good record in handling fruit fly, and I think it is a fair comment to say that the systems in place for handling fruit fly in South Australia are probably better than any other State. South Australia has a proud history of tripartite discussions on fruit fly and a very good clear-up rate. However, the clear-up rate comes at a price and, during the recent Estimates Committee discussions, it was pointed out that that price was $120 000. It is very easy to see that the previous Minister was being penny wise and pound foolish, in that he was putting at risk unnecessarily the horticultural industries and that most important fruit fly free status of South Australian horticulture.

In a couple of speeches and radio interviews I pointed out—and what I said was reinforced by people living in

Peterborough and Oodlawirra—that it was a common practice, because of this unusual arrangement of a 16-hour operation, for cars to park on a hill overlooking the Oodlawirra fruit fly station and, when the inspectors knocked off, people would drive through the station, but what is more alarming, commercial semi-trailers were also parked in the background, waiting for the fruit fly station to close.

In a contribution during the Estimates Committee, which was a little bit out of character, the present Minister scoffed that that was a fact. When this matter was raised I was approached by the press and, on advice from people living in the area who said it was a common practice, I suggested to the reporter that if he wanted to take some film of vehicles waiting until the station had closed it would be easy to do. Unfortunately, the reporter in his enthusiasm contacted the fruit fly station. The persons employed at the station did what they thought was the right thing and contacted the department and were barred from talking to the press and threatened with the loss of their jobs.

I raised the problems at the Oodlawirra site again in 1995 and received the same condemnation and heard the same tired speeches that it was probably the Labor Party's system, which I fully accept. I also fully accept that the system is inadequate and needs to be fixed. Last year the Oodlawirra site again recorded a record number of detections, while it was operating only 16 hours a day for a few months of the year. Those cries, which were backed up and supported by horticulturists throughout South Australia, were brushed off and condemned by the previous Minister. In a sense, it was a stroke of luck for horticulturists in South Australia when the Liberal Party, due to its factional differences, axed the previous Minister for Primary Industries and installed a new chum who, fortunately for South Australian horticulture, was keen and prepared to do something. Yes, he did go through the same tired rhetoric that his advisers had been giving to Dale Baker but, to his credit, whilst engaging in tired political rhetoric, he also proceeded to try to fix the problem—something which had not occurred over the previous two years, despite the damning evidence.

We now have this Bill. A trial system of random testing was conducted at the Oodlawirra site in March this year. I do not condemn the effort, but it is an anomaly that the random testing was conducted at the end of a peak period when most holiday-makers had returned home and school children had returned to their classrooms. During that test there were some interesting findings. During the trial period many vehicles containing fruit were stopped and there were four instances of fruit fly infestation. An extrapolation of night-time interceptions over a 60-day period suggests that a potential of 12 lots of infested fruit may have entered South Australia via Oodlawirra. Every one of those detections had the potential not only to trigger a fruit fly outbreak at $120 000 a pop, but to ruin our fruit fly-free status. At a time when South Australian citrus growers are under intense pressure by the Americans to prevent our fruit fly-free status product going into America, we were engaging in this dangerous practice with a cavalier attitude towards the detection of fruit fly.

It was also pointed out that the Oodlawirra station had made 50 per cent more detections, so it was working very well. I should have thought that would have rung an alarm bell. If we had 50 per cent more in 16 hours, the potential to destroy the horticulture industry in South Australia with its fruit fly-free status should have been obvious to all.

The new Minister, after negotiations and investigation, announced a whole range of new initiatives, which I welcome, to ensure that we maintain our fruit fly-free status. The Minister, in his second reading explanation, asserted that the police had come to him and said that they wanted to be involved in the detection of fruit fly in South Australia. That is an assertion that I find amazing when the police are having their duties contracted out. A patent example of that is the speed camera. Mr President, I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

STATUTES AMENDMENT (SENTENCING OF YOUNG OFFENDERS) BILL

The House of Assembly intimated that it insisted on its amendments to which the Legislative Council had disagreed.

Consideration in Committee.

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

That the Legislative Council do not insist on its disagreement to the House of Assembly's amendments.

Motion negatived.

A message was sent to the House of Assembly requesting a conference at which the Legislative Council would be represented by the Hons K.T. Griffin, J.C. Irwin, Sandra Kanck, P. Nocella and Carolyn Pickles.

FRUIT AND PLANT PROTECTION (ENFORCEMENT) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

The Hon. R.R. ROBERTS: I was saying that the Minister had asserted that the police had come to him seeking the ability to be involved in fruit fly detection. I pointed out that I found that amazing when their duties were being cut and there was an intention to take on more duties.

The Hon. M.J. Elliott interjecting:

The Hon. R.R. ROBERTS: That was the assertion that I found hard to accept. If we made every police officer in South Australia a fruit fly inspector, it would open up the potential for abuse of the system because fruit fly inspectors have wide-ranging powers of search.

The Hon. M.J. Elliott: Wider than the police.

The Hon. R.R. ROBERTS: Much wider than the police. The fear put to me by a number of groups—and no doubt the Hon. Mr Elliott was approached by many of those groups—was the potential for abuse of the system.

I was also concerned that this was not going to be some el cheapo way of reducing the costs of fruit fly inspection in South Australia, as important as it is. I was briefed on a number of occasions by departmental officers, but I pointed out that I did not want the mums and dads travellers of South Australia and interstate paying for fruit fly inspections by fines. That does not mean that I do not agree with stronger penalties for the protection of our horticulture industry.

I also indicated to the department that I saw some value in allowing some police officers to assist in areas where we could expect to find breaches of the provisions for the carriage of fruit and plant products. I emphasise plant products, because there is the important problem of phylloxera and other horticultural diseases which can be brought into the State. However, I found it hard to accept that it ought to be a general provision given to all police. I have been briefed by the Minister that, with truckloads of fruit coming in, it

would be nice to give the police these powers. My answer is that we need only one fruit fly inspector to invoke his powers and that it is not unreasonable to expect that in the commission of a crime the police would assist the inspector in his proper investigation.

What I and others feared was that we may have a situation where a vindictive police officer may find that someone was smoking something in his car on Port Road and the person was pulled up on the pretext that they might have been looking for peaches or bananas and the authorities were engaging in activities they did not have the legal power to engage in if they were only acting with the status of a police officer. There were discussions and the Hon. Mr Elliott has an amendment on file that I was told by many people could not be drafted. The Hon. Mr Elliott was advised that such an amendment could not be drafted to allow police activities in this area where there was only a genuine suspicion that a crime had been committed. As has often been the case in the Legislative Council there have been discussions with the Minister but, because of further complications as a consequence of that amendment, there is an agreement between the Parties that these important reforms that we all support and applaud will be put in place as soon as possible on the understanding that discussions with respect to the powers of others—not necessarily just police—to act as fruit fly inspectors will be ongoing.

On the basis of those understandings and with the support of the Democrats and the Government, I have pleasure in supporting the second reading. I add my thanks to the Minister for Primary Industries in seeking resolution of a real problem. I am happy to announce that he has given me a guarantee that there will be closer inspections at Oodlawirra, in particular, and it is hoped that during danger months there will be 24-hour inspections to protect horticultural products coming into South Australia and maintain our fruit fly-free status for the benefit of all South Australians. With those understandings and undertakings I again thank the Minister and his officers for the cooperation they have shown. I thank the Minister for combining with the Opposition and the Australian Democrats to introduce proper reforms for the benefit of our industries and all South Australians. I support the second reading.

The Hon. K.T. GRIFFIN (Attorney-General): I thank honourable members for their contributions and indications of support. The major issue seems to be the issue of inspectors and police officers, and I will deal with them in the Committee stage rather than spending more time now exploring the issues relating to that.

Bill read a second time.

In Committee.

Clauses 1 to 3 passed.

Clause 4—'Exemption of certain vehicles from compliance with certain provisions.'

The Hon. M.J. ELLIOTT: I will not be proceeding with my amendment on file. Originally, my amendment sought to ensure that the police would only be able to use the powers of an inspector when there were reasonable grounds of suspicion that an offence had been, was being or was about to be committed. During the second reading stage I indicated some concern about the sorts of powers that were being given to the police. Police powers are often not as broad as they are for inspectors and that is something of a conflict. Fishing inspectors and a range of other inspectors usually have a narrow task and there has always been a difficulty to balance how best to carry out their task as against what powers are necessary and whether or not they are justified.

The Hon. K.T. Griffin: Narrow task, wide powers.

The Hon. M.J. ELLIOTT: That is right. Here we are looking at taking quite wide powers and giving them to the police who have a wide range of tasks already. At the time I indicated that I was surprised that the police were being given this responsibility at all, since the Government in general terms had been taking responsibilities such as staffing speed cameras and the like away from police. Nevertheless, there is a real civil liberties question about the sorts of powers that these inspectors have being given to police generally. As I said, I have the amendment on file and I have had discussions with the Minister. I have indicated to him, as has the Opposition I understand, that we believe there is a place for the police to exercise the powers of inspectors. That is possible under the current Act, so even if the clause is defeated, individual police can be made inspectors for the purpose of the Act but the capacity is not allocated to the police as an automatic right at all times in all places. We have indicated to the Minister that we are prepared to address this issue during the break and, if he wishes, we can pursue it when Parliament resumes.

I believe that my amendment would have coped with the situations that were described to me in which they wanted the police to exercise the powers. I was given the examples of where a person went through a roadblock and did not stop. In those cases I would argue that reasonable suspicion that an offence had occurred would have enabled the police to stop them and inspect their vehicle. If a truck came down a back road over the border, and trucks do not do that as a matter of course, it would be reasonable grounds for suspicion, and if a particular fruit importer had raised suspicion more generally, the police would be able to use their powers under grounds of suspicion. They were the three examples given to me of where the police may want to exercise the powers and I think my amendment would have coped. There was a difference of opinion about that. I put on the record that we are prepared to look at the issue further. We think there will be times when the police will need to exercise the powers but we think there needs to be not just a general granting of the powers because of the civil liberties questions that are involved.

I believe that members of the Government share that same view and perhaps it is something that we should revisit in relation to other powers of inspectors which are given to police under a couple of other Acts as well. If we wish to maintain a democracy, we must always remain vigilant about civil liberties and be careful in legislation that through the back door we do not give powers which on the surface seem to be quite reasonable but are capable of being severely abused. Since I spoke quite a while ago in the second reading debate, I indicate that except for this clause we will be supporting the rest of the Bill and we welcome it.

The Hon. K.T. GRIFFIN: I understand the issue which members have raised in relation to the appointment of police officers as inspectors. I note the amendment which the Hon. Michael Elliott has on file. There are some difficulties with it but, in the light of the fact that there have been discussions with the Minister for Primary Industries about the way in which this might be progressed over the recess, I am amenable to the course of action that is being proposed.

The real difficulty ultimately is not the power of the police but the power of the inspectors—whether they are fruit and plant inspectors, fisheries inspectors or forestry inspectors. Such persons have wide powers under the Acts under which

they are appointed—much wider powers than the police exercise. We keep police very much under scrutiny in relation to complaints against them and against the exercise of statutory powers, but we do nothing similar in relation to inspectors.

The powers of inspectors include random searching, stopping of vehicles and a whole range of other powers which, if given to police, would attract a fairly significant uproar from the community. Ultimately we may have to look at the powers which inspectors have under the various pieces of legislation. For the moment, police can be appointed specifically as inspectors under the existing law. That will occur at least in the border regions where fruit may be crossing into South Australia, and that would seem to be the most appropriate way to deal with the issue until the next session in October.

Clause negatived.

Clause 5, schedule and title passed.

Bill read a third time and passed.

The Hon. K.T. GRIFFIN: Mr President, I draw your attention to the state of the Council.

A quorum having been formed.

STATUTES AMENDMENT (SENTENCING OF YOUNG OFFENDERS) BILL

A message was received from the House of Assembly agreeing to a conference to be held in the Terrace Room East at 5.30 p.m.

APPROPRIATION BILL

Adjourned debate on second reading.

(Continued from 22 July. Page 1758.)

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I thank members for their contribution to the second reading debate on this Bill. A number of members raised some specific questions. To the best of my ability, I have endeavoured to trace for those members some replies. I note that my colleague the Hon. Diana Laidlaw has responded to a number of questions in relation to the administration of the arts and cultural heritage portfolio. Therefore, I will not go over those issues again.

In her contribution, the Hon. Carolyn Pickles asked whether I could provide a reconciliation of funding for the 1996-97 education budget for teachers' salaries together with supplementary funding to be provided by Treasury to meet the teachers' pay claims and the latest offer made to teachers valued by the Government at $130 million and indicate the total amount not yet funded and how the Government intends to fund the difference. I am not in a position to indicate at this stage whether the pay offer for teachers of $130 million reported in the press has, in fact, been made by the Government to teachers in the confidential negotiations. Therefore, in essence, there is no question for me to respond to in relation to this issue. I may be able to say something in the next day or two, as I indicated during Question Time, but I suggest to the Leader of the Opposition that, if the Government did increase its offer, the full year cost may not be incurred in the 1996-97 budget and that it may well be incurred towards the end of the proposed two-year agreement that the Government has been seeking to implement in the State arena. Therefore, the full year cost of any agreement might not be felt in the 1996-97 education budget, which is what we are discussing at the moment.

I am able to respond to some parts of the Leader's question. The Government's publicly available offer at the moment is $93.6 million, which is the full year cost at the end of the Government's proposed two-year agreement. At that stage, that cost of $93.6 million will be shared by the Department for Education and Children's Services, which will provide $23.6 million, and Treasury, which will provide additional funding of $70 million. Of that $23.6 million, the Government has already made budget decisions which have had factored into them ongoing savings of about $15 million per year. The difference between that $15 million and the $23.6 million (about $8 million or $9 million) is part of the Government's enterprise bargaining offer. The Government said when it made its original offer and its subsequent offer early this year that it was prepared to pay the 12 per cent salary increase over the two-year period if limited savings were to be made from the education budget to go towards the total $93.6 million cost. Those further limited savings would be about $8 million to $9 million.

As I have indicated before, almost half that figure would be what the Government suggests is a relatively painless policy change, which would see the length of the school year in South Australia being reduced to 202 days. That would bring the school year in South Australia a little closer to the school year in non-Government schools and the Australian average for all Government schools. The trade-off, however, would be that teachers would undertake up to five days' training and development in their own time. Whilst these extra five days would be added to the holiday period for teachers, it would be expected that five days of their own time or the equivalent thereof would be undertaken by teachers for training development.

That simple change would save almost $4 million in a full year for the Government. First, it would save money because we would have a shorter school year. We would not have to run buses or hire contract teachers for as long, and there are a range of other obvious ongoing recurrent expenditure savings in terms of running a big system such as our own. Secondly, we would no longer have to pay significant sums of money for temporary relieving teachers (TRTs) to replace teachers who attend training and development sessions or conferences during the normal school week. The current arrangement is that, if a teacher wishes to attend a training and development session or a conference, they may absent themselves from the school for one or two days, and the system has to pay for a temporary relieving teacher to take that teacher's classes during that time. Under this proposed arrangement, that would not be required, and there would be a further saving of up to $2 million. Of that $8 million to $9 million worth of expenditure savings proposed as part of the enterprise bargaining agreement, almost $4 million would come about through this relatively painless offset.

The other $4 million is achieved in a variety of ways which we have suggested. We have indicated to the Institute of Teachers that we were prepared to negotiate with it and with others in terms of the exact make up of these expenditure savings. Nevertheless, those savings would be put as a contribution—although it is a relatively small one—to the $93.6 million total offer. That is the way the Government has factored that salary increase in its funding for 1996-97. If the Government were to increase its offer for 1996-97, it would obviously do so only if it was able to ensure that that salary increase was paid for through additional funding from

Treasury, through savings from education or, as the Premier and others have indicated on occasions, through additional revenue which the Government might seek to gather and which would then be devoted towards the Department for Education and Children Services for increases in salary.

The second set of questions was asked by the Hon. Ron Roberts. The honourable member asked some questions in relation to escape figures. I have been provided with a response from the Minister for Correctional Services. I place on the record his reply to me, as follows:

On 10 July 1996, the Hon. Jamie Irwin MLC advised [the Legislative Council] that this Government had reduced the cost of maintaining an offender in prison from $52 000 in 1992-94 to $38 000 in 1995-96. The honourable member asked for similar comparisons with the escape rate, and I have undertaken to provide this information as soon as possible.

In response to his question I am very pleased to be able to advise the honourable member that, as well as significantly reducing the cost on maintaining a prisoner in South Australia's prisons, this Government has also significantly reduced the number of escapes. The figures show that the escape rate from the State's prisons in 1995-96 was 31 per cent less than in 1992-93 and 36 per cent less than in 1993-94.

Reductions have largely been achieved by closing the Fine Default Centre, and further reductions are expected as a consequence of this Government's most recent decision to fence the accommodation areas of the Cadell Training Centre.

In the six financial years since July 1990, 54 prisoners escaped from Cadell and, since the opening of the Fine Default Centre in 1993 until its closure in October 1995, 26 prisoners escaped from that institution. The closure of the Fine Default Centre in October 1995 and the transfer of all fine default offenders to the special wing of Yatala Labour prison has resulted in a reduction to the number of escapes and has contributed to the number of fine defaulters admitted to prison dropping by 30 per cent.

Other questions are raised in relation to the delivery of health related services, and the reply from the Minister responsible is as follows:

The South Australian Health Commission is not able to release details of the amounts paid to Healthscope under the management agreement as they are commercial in confidence. The management agreement between the Modbury Public Hospital Board and Healthscope Limited requires a certain level of activity to be performed for a set management fee, and the savings achieved to date are on target to achieve the estimated $6 million per annum returned to the Government after the Torrens Valley Private Hospital has been commissioned.

With that, I thank members for their contribution to the second reading debate and for their support for the Bill.

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

STATUTES AMENDMENT (UNIVERSITY COUNCILS) BILL

In Committee.

Clauses 1 to 4 passed.

Clause 5—'Council.'

The Hon. R.I. LUCAS: I move:

Page 2, lines 15 to 17—Leave out this paragraph and insert:

(b) the presiding member of the Academic Senate who will be a member of the Council *ex officio* or, if the Vice-Chancellor is the presiding member of the Academic Senate, a member of the Academic Senate who is a member of the academic staff of the University elected by the Academic Senate (but that person cannot be a student of the University);.

This amendment would allow a member of the academic staff to be elected by the Academic Senate rather than, in certain circumstances, the Vice-Chancellor. The Hon. Anne Levy has indicated that there seems to be some agreement about this amendment.

The Hon. ANNE LEVY: I support this amendment; it is at the request of Flinders University. It was, I think, the clause that was originally in the Bill, but it was changed when the Bill was before the Lower House to provide that if the Vice-Chancellor is the presiding member it would be his deputy. The Vice-Chancellor of Flinders University told us all that if he is not Chair of the Senate it would be his Deputy Vice-Chancellor who would not be regarded as an academic. It was important that an academic member of the Senate be appointed to this position on the council.

The Hon. R.D. LAWSON: I am a member of the council at Flinders University and I certainly support this amendment, which has been made at the request of the university to accommodate the anomaly appearing in the present paragraph (b).

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 2, after line 22—Insert the following paragraph:

(da) two members of the South Australian Parliament, one from the group led by the Premier and the other from the group led by the Leader of the Opposition, appointed by the Parliament on a joint address from the House of Assembly and Legislative Council;.

This is an important amendment, which relates to membership of university councils by members of Parliament. Currently, Flinders University and Adelaide university each has five members of Parliament and that situation has applied for many years. The proposal put up by the Government would have removed all members of Parliament from representation on the university councils, but we feel that there is an important role for members of Parliament to play as members of university councils. We certainly agree that it should not be five when a smaller council is being constructed, but we feel that a representation of two from the Parliament can be extremely useful to the university council.

Members of Parliament will have backgrounds, experience and skills which are quite different from those of the other members of a university council, and it can be of great assistance to the council in having such backgrounds, experience and skills represented on their council. As I mentioned this morning, members of Adelaide University Council made very complimentary remarks about the contributions that have been made to their council by members of Parliament.

The Hon. T.G. Roberts: They were only being polite.

The Hon. ANNE LEVY: No, I was present at the time and, although I offered to leave the room, as did the other members of Parliament, they were extremely complimentary, almost embarrassingly so. Having members of Parliament as members of the council serves as a point of contact between the Parliament and the university. It is a two-way contact, which I think can be of benefit to the Parliament: there are members who are fully cognisant of the affairs of the university and are also of advantage to the council because, as I say, they bring with them quite different backgrounds and experiences.

I know that the Minister in the other House, and indeed the Hon. Robert Lawson today, said that there could be members of Parliament on the council who were selected as part of the 10 or seven, in the case of Adelaide University, who will be selected by this selection panel, but that seems to me unfortunate. I imagine the selection panel would prefer to select other individuals amongst their seven or 10 but, in

principle, it seems to me important that members of Parliament should be elected by the Parliament to fulfil this position. It has been suggested that the whole process of selection has come about because some individuals shy away from elections, perhaps because they fear being defeated in elections.

That certainly cannot be said of members of Parliament. We are all thoroughly used to elections; we revel in them and undertake them regularly. To suggest that members of Parliament are afraid of elections would be the greatest nonsense anyone could suggest. I firmly believe that democracy is much better where ever possible, and that members of Parliament should be elected rather than selected. The appropriate electoral college for members of Parliament is the Parliament itself, and my amendment is saying that these two members of Parliament will be members of the council of the university and that they will be elected by the Parliament rather than selected by a selection panel.

The Hon. R.I. LUCAS: Having served on the University of Adelaide Council for three or four years myself, I remember—

The Hon. T.G. Roberts: What did they say about you?

The Hon. R.I. LUCAS: They were not as flattering about me, I suspect. I remember with some nostalgia and fondness my time on the University of Adelaide Council, although I must say that I suspect that there was more politics on the Adelaide University Council at that time than I was seeing in Parliament House on North Terrace. It was certainly an interesting experience as a relatively new member of the State Parliament and of the university council. The Government's position, as outlined by Minister Such in another place, is that we do not support as a Government, this particular amendment. Minister Such spoke on this issue in another place and outlined the reasons for the Government's opposition to this proposition. The Minister's view is that the proposed arrangements in the Bill will allow, where the universities wish it, the co-opting of members of Parliament with expertise to university councils if the universities wish to do so. If the compliments by the University of Adelaide council were as laudable as the Hon. Anne Levy has led us to believe, I suspect that she will be the first person to be co-opted to the council.

The Hon. R.D. Lawson: Second after Peter Lewis.

The Hon. R.I. LUCAS: The Hon. Mr Lawson tells me that she would be second after my friend and colleague the member for Ridley, Mr Peter Lewis. I will leave the order to be sorted out by the respective members.

The Government's view is that if there are members of Parliament with expertise to offer to university councils and the universities recognise it, the flexibility is available for them to be co-opted. I understand that some universities are not supportive of the notion of having members of Parliament on university councils. However, I am sure there are other universities—perhaps the University of Adelaide is one—where there has been a strong tradition of support for having members of Parliament on their councils.

The Government's view is that the arrangement in the Bill allows the universities the flexibility to make that choice. If a university does not want members of Parliament on the council or does not believe that they have the sort of expertise that they need, they will choose not to co-opt. If universities believe that members of Parliament have expertise to offer to the council, they can use that provision to co-opt them to the council.

The Hon. R.D. LAWSON: I support the Government's position, notwithstanding that I have great sympathy with the sentiment behind the amendment proposed by the Hon. Anne Levy. I believe it is of advantage for university councils to have people such as parliamentarians as members. Universities spend hundreds of millions of dollars, they are substantial public institutions, and they need to be reminded that they have heavy public obligations. I believe that members of Parliament on university councils serve as representatives of the wider public interest and not only contribute to the decision making of universities but are a reminder of their public obligations.

The Hon. Anne Levy: You should be supporting the amendment.

The Hon. R.D. LAWSON: I support the sentiment behind it. I am saying that it is good for a university council to have members of Parliament on it provided those members of Parliament are prepared to familiarise themselves sufficiently with the business of the university and to contribute to the deliberations of the council. However, I agree with the Minister that members of Parliament ought not to be imposed upon university councils.

The Hon. M.J. Elliott: Or anybody else.

The Hon. R.D. LAWSON: Indeed. I remind the Committee that the Hoare committee of inquiry into higher education management, which was published last year, concluded:

> . . . many governing bodies would operate more effectively if parliamentarians were not a prescribed membership category.

The Hoare report described a number of skills and attributes which, in the view of the authors, ought to be present on the governing bodies of universities. The report stated:

> The skills likely to be required include business, management, accounting, finance, law, information technology and education.

It struck me as somewhat curious that this report should have put education as the last of the qualifications and skills likely to be required on university councils. One criticism that I have of the Hoare report is that it tends to focus on what might be termed financial, accounting and managerial functions of university councils and barely pays lip service to the important educative role of universities.

The Hoare report in some detail went through issues of university governance—far more detail than did the McGregor report in South Australia. It stated:

> The issue of governance has become prominent because of poor business practice and performance in the corporate sector and commercialisation of public sector enterprises.

It saw the problems of university governance as part of a wider issue of governance of corporations and public and private institutions. The authors noted:

> Higher education institutions are passing through major change occasioned by social policy opening tertiary education to the full spectrum of society. . . Universities can probably no longer rely on their traditional governance forms if they are to operate fully effectively.

It was the view of Hoare that the governing body, the university council, had only three primary roles in the university: external accountability, strategic planning oversight and performance monitoring. It was concerned about a number of aspects of the operation of university councils, and the main problem was lack of focus and emphasis on strategic issues, inadequately articulated roles and responsibilities of council members and lack of commitment and interest by some members. I might interpose in this regard that parliamentary members of university councils came in for special criticism. It also noted as a problem the

imbalance between internal and external appointments, which will be redressed by this measure. Hoare noted that the members of governing bodies in many cases did not appear to have a proper understanding of their roles and responsibilities. This particular charge was made not against parliamentary members, but was really levelled at staff and students who are elected to the governing body, many of whom seem to see the university council as a forum for matters which have been defeated in other committees within the university.

The review committee was informed that attendance at university council meetings by some appointed members was very low. It states:

> Attendance by governing body members who are also parliamentarians was particularly poor—parliamentarians attended only 70 per cent of possible meetings at institutions in capital cities, and attended only half of the possible meetings in regional institutions.

Given that poor attendance record by parliamentarians over the general view of university councils, it is not surprising that Hoare was not in favour of entrenched positions for parliamentary members.

Notwithstanding the view that I hold that members of Parliament can add value to the deliberations of university councils and in some respects do, I do not believe that parliamentary members ought be entitled by statute to seats on university councils. If they are to participate, they should be elected and nominated on merit and merit alone.

The Hon. M.J. ELLIOTT: I have given this matter a great deal of consideration and arguments on both sides have merit, which is often the case. When I look at some of the members of Parliament inflicted on some universities (without being specific), I am not sure that we have always done them a great favour and perhaps there is an argument for saying that where the universities feel they can benefit from having an MP—and I think they can—they should be in a position to choose them. The great benefit to the university is not always the wisdom they bring to the council itself but the fact that members from different Parties are getting an appreciation about what is happening within the university and perhaps communicating to the political system what the real wants and needs are of tertiary education rather than as parliamentarians might often do, that is, go on their prejudices and lack of information.

The Hon. P. Holloway: How can we debate this sort of issue in 10 years' time if no-one has been involved?

The Hon. M.J. ELLIOTT: I have not been on a council, but at least as a former student, with a wife who is still in university and, hopefully, children who are about to go there, I will certainly be seeking to maintain a closer understanding of the issues. Nevertheless, there is an argument to be had for having MPs on university councils. Whether they should be the MPs that Parliament chooses to inflict on them or whether they are the MPs that the universities feel have the most to offer to them—

The Hon. Anne Levy interjecting:

The Hon. M.J. ELLIOTT: I believe they have a right to decide who they want. That is democracy. The arguments of the Hon. Anne Levy have some merit but, on balance, it is not unreasonable that the university council might choose the MPs, if it chooses to have some, who may be on the council.

Amendment negatived.

The Hon. R.I. LUCAS: I move:

> Page 2, lines 23 and 24—Leave out this paragraph and insert:
>
> (e) if the council so determines, one person co-opted and appointed by the council.

I am advised that the genesis of this amendment originally came from Flinders University. The amendment should be taken with the next amendment as a package. It means that there will be a reduction of one in the number of persons who can be co-opted and an increase of one in the number of general staff who will be elected by the general staff. In effect, it is a net transfer from co-option to increase the number of general staff. I note under subclause (f) that two members of the academic staff are elected by the academic staff. The amendments that I am moving on behalf of the Minister mean that there will be two members of the general staff elected by the general staff as well as two members of the academic staff being elected by the academic staff.

The Hon. ANNE LEVY: I do not oppose the Minister's amendment if there are to be co-opted members. My amendment leaves out the whole paragraph regarding co-opted members. Universities have never had co-opted members of their councils. They have never had proxies to members of council and they have always regarded membership of the council as something which was ongoing and went with the individual, not as a representative of anywhere. I know for some time universities have felt that it could be desirable to be able to co-opt someone on to their council. This applied particularly, shall we say, with the University of Adelaide where certainly every member was an elected member. The only people who were there *ex officio*—

The Hon. R.I. Lucas: There are co-opted members already at the University of South Australia and Flinders University. You might be talking about Adelaide.

The Hon. ANNE LEVY: I am talking about Adelaide University, where all members of council other than *ex officio* ones like the Vice-Chancellor are elected members. It has been felt that there was a need sometimes to be able to co-opt an individual with particular skills or experience which was lacking among the elected members of the council. However, we are fundamentally changing the composition of university councils. A large proportion—half in the case of Flinders and South Australia—will be selected. There will be a procedure for setting up a selection panel which will select half the members of the university council. If members are selected by a selection panel, which has been carefully chosen and which has to take regard of all sorts of criteria in choosing, why would the power to co-opt still be necessary? The selection panel will be viewing the composition of the council as a whole, will know what experiences, skills and attributes are desirable for members of a university council and will make their selection accordingly.

It is quite unnecessary to have a power of co-option when selection is occurring for a large proportion of the council. It is quite superfluous. There is nothing to indicate who would be co-opted or what would be the criteria for co-option. It could just be mates giving a job to their mates. There is no indication of why and what type of person would be co-opted. The rationale for co-option ceases to exist when there is a selection process carried out by a carefully established selection panel which used the university council as a whole when making its selection and which will take into account the skills, experiences and attributes which should be found on a university council. As a matter of principle, it is undesirable to have a quite unnecessary power of co-option. I make clear that if the committee believes there should be co-opted members, I certainly support the Minister's amendment.

The Hon. R.D. LAWSON: I remind the honourable member that this clause deals with the Flinders University,

and the Flinders University Act contains a provision for the cooption of members of council. As I understand it, it has always be the case at Flinders that there has been cooption of a limited number.

Amendment carried.

The Hon. R.I. LUCAS: I move:

Page 2, line 26—Leave out 'one member' and insert 'two members'.

This is consequential on the amendment that the Committee has just passed.

The Hon. ANNE LEVY: I support the amendment, although it is not consequential at all. There is nothing to say that there must be a particular number of members of the university council. It is Government policy to have two students on the university council. I certainly support it, but it is not in any way consequential on whether there are or are not coopted members or how many of them there are. There is no relationship at all.

Amendment carried.

[Sitting suspended from 6 to 7.45 p.m.]

The Hon. ANNE LEVY: I move:

Page 2, lines 27 to 33—Leave out this paragraph and insert:

(h) two students of the university (not being persons in the full-time employment of the university), one of whom must be a postgraduate student and one of whom must be an undergraduate student, appointed or elected in a manner determined by the Vice-Chancellor after consultation with the General Secretary of the Students Association of the university.

This amendment will increase the number of students on the university council by one, giving a total of three, at least one of whom must be an undergraduate and one of whom must be a postgraduate. Students are a very important part of the university. There have been up to five student members on a university council. We feel it desirable that there be three students on this university council, particularly when one would expect that more often than not two would be undergraduate and one would be postgraduate. For an undergraduate student it is a pretty frightening experience to attend a meeting of a university council. Two undergraduate students would be able to give support to each other and, apart from being able to second a motion, it would make their life a lot easier.

It is not only for that reason that I move this amendment. Students are an important part of a university. There are thousands of them. I do not know the number of students at the Flinders University, with which we are dealing here, but at the Adelaide University there are almost 2 000 postgraduate students and 12 000 to 14 000 undergraduate students. It seems fair and reasonable that this large number of undergraduate students should have two representatives on the university council. Far too often, young people are ignored in our society and their views not taken into account and, if they are heard at all, they are not taken seriously. Despite this, there have been some extremely competent and brave students at our universities who have gone on to contribute a great deal to society. It think it is a measure of the recognition of the importance of young people and the contribution which they can and do make to society when given the chance to increase the number of students by one.

The Hon. R.I. LUCAS: The Government opposes this amendment. I am sure that most members would agree with many of the sentiments expressed by the honourable member, but under the current structure of the council there will already be two students on the council. Under paragraph (c) there will be the General Secretary of the Students Association and under paragraph (h) there will be one student of the university. I am advised that there is a counterbalancing factor in terms of one student being an undergraduate and one being a postgraduate.

When you are reducing the size of the council from 34 to 20, clearly the degree of representation by each of the constituent groups within the university will need to be similarly reduced. To have two students on a much smaller council is, in the Minister's view, more than adequate representation of the views of students. No-one is suggesting that there be a lone student on the council.

The Hon. Anne Levy: There will be a lone undergraduate.

The Hon. R.I. LUCAS: There will be two students: an undergraduate and a postgraduate. If they happen to agree on a particular issue they will be able to caucus together or work together if that is their wish. One would hope that on most issues the students would take a wider view of the needs of the university and the council rather than always taking just the view of the student body or student association, although of course that would be their primary role. For all those reasons, the Government opposes the amendment.

The Hon. R.D. LAWSON: It is undoubtedly true, as the honourable member says, that students are important to a university. Obviously, they are vitally important. However, when the honourable member goes on to say that the student body will have only X representatives on the council, that betrays a misunderstanding of what these amendments are all about. The report of McGregor and Hoare shows that university councils have failed to fulfil their function, because the people who have been members of them have seen themselves as representing particular interest groups. The amendments seek to get rid of that model of university governance and have the university governed by a body, the individual members of which will not see themselves as being representative of particular interest groups and pushing a particular barrow.

The amendments are designed to produce a cohesive body drawing upon various resources, not selecting a number of representatives to give each other support, as this amendment proposes, but drawing together a body of people who can, together, provide useful leadership to the university in fulfilment of the functions of the council's responsibilities. I think it would be an anomaly, as is now proposed in paragraph (h), to have two students together with the General Secretary of the Students Association under paragraph (c)—that is three altogether—and then under paragraph (f) to have two members of the academic staff.

The Hon. Anne Levy: Under paragraph (b) we have three.

The Hon. R.D. LAWSON: As of right, there are two members of the academic staff. The honourable member proposes that there be two members of the academic staff under paragraph (f) and two members of the general staff under paragraph (g)—we agree with that—

The Hon. Anne Levy: And two students under paragraph (h).

The Hon. R.D. LAWSON: Two students, whereas there is already one student under paragraph (h) and the General Secretary of the Students Association under paragraph (c). So there will be two students on the representative council. We should bear in mind that for students the term of university council members is only one year, because by and

large students are there for only a short time. Frankly, the degree of participation in the deliberations of a university council, for someone who is there only for a year, meaning that the person would attend probably only four or five meetings or six at the most, is a pretty limited form of participation. To increase the number of students is purely a form of token representation; it does not actually advance the cause of university governance at all.

The Hon. ANNE LEVY: I was not going to speak again, but really the Hon. Mr Lawson is being utterly provocative—presumably deliberately. He talked about my amendment meaning two students under eight plus one under paragraph (c) and only two staff. There are two academic staff under paragraph (f) and there is another academic staff member under paragraph (b). So, there are three academic staff on the council of Flinders University, and everyone has agreed to that. There are two members of the general staff, and I feel there should be three students.

The honourable member said that he does not want people representative. Obviously, as soon as someone becomes a member of the university council they act for the benefit of the university as a whole in that capacity. However, they represent an electorate in the same way as we in this place represent a electorate. If 2 000 postgraduate students can elect one person to the council, 14 000 undergraduates should be able to elect more than one person to the university council. The Hon. Mr Lawson is talking nonsense.

The Hon. M.J. ELLIOTT: As with a number of these matters, there are valid arguments for both sides. On balance, universities exist primarily to educate students, and they are the prime customers of the place. It is not unreasonable for them to have a fair input into the council. We can argue about what a fair input is, but I note that they currently have five out of 35. In proportionate terms, when you cut back the council, students seem to suffer a disproportionate share of the cutback in numbers. We must recognise that they are the customers in the whole deal and, as such, they can make a valid input. Having more than one undergraduate student would be an advantage, with the increased likelihood that they may come from a different background within the student body and, therefore, bring perhaps some different viewpoints into the council.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 3, line 7—Leave out 'An employee' and insert 'A member of the academic or general staff'.

I hope this will prove non-controversial. As I indicated in my second reading speech, I am sure that the aim of this clause is to ensure that the people who will be selected to be on the university council do not include any academic staff, any staff of the university or any students. By using the word 'employee' one is including anyone who earns any money whatsoever from the university.

I can recall a time at the University of Adelaide when a very eminent lawyer in the city was invited to give two lectures at the university, and he did so. Of course, he was paid for the work he had done, but it was a trivial amount for two lectures. Under the definitions then applying, he was ruled an employee of the university—I think he had earned $60. As such, he was not eligible to be elected by the graduate body at Adelaide University to become a member of council. Of course, he did not classify as academic staff—two lectures a year hardly qualifies one for that title—so he was not eligible to be elected to council by the academic staff, either. This lawyer fell between stools and was not able to stand for council, to which he could have contributed a great deal, merely because he had given two lectures and received $60 for it. These days, I hope people who give two lectures receive a little more than $60, but this was some time ago.

Having checked the university Acts, I find that academic staff are clearly defined, as are general staff. Someone who gave two lectures a year would not be classified as either academic staff or general staff, even though they would be classed as an employee. I am sure the aim is to prevent what could be regarded as an internal member being appointed on the recommendation of the select committee. The select committee must choose external people. I have moved my amendment so that the aim can be achieved and so that the few people in the category of the person I mentioned would not be excluded from consideration.

The Hon. R.I. LUCAS: My advice is that the Government does not seem to have a major problem with this amendment, and at this stage we are certainly prepared to support it.

Amendment carried; clause as amended passed.

Clause 6—'Term of office.'

The Hon. R.I. LUCAS: I move:

Page 3, after line 20—Insert the following subsection:

(1a) A person elected by the academic senate of the council will be elected for a term of two years.

I am advised that this amendment is in part consequential on an amendment that the Government earlier moved successfully to clause 5. Because a person could be elected by the academic senate, there needs to be a length of term for that person, and I am told that it matches the term of members elected by staff.

Amendment carried; clause as amended passed.

Clause 7 passed.

Clause 8—'Conduct of business in council.'

The Hon. ANNE LEVY: I move:

Page 4, line 33—Leave out 'nine' and insert '12'.

This amendment relates to the size of the quorum. I had hoped, with the addition of the parliamentary members replacing the co-opted members and the extra student, that the size of the council would not have been 20 but 21. The normal procedure for a quorum is to take a half plus one, which would mean that a quorum should be 11 or 12. The Government is proposing a quorum of nine only. I do not know on what rationale it has picked a number that is less than 50 per cent of the total membership. I would be very interested if the Minister could explain this. I prefer to have a number which is in fact more than 50 per cent, as is the usual case in determining the quorum.

The Hon. M.J. Elliott interjecting:

The Hon. ANNE LEVY: Yes, I know you have.

The Hon. R.I. Lucas: The Hon. Mr Elliott is going for 10 and the Hon. Anne Levy is going for 12.

The Hon. ANNE LEVY: Eleven would be the best, now that I have not won the other amendments.

The Hon. M.J. ELLIOTT: Before I move my amendment, I will speak to the Hon. Anne Levy's amendment and wait for the Minister's response as well. I had already decided, even before committing myself to the extra staff member, that I thought nine was too small with a potential council of at least 20. I was not going to support the Government in insisting that there should be five external members. It seemed to me that if the Government had some sort of

concern about having a truly representative body, the important thing was to increase the size of the quorum, or at least the representative body making decisions. I had already decided at that stage to go to 10, but if we are talking about a body of between 19 and potentially 21, it would seem to me that 11 could make some sense; but I will wait for the Minister's response before I pursue it further.

The Hon. R.I. LUCAS: Minister Such is an eminently reasonable person, as is the Government eminently reasonable, and we are interested in trying to sensibly resolve this matter. I thought we might throw the numbers into the air and come up with something that is modest and reasonable. The Government is prepared to look at something like ten or 11. One person is now going to be potentially co-opted, so the council might potentially be the size of 20 or 21. I would be interested to hear from the Hon. Anne Levy and the Hon. Mr Elliott. The Hon. Mr Elliott has flagged that he will move for 10, and I think the Government would be prepared to support the Hon. Mr Elliott's amendment rather than the 12 suggested by the Hon. Anne Levy, but that was predicated on other issues which she has acknowledged. I think that if the Hon. Mr Elliott did move his 10, the Government would be prepared to support the 10 rather than the 12, in the interests of trying to settle this.

The Hon. M.J. ELLIOTT: On further reflection, I move:

Page 4, line 22—Leave out 'nine' and insert '11'.

I will explain my reason for that. I had already indicated that I was not going to support a later amendment where the Government would insist that at least five of the quorum should be external members—I think that was the term it used.

The Hon. R.I. Lucas: Did you say you were not going to support the Government's position on that?

The Hon. M.J. ELLIOTT: That's right. I guess there might be some concern if either external members or internal members, in terms of numbers, turn up on the day and dominate proceedings. The simplest way to reduce that risk is to increase the quorum to start with, and perhaps 11 would be the more sensible number in the circumstances.

The Hon. R.I. LUCAS: I am almost as reasonable as the Minister in the other place on this particular legislation, and the Government will accept the position of 11. It is preferable to the 12, and I am sure it is not the sort of thing that should see the legislation fail. We will support the amendment for 11.

The Hon. ANNE LEVY: I would like to say that I also support 11. When I put '12', I was expecting two members of Parliament to be added to the council which would have increased the number by two and which would thereby increase the desirable quorum by one. In view of the numbers that we now end up with, 11 is a very reasonable number, which I would be happy to support.

The Hon. M.J. Elliott's amendment carried.

The Hon. ANNE LEVY: I move:

Page 4, lines 33 and 34—Leave out ', at least five of whom are external members,'.

The Hon. Robert Lawson just gave us a lecture about how all members of council, once they become members of council, are equal, do not represent a constituency and should behave identically. In that case, I am sure he does not support differentiating between types of members of council according to where their constituency is in determining the quorum. As members of council all members are equal. The quorum is a number, not the constituency which the particular individual members may come from. It is interesting that the Government put forward, 'at least five should be external' but was in no way concerned about how many should be internal, which seems to be unduly weighting the external and denigrating the internal members.

The Hon. R.I. LUCAS: I am sure that the Minister was not intending to denigrate members appointed to represent internal interests. Having had some experience of university council operation, I cannot recall a time when there was a lack of numbers from internal sources turning up and constituting a quorum of the council. Neither the Minister nor the Government intend to denigrate members appointed from internal bodies. In effect, it was a statement of the reality that there is unlikely to be an issue about members appointed from those bodies attending in sufficient numbers to ensure that their views are made well known. The concern expressed to the Minister responsible for this legislation has been that on occasions the numbers of external members who have not attended meetings, for whatever reasons, and expressed a view has not always been apparent. However, I am nothing if not a realist. I note that the Hon. Mr Elliott and the Hon. Ms Levy are moving similar amendments and it is apparent that the Government does not have the numbers to prevail on this issue. I therefore place on record the Minister's opposition to it, but I do not intend to prolong the debate.

The Hon. R.D. LAWSON: I think the Minister should have mentioned that this provision comes directly from the recommendation of the McGregor committee which, after giving due consideration to the arguments and not firing from the top of their heads, said that the quorum should provide for at least as many external members as members from within being present at the meeting.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 5, lines 1 to 4—Leave out subsection (5).

This is consequential on the amendment that we have just carried.

Amendment carried; clause as amended passed.

Clauses 9 to 13 passed.

Clause 14—'Conduct of business of the council.'

The Hon. ANNE LEVY: I move:

Page 6, line 9—Leave out 'nine' and insert '11'.

We are now dealing with the quorum for Adelaide University. Presumably the composition of the council will be the same as Flinders University.

The Hon. R.I. LUCAS: I will try a bartering exercise. I am advised that this council is one smaller than the Flinders University.

The Hon. Anne Levy: Not if we put another student on the council.

The Hon. R.I. LUCAS: Are you going to put another student on the council?

The Hon. Anne Levy: Yes.

The Hon. R.I. LUCAS: Are you supporting putting another student on the council?

The Hon. M.J. Elliott: Yes.

The Hon. R.I. LUCAS: You are very consistent on this issue.

The Hon. M.J. Elliott: As with all others.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 6, lines 9 and 10—Leave out ', at least five of whom are external members,'.

This is the same argument regarding the quorum for the Adelaide University as we had for Flinders University.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 6, lines 23 to 27—Leave out subsection (5).

This is consequential.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 7, after line 1—Insert the following paragraph:

(ca) two members of the South Australian Parliament, one from the group led by the Premier and the other from the group led by the Leader of the Opposition, appointed by the Parliament on a joint address from the House of Assembly and the Legislative Council;

A similar amendment was defeated with regard to Flinders University, but we are now on the part of the Bill that deals with Adelaide University and it has specifically requested that two members of Parliament be appointed to the council.

The Hon. R.I. Lucas interjecting:

The Hon. ANNE LEVY: We had a test vote for Flinders, which had not made this request. When the Minister moved amendments to the section of the Bill dealing with Flinders University, he said that he did so because that university had requested them, and the Opposition supported them completely. We are dealing with the membership of the Adelaide University council. While I am sure that the arguments regarding members of Parliament will be the same on both sides, there is the added argument that Adelaide University council has requested that members of Parliament be members of the council of the university. If the Minister is happy to abide by the request from Flinders University council, I suggest that he should be influenced by the fact that Adelaide University council has officially requested that members of Parliament be part of its council and that this should give added weight to the argument for having members of Parliament on the council.

The Hon. R.I. LUCAS: The Minister was prepared to accept the proposition put forward by Flinders University because he agreed with it. However, it is not a logical extension of that argument to say that the Minister will accept everything that any university puts forward by way of amendment.

The Hon. Anne Levy: That's how you put it.

The Hon. R.I. LUCAS: It is not how I put it, but I do not propose to be provocative. I refer interested observers of the University of Adelaide Act, many of whom I would know quite well, to my earlier comments in relation to Flinders University as to why the Minister and the Government oppose this amendment.

The Hon. R.D. LAWSON: If the Adelaide University council wishes to have members of Parliament on its council, it has the opportunity in this legislation to have them appointed. It is up to the council from time to time to decide in the future rather than for us to entrench in this legislation for all time, irrespective of the wishes of particular university councils, a requirement that they have members of Parliament foisted on them. I am in favour of consistency in this matter. All universities can have parliamentarians on their councils if they want them and if they are appropriately qualified and are prepared to serve. However, no university will be required by statute to have parliamentarians on the council.

The Hon. M.J. ELLIOTT: It is true that this university has asked for politicians to go on the council, but we should point out that they will not always have Peter Lewis and the Hon. Anne Levy available to be appointed by the Parliament. In those circumstances, it is reasonable to say that—

The Hon. Anne Levy: There is also the Hon. Bernice Pfitzner, Mr Kevin Foley and Mr Malcolm Buckby.

The Hon. M.J. ELLIOTT: I think they are all available. If the significantly reduced council wishes to take on members of Parliament, it has the choice to do so. I think it would be sensible of the council to have one or two politicians as members, and it is reasonable that it should choose those whom it thinks can make a contribution.

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: I have to be fair and say this amendment put me right off.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 7, line 6—Leave out 'two' and insert 'three'.

The amendment relates to the number of students who would be on the university council. It is exactly the same argument as applied for Flinders University.

The Hon. R.I. LUCAS: The amendment is supported.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 7, line 19—Leave out 'An employee' and insert 'A member of the academic or general staff'.

This is the same amendment as was accepted for Flinders University.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 7, line 21—Leave out 'An employee' and insert 'A member of the academic or general staff'.

This is the same amendment.

Amendment carried; clause as amended passed.

Clauses 15 to 17 passed.

Clause 18—'Substitution of s.10 to 11a.'

The Hon. ANNE LEVY: I move:

Page 10, lines 3 to 8—Leave out this paragraph and insert:

(h) two students of the university, one of whom must be a post-graduate student and one of whom must be an undergraduate student, appointed or elected in a manner determined by the Vice-Chancellor after consultation with the presiding member of the Students Association of the university.

This amendment relates to the number of students and is exactly the same as applies for the other two universities.

The Hon. M.J. ELLIOTT: It is supported.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 10, line 18—Leave out 'An employee' and insert 'A member of the academic or general staff'.

The amendment is the same as applies for the other two universities.

Amendment carried; clause as amended passed.

Clause 19 passed.

Clause 20—Procedure at meetings of the council.'

The Hon. ANNE LEVY: I move:

Page 12, line 2—Leave out 'nine' and insert '11'.

The Hon. M.J. ELLIOTT: It is supported.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 12, lines 2 and 3—Leave out ', at least five of whom are external members'.

The Hon. M.J. ELLIOTT: It is supported.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 12, lines 8 to 12—Leave out this paragraph.

The amendment is consequential on amendments already passed.

Amendment carried; clause as amended passed.

Schedules and title passed.

Bill read a third time and passed.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE: VEGETATION CLEARANCE REGULATIONS

The Hon. CAROLINE SCHAEFER: I move:

That the report of the Environment, Resources and Development Committee on vegetation clearance regulations pursuant to the Electricity Trust of South Australia Act 1946, be noted.

I will speak briefly on the report so that my two committee colleagues, the Hon. Mr Elliott and the Hon. Terry Roberts, will also have the opportunity to speak if they so wish. In so doing I commend the Environment, Resources and Development Committee. By and large we work in a non-partisan, non-Party political fashion. Since I have been on the committee I do not believe that there have been any minority reports. Sometimes we have a few rigorous altercations in committee, but generally we reach a considered and acceptable viewpoint and all work genuinely and sincerely towards the aims of that committee.

I considered this report to be very difficult because the committee found itself between a rock and a hard place in that whatever recommendations were brought down were bound to be disagreeable to a number of people. Essentially the history of the report is that it was brought on by the regulations under the Electricity Trust of South Australia Act, which allows for vegetation clearance over powerlines.

Historically a number of leafy green suburbs in Adelaide are not considered by any stretch of the imagination to be high bushfire risk areas, and some of us have a great deal of sympathy for their view that they should not be subjected to the same rigorous regulations as the rest of the State. In looking at this issue, many of us were inclined to agree with those councils, but they in turn were unwilling to assume the liability should an accident occur in that area. So, the committee's recommendations were extremely difficult to arrive at, and in the end we were forced to reach the logical conclusion that, unless some other compromise could be reached, the regulations must stand and the responsibility must still remain with ETSA.

A few recommendations need further comment. We recommended that the regulations be amended to facilitate a compulsory conciliation conference because, as with many of these matters, a conference has reached a deadlock and conciliation has become impossible, so we have recommended that there be a compulsory provision for some sort of conciliation to be reached.

It was impossible in suburban South Australia to look at an issue to do with powerlines and trees without also taking on board the concerns of councils and the people whom they represent with regard to powerlines generally and, in particular, to what many people see as the new blight of telecommunications cabling above ground.

We reached a number of conclusions, which were broadly speaking outside our terms of reference. However, we did not believe that we could talk about one without taking on board the evidence given to us by a number of people. As such we have recommended that the undergrounding of powerlines continue as a matter of urgency and that progress be reported to Parliament every 12 months.

The *Advertiser* reported that we had recommended (and I do not have the article in front of me) that there be no more overhead cabling. This was not what we said at all. We recommended that Parliament amend the Act to provide for all further 11 000 volt lines to be undergrounded. They are the high voltage lines, and it needs to be remembered that we were talking about the specific metropolitan area rather than the whole of the State, because we were mindful of budgetary reality in what we recommended.

We also recommended that the State Government encourage development of technological advances in the undergrounding of cabling because we received a number of reports which indicated that at this stage communal or common undergrounding for telecommunication and power was not possible; common undergrounding for the opposing telecommunications companies was not possible, and so on. While many of us may have formed our own opinions, we are not qualified to assess whether those pieces of evidence were realistic. We wanted to take on board the concerns of the people of Adelaide, particularly in the leafy green suburbs, who would like the places in which they live to be as aesthetically pleasing as possible. We have endeavoured to cover that within the report also. I do not wish to comment further, except to say that it was a difficult report because whatever recommendations we brought down would be displeasing to a fair proportion of the people who gave us evidence.

The Hon. M.J. ELLIOTT: I note the report of the committee. I, too, found this term of reference a difficult one. My biggest problem was that it was a particularly busy time of the year and I did not feel that I had sufficient time outside the committee time to put into looking at the report, as I would like to have done, but that is life. As the Hon. Caroline Schaefer said, we always have rigorous discussion, but so far have always reached consensus and the blood stains do not show up on photocopies.

It would be fair to say that a couple of councils are a little stroppy at the moment in relation to this issue. However, they are justified in being so. I was unimpressed in a number of ways by ETSA on this issue. One needs to recognise that the pressure came on for pruning as a consequence of bushfires. Yet, we are looking at non-bushfire areas in relation to this report, and suburbs with no bushfire risk at all are having these regulations applied rigorously.

ETSA then set about defending the regulations in other ways, for example, by claiming safety in terms of risk of people being electrocuted. It claimed that there was a risk of outages into homes and businesses and pointed out the consequences of that. However, when the committee sought data from ETSA on both those factors, it did not produce data on either. It could produce no data to support the claimed risk factor and no data in relation to outages.

ETSA should have been able to do it because a number of suburbs have a long history of no pruning. It should have been possible to demonstrate the risks in those areas. I do not think ETSA could back it up with any substance at all, and that is one of the reasons for my not being particularly happy. ETSA has been more worried about the public relations of the issue than about getting into it.

As the Hon. Caroline Schaefer also observed, while a term of reference referred to powerlines, the issue in relation to overhead cabling for telecommunications was also in the

public arena quite actively when we were considering the term of reference. Our committee is free of its own volition at any time to pick up its own terms of reference, so it was quite right and proper to look at overhead cabling of telecommunications at the same time.

One of the important points which we came across and which become obvious was that money was to be saved if there could be cooperation between the telecommunications people and ETSA. We have two telecommunications companies laying cables at this stage, one of which tends to lay cables almost predominantly above ground, and that is Optus, while Telstra has informed us that, although it has the capacity in some of its underground ducting to take cables, it also may follow Optus above ground in a number of places. It is self-evident that if the trenching costs of ETSA, which has to dig the deepest, could be shared with two telecommunications companies there must be a significant saving as a consequence.

The problem that we have is that when the committee was taking evidence ETSA had not really explored that issue in any meaningful way. It was self-evident that it should have, but it was also evident that ETSA had not pursued that option at all. When we spoke to the individual telecommunications companies, it was obvious that they did not want to cooperate with each other because they did not want each other to know where they were going to lay their cables, and to cooperate would give away their business plan. I think that is where the later recommendations (particularly recommendation 12) become important. Under recommendation 12 the committee recommends that the State and Federal Government should develop joint programs for the sharing of trenches by electricity and telecommunications carriers. I do not think this will happen unless they are told that it should happen. If they are given that instruction, we will see a lot more progress.

Under recommendation 14, the committee recommends that there should be a legislative program of undergrounding for power and telecommunications cables with specified targets for residential and tourism areas. We are not saying that in all non-bushfire areas there should be undergrounding; what we are saying is that in residential and tourism areas we should pursue a program and that, if it were legislated and given a fixed time scale with intermediate and annual targets, and if that were combined with encouraging those who are not underground to share trenches, which they are quite capable of doing, it could be done far more economically. It needs to be noted that already significant parts of the metropolitan area, particularly the newer subdivisions, are already underground.

The Hon. R.D. Lawson: It is a lot easier to do it that way.

The Hon. M.J. ELLIOTT: In terms of new areas, it certainly is. We are not suggesting that commercial or industrial areas in the city should be undergrounded. My suggestion is that over a 10-year period you would pick on the most important tourism areas first. They would be the obvious places to target first because of the economic benefit they would bring to the community. However, we should aim gradually to cover all the residential areas also.

If it is laid out and if ETSA is told that it has so many years in which to do it and that it has annual targets, and if it is told that in cooperation with the Federal Government we will ensure that telecommunications carriers go in with them, we will do that at a cost far lower than if each of them goes their own way and separately digs trenches or carries out underground boring, which some of them use. Frankly, I think that is the only long-term solution. We do not want to have ongoing battles between councils and ETSA about who is going to take responsibility and the passing backwards and forward of liability. The long-term solution must be to go underground. We need to bite the bullet. The question is how we can do it in the most efficient and equitable fashion. I think that the recommendations—in particular, recommendations 12 and 14—show the way.

It is also important that the Federal Government be encouraged to ensure that telecommunications carriers comply with the Development Act. It is quite outrageous that the Federal Government has given a specific exemption to telecommunications carriers, both in relation to cables and towers, to flout laws which no private operators are allowed to flout.

The Hon. R.D. Lawson: The previous Federal Government, do you mean?

The Hon. M.J. ELLIOTT: With the support of the current Government when in Opposition.

The Hon. R.D. Lawson: With no opposition from the Democrats?

The Hon. M.J. ELLIOTT: You are wrong.

The Hon. R.D. Lawson: With no effective opposition from the Democrats.

The Hon. M.J. ELLIOTT: Seven votes is seven votes: it is as simple as that. I was speaking with a person in the computer industry who said that Mr Kennett is doing something rather interesting at this stage. Whenever any of the utilities are carrying out underground work, whether it be electricity or water, while the trenches are open they are laying a telecommunications cable, not for either Optus or Telstra but simply laying the cables with the intention to make that capacity available for other companies. They will try to put even more competition into the telecommunications market in Victoria. If they are putting the cabling in while the trenches are open, the capacity will be there. If it is true—and I have no reason to doubt this person—it is an interesting notion and something that we could perhaps explore here in South Australia. I hope that members take the time to read this report; we have continued a long line of quality reports.

The Hon. T.G. ROBERTS: I would like to endorse the noting of the report and the comments of my two committee colleagues in relation to the work that was done in bringing down the report. As a committee, instead of a snapshot being taken of a problem that had been delivered to us by a reference, we had to look at a moving picture. The snapshot at which we thought we were looking evolved into a more contemporary problem, namely, telecommunications and some of the cabling that was being put down by some of the telecommunications industry leaders, and the aesthetic problems that resulted in some of the leafier metropolitan suburbs rather than in some of the more problem areas that are prone to bushfires because of vegetation clearance and the regulations that were first laid down in 1946.

The memories that live with me after the 1983 bushfires are the problems that ETSA had, in that regional and country communities relied on electricity delivery by poles and wires strung through poles. In 1983, on the day of the bushfires, the winds were probably one in 100 or 200 years. In fact, I doubt that I will again see anything like the winds that blew through the South-East during that period—I hope I do not. Those problems were brought about by the difficulties which ETSA had through public liability and which brought about the regulations after 1983 with which we as a committee had to

contend and on which we had to make recommendations in relation to non-bushfire areas.

The difficulties confronting councils in the metropolitan area were certainly not those which confronted rural councils. As I said earlier, they had to contend with high winds, swinging wires and sparks which started many fires on rural properties and initiated many damages claims. We were never going to see those issues in the metropolitan area. There would never be loss of life or stock. It would always be aesthetics, although there may have been power blackouts and problems associated with waste in freezers.

I have some sympathy for ETSA in that as a power authority it must look at a wide range of problems associated with regional, rural and metropolitan living. Some councils had decided that they were not prepared to accept any regulations at all in relation to trimming, and on behalf of their constituents they were prepared to take the risk of storm and tempest and careering FJ Holdens on Saturday nights crashing into poles and putting out electricity. On behalf of their constituents they were prepared to take that risk. However, they were certainly looking from some direction from the State Government to at least provide an insurance scheme that allowed them to take the risk and pay for that risk. If dangers were associated with it, they were prepared to accept it and transfer the risk back to their ratepayers.

We had to decide whether State Governments were morally able to transfer the risk, knowing that perhaps the systems of assurance would cover all those people in the metropolitan area who were going to be put at risk because the tree trimming programs were not going to be the same as the regime adopted by ETSA. One of the problems for metropolitan people living in tree lined avenues and streets relates to the early tree trimming regimes. This was done as a result of the bushfire risk trimming programs which virtually wiped out any tree within reasonable distance of powerlines, because of the trauma associated with that one wind in 200 that creates a problem.

There seemed to be an over reaction to the problems associated with tree lopping in the metropolitan area. So there was a culture of over trimming, over cutting and over protection that caused a reaction from residents in the metropolitan area who said, 'Those sorts of tree trimming operations in which ETSA is involved now are appropriate for rural areas where there is a danger of bushfire, but there is no danger of a bushfire in the metropolitan area.' The danger in the metropolitan area is associated with children climbing trees and being electrocuted. However, the worst thing that might happen in the metropolitan area is that you will not get your dinner at six but at seven because a storm has blown a tree bow across high tension wires. We had two or three such cases at St Peters and Norwood—suburbs that have aesthetic avenues to protect. They were keen to make sure that the trimming regimes were kept within reasonable bounds and were prepared to take the risk. We had to weigh up the risk, aesthetics and insurance-assurance issues.

As it moved into its deliberations, the committee then had to weigh up the aesthetic problems associated with cable laying for television and other commercial reasons such as computers and telecommunications systems that we will be living with in the next decade. The recommendations we have brought down are fair and reasonable. We have taken into account the problems that ETSA has had and any of the prospective problems that residents will place upon local government to make sure that the aesthetics and the electricity supply to their suburbs are protected. It is a balancing act, where we have to weigh those risks against each other. As more people become employed within their own regional suburbs, with telecommunications being one of their prospects for employment, those damages claims could increase. There will be more damages claims for blackouts, home entertainment systems blowing and so on as more people buy the electronic gadgetry that is now available.
Councils and authorities have to weigh up those decisions against a tree trimming regime.

We had a moving feast. The picture altered as we took evidence, and the weight of evidence that we were given was put in a very forthright and accurate manner by power suppliers, by prospective telecommunications suppliers and by residents. The decisions of the committee were weighted and balanced, and the objectives and recommendations were drawn together by consensus rather than by conciliation or by exhaustion. When we drew up our final recommendations, there was a general view of acceptance, although there were some issues where individuals felt that legislators may have to look at those decisions a bit further down the track.

As I said before, one of those is the transfer from State Government to local government of the function to take into account and balance the aesthetics as to the potential for mini-disasters from localised storms, and the potential for blackouts and loss of income and amenity from a non-trimming regime. Some local councils may not have a trimming program while others do, and that may interfere with the aesthetics, but we must make sure that those regimes do not impact on the dangers of electrocution and loss of amenity.

I commend the deliberations of the report and thank the other members of the committee. It was a wrestle, because of the issues faced by regional and metropolitan areas between which we had to draw a balance, but I think that we have come down with a report that the Legislative Council can be happy with because all its constituents get something out of it.

Motion carried.

SELECT COMMITTEE ON THE PROPOSED PRIVATISATION OF MODBURY HOSPITAL

The Hon. BERNICE PFITZNER: I move:

That the interim report of the select committee on the proposed privatisation of Modbury Hospital be noted.

Unfortunately, unlike the foregoing report, this report is not supported by all the committee members; therefore, there are two dissenting statements. In noting this interim report, my contribution will be brief, perhaps as brief as the report itself, which contains about 2½ pages of substance together with about 4½ pages of dot point communications with Healthscope, the Modbury Hospital board and the Minister for Health.

As Chair of the committee, I present the report, but unfortunately both the Hon. Mr Robert Lawson and I are not able to support the report. Therefore, we have included in the report a dissenting statement that refutes the suggestion and/or impression that the delay in progress is due to a deliberate ploy to frustrate the committee in its investigation.

Whilst it is true to a certain extent that there is some tardiness in supplying some information, it seems to me that the information that we requested has not come readily to hand. However, I do recognise that this tardiness can be seen as an obstruction, but I do like to give the benefit of the doubt that people from the Modbury board, Healthscope and the South Australian Health Commission are trying hard to

supply us with the information we need. However, it does at times worry me as to why these facts are not easily to hand and, if they are not, how can the monitoring ability of the Modbury board be effective and efficient.

As regards the obtaining of the contract, this has caused the committee great angst. We are sure that the Attorney-General is having discussions with the Opposition to have a protocol in place for dealing with commercially confidential information, such as the contract with Modbury, so that we can have a balance of accountability to Parliament and confidentiality for commercially sensitive information. The assurances that the Government is looking at accountability can be seen in the ministerial statement given by the Premier in the beginning of the year under 'Reporting and Accountability to Parliament', and it reads in part:

> Honourable members will appreciate that there are contracts into which Executive Government enters which contain commercially sensitive information. This can include intellectual property, know-how, pricing or other information which could be exploited to the detriment of the State or a competitor to the party with which the Government has contracted in any particular case. The challenge is to ensure proper Executive accountability on the one hand and proper protection of the State's interests and contractors on the other.
>
> The process by which any major contract is negotiated has a very significant bearing on the ultimate outcome and the protection of public interests. Before Cabinet contracts out a major Government activity, the process will be referred to the Industries Development Committee of Parliament for its comment on the process. This would be on a confidential basis, given the need to protect the State's commercial position in subsequent negotiations. It will be necessary to amend the Industry Development Act to establish this role for the committee.
>
> This protocol will propose to deal with the disclosures of information which would harm the interests of the State and party which the Government has contracted. Therefore, in relation to other parliamentary committees which seek to inquire into Government contracts, the Government has developed a protocol for dealing with commercially confidential information which it will discuss with the Opposition.

I have had further assurance given by the Attorney-General in his contribution in the Legislative Council when he spoke on the Select Committee on Contracting Out of the State Government Information Technology. The Attorney-General says, and I quote in part:

> There is certainly no doubt that both Houses of Parliament are supreme and sovereign within the context of the State Constitution Act. There will be, undoubtedly, from time to time tension between the Executive arm of Government and a House of Parliament, or both Houses of Parliament for that matter, on issues whether Houses or House of Parliament believe that they have sovereign power and need to exercise that sovereign power on the one hand and the Executive Government believes that it is not in the public interest that certain matters, for example, not be publicly disclosed. That is a tension which has existed for many years, and it is a tension which has been resolved from time to time in different ways.
>
> I could expect that, ultimately, if that confrontation occurred in this State in relation to contracts and the tension between the Executive and the Legislature could not be resolved, it would make South Australia appear to be a mickey mouse State around the world. But you can be assured that no business would be prepared to come to South Australia in the interests of the people of this State and do business with the Government of this State if the ultimate sanction which it knew would be enforced and which would be imposed by a Legislature was imprisonment. It would give South Australia a very wide berth.

Members interjecting:

The ACTING PRESIDENT (Hon. T. Crothers): Order!

The Hon. L.H. Davis: These boys have got to learn.

The ACTING PRESIDENT: Order! The Hon. Mr Davis will come to order.

The Hon. BERNICE PFITZNER: The Attorney concludes his remarks as follows:

> It is my hope, as I said earlier, that the discussions relating to a draft protocol for dealing with these—

Members interjecting:

The ACTING PRESIDENT: Order! I suggest that, if the Hon. Mr Davis and the Hon. Mr Cameron wish to carry on a conversation, it would be best done outside the Chamber, so as those members who are present and wish to listen to the speaker can do so in absolute peace and silence.

The Hon. BERNICE PFITZNER: Thank you, Mr Acting President. The Attorney concludes:

> It is my hope, as I said earlier, that the discussions relating to a draft protocol for dealing with these sorts of issues might, in fact, lead us to a resolution of this problem, which ultimately will be to the satisfaction of the committee, of the council and of the Government, and which will meet the requirements of the public interests.

I spoke just yesterday with the Attorney-General regarding the protocol for the provision of outsourcing contracts, and he has advised me that negotiations are continuing but not yet finalised. We conclude that this protocol is nearing completion, and therefore I do not think there is any deliberate delay in producing the protocol if that was the impression. I briefly turn to the terms of reference which we must specifically address, which are:

(a) the costs and benefits to the public resulting from any transfer to the private sector;
(b) the benchmarks used to determine any possible change in the standards of health care provided to the public;
(c) means by which continued access to at least the same level of public hospital and related health services is guaranteed to public patients;
(d) the actual savings that will be made and where they will be derived from;
(e) public standards of accountability and consultation demonstrated in the process leading up to privatisation;
(f) the terms of management contract for hospital services; and,
(g) methods by which Parliament can ensure scrutiny of expenditure of public funds in the provision of health services following the proposed privatisation.

We therefore come back to the essential issue of accountability, about which I have spoken to a certain extent. An accountability to Parliament will be addressed when we finally obtain the protocol. In the meantime, the responsibility lies with the Modbury board, and we await its annual report to make some comparisons over the last few years. We still have some information to obtain from all three players, that is, the Modbury board, Healthscope and the South Australian Health Commission. I am sure that all this will be to hand in the near future. However, the dissenting statement from the Hon. Ms Kanck is not quite as optimistic that we will obtain the information, but we hope she will be proved incorrect.

It has been said that this committee is a political one, meaning that we are playing one-upmanship. I hope that that is not so as any parliamentary investigation, in particular the investigation of a health institution, should not become a political football but should seek to properly address the issues of concern. If there are mistakes and if there are difficulties, we should address them and learn from our mistakes, more importantly as Modbury is the first model in this new method of outsourcing of our hospital services.

In closing, let us be optimistic that the outsourcing of Modbury Hospital has been successful and satisfactory. If there are malfunctions and if there are maladjustments, let us remedy and correct our oversights. In the meantime, we cannot support the implication of this interim report as, although the progress has been slow, it is on track. I note the report with some concern.

The Hon. P. HOLLOWAY: We have heard the myths: let us get some facts on the record. The interim report of the select committee on Modbury began in November 1994. It is almost two years since the committee was established. This report was put out for one reason—because the committee has not been able to receive very basic information that it needs to complete its report. I will come to the information we are requesting in a moment so that people can understand what it is. It really had nothing to do at all with getting the contract—which the Hon. Bernice Pfitzner said. I will read one paragraph from the majority report of the committee which refers to the contract as follows:

> The committee understands that the Government has been having discussions with the Opposition regarding a proposed protocol for dealing with commercially confidential information. This was foreshadowed in a statement by the Premier in the House of Assembly on 6 February 1996. The committee is prepared to await the outcome of these discussions, recognising that commercially confidential information in the contract between Healthscope and Modbury Hospital board of management will be covered by the protocol.

That is the only reference in the majority report to the contract. Let me re-enforce the fact that we were not criticising the Government over the production of the contract, because the Opposition accepts that there are commercially confidential matters involved in contracts. Most members in the Labor Party have been involved in government. We understand the need for sensitive information to be kept commercially confidential. The Opposition is proceeding very cautiously on this matter of commercial confidentiality. So, that was not an issue before the committee.

The issue was that this committee requested quite basic information in 1995 from Healthscope which has still not been received. I will provide some of the correspondence that has taken place to indicate why the committee felt the need to bring this report down and to reach its finding that inadequate responses it has received in its requests for information were totally unacceptable. On 30 November 1995 the committee wrote to the General Manager of Modbury Hospital—

Members interjecting:

The ACTING PRESIDENT: Order! The speaker is on his feet.

The Hon. P. HOLLOWAY: Thank you for your protection, Mr Acting President. I was indicating the course of events that led to why the committee felt it necessary to bring out an interim report simply saying that we felt that the inadequate response we had received to our requests for information was totally unacceptable. On 30 November 1995—a long time ago now—a letter was sent by the secretary to the General Manager of Modbury Hospital, part of which states:

> The select committee is continuing to hear evidence from various community groups, Government agencies and health service providers with an interest or involvement in the contractual arrangements which have been made with Healthscope.
>
> I am now in a position to provide some indication as to the areas that the committee would appreciate clarification on. The committee has received submissions which express fears that the type and level of services provided by Modbury Hospital under the management of Healthscope will be less than or different to those previously provided. . .
>
> Attached is an outline of specific areas in which the committee is seeking accurate and up-to-date figures. The committee hopes that this may assist you in extracting information from your records.

There were two pages, which are included in the appendix to the report if anybody wishes to check them. This is the information that was requested by the committee on 30 November 1995. For the years 1994 and 1995 we asked for the number of registered and enrolled nurses. We also asked for statistics on the number of medical staff specialists in specific areas, registrars and RMOs, interns and visiting medical specialists. We asked for staff in allied health and scientific and technical areas and staff in service areas and, finally, administrative and clerical staff.

The other information for which we asked was patient activity levels for 1994 and 1995. We specified the patients admitted, outpatient occasions of service, occupied bed days, average length of stay, and surgical or other procedures by category. We asked for outpatients, including prison medical services, for clinics, physiotherapy, social work, radiology, psychiatry, accident and emergency, the cost per adjusted bed day and any major upgrades of medical equipment. That was the information that the committee requested on 30 November 1995. It was hardly commercially confidential.

In February 1996 Healthscope members gave evidence, but most of the information was not provided. In March, the secretary telephoned Mr Edwards, the Manager of the Modbury Hospital, to ascertain progress on the committee's request. Mr Edwards indicated that he would have to check the initial correspondence. In March 1996 he indicated that he would have to check the initial correspondence. Nothing happened.

On 21 May 1996—over six months later—a letter was sent to Mr Edwards reiterating the committee's request and highlighting certain information and assurances that were given in evidence. Copies of the earlier correspondence were attached to the letter. The committee requested that as much information as possible be provided before the committee's meeting with the Chairperson of the Modbury Hospital Board on 27 May 1996. The letter that was received from Healthscope, which is included in the correspondence, is as follows:

> There appears to have been some confusion in relation to the information requested by the select committee in your previous letter of 30 November 1995. Following our meeting with the committee on 4 December 1995 we were unsure what, if any, further information the select committee may require.

This was even though there had been a telephone call from the secretary and a further copy of the initial letter of 30 November had been sent to them. The letter continues:

> Having received your letter of 21 May 1996 by facsimile this morning, I have discussed your letter with Peter Edwards and directed Peter to analyse your request and prepare relevant information. This will be done as soon as possible. However, I must advise that it is not possible for us to provide any of the information you have requested by Monday 27 May 1996 as we only have three working days to consider the request.

I do not know whether there had been some error—and anybody can judge on the evidence whether I have been fair or not—but there were only three days to do it before that meeting. So, what happened? That was Monday 27 May 1996. It is now 1 August 1996 and still that very basic, elementary information I mentioned earlier, such as the numbers of staff—

The Hon. T.G. Cameron interjecting:

The Hon. P. HOLLOWAY:—nothing at all that is commercially sensitive—has arrived. I would have thought that the committee was perfectly entitled after some eight or nine months to put out a report saying that we think the lack of response to the committee's requests is totally unacceptable. But what do we get? We get the two Government members putting out a report about the implication of the report that Healthscope Limited, the board of Modbury

Hospital and Minister for Health have frustrated the investigation. When I read the report now it does not really make much sense. I guess that is the problem of whoever prepared the dissenting statement. It states

> The implication of the report is that Healthscope Limited, the board of Modbury Hospital and Minister for Health have frustrated the investigation of the select committee by failing to furnish information. However, the fact is that a number of witnesses have attended before the committee and have furnished a great deal of useful information, while it is accepted that there has been some tardiness in supplying some information.

So, that is what we have get from the Government. It is happy to accept the fact that this committee has not been provided with the most elementary information. It begs the question: what select committee in any other Parliament in the world would accept the situation where, after eight or mine months, even the most elementary information has not been provided? What do we get? We get a minority report. When we simply say that that situation is totally unacceptable, this Government puts in a minority report about it. That says how uncaring this Government is about accountability. What garbage it put out before the last election about its concern for accountability! This Government is so uncaring about the importance of Parliament; it is so uninterested in accountability that it would even put in a dissenting report when a committee says that the lack of response that I have outlined is totally unacceptable.

I do not think I need say much more on the report, because I think it stands for itself. All I say to anybody who might read this report is just to look at all the information that is in there: all the correspondence, everything that was asked for and all the responses are in there. All I say is to read it for yourself and, if anybody thinks it is acceptable, perhaps we should give the game away and Parliament should not exist.

The Hon. Diana Laidlaw: You're in Opposition now.

The Hon. P. HOLLOWAY: I hope the Minister's interjection goes on record, because the implication is that the Government should be able to do anything it likes and there should be no accountability or scrutiny whatsoever. I remind people that Healthscope—the private operators of Modbury Hospital—are getting between $30 million and $35 million of taxpayers' money every year. I would not have thought it was too onerous for a select committee of this Parliament to ask questions about staff numbers and services. When that becomes so onerous and so difficult that we do not get a response, perhaps it is time to give the game away. I will make one final comment. I invite anyone to read the report and look at the correspondence, but perhaps I should say that even the correspondence in here is not complete: there is actually further correspondence. Unfortunately, one letter of 30 May, which is quite revealing, was for some reason omitted from this report. I do not know why it was omitted; it should certainly have been included in the report. I mention that, for anybody reading it, the situation is even worse if they had read this letter of 30 May 1996. Perhaps I should concede that the Opposition members were outsmarted by the Government when this letter was somehow omitted from the report.

An honourable member interjecting:

The Hon. P. HOLLOWAY: No, I will not read the letter, because that would be breaching the rules of standing committees, and I do not do that. I just say that there is other correspondence that is somehow missing from the report. Enough has been said about that. What is needed is simply information supplied to the committee so that it can assess the situation. This report is not so important just for assessing Modbury Hospital, because the privatisation of management has already proceeded, but there will be privatisations of other hospitals coming up. We know the privatisation of management of the Queen Elizabeth Hospital is considered and we know that the Government intends eventually to privatise the management of all the hospitals in this State.

The Hon. R.D. Lawson: Piffle.

The Hon. P. HOLLOWAY: The Hon. Robert Lawson only has to look at a paper presented by the Chairman of the Health Commission to a meeting in Sydney back in 1994. Although I do not have it with me, I would be happy to show it to him afterwards, because it expresses as much. I am surprised that the honourable member denies it. The Government is entitled to do anything it wishes: it can put up whatever policies it wishes, but if we are going to go down this track, surely we can learn some lessons from Modbury? Should we not look at Modbury to see where savings can be made, to see if it can be done better, so that we can learn for other privatisations that will come in the future? Unfortunately, because of these delays, the tragedy is that this report might take so long that we will not be in a position to learn from these lessons or give advice before the privatisations.

The committee has had a lot of useful information and it could make sensible and constructive recommendations. Even if we accept that privatisation may occur, which might be anathema to members on this side of the Council, then there are lessons we can learn from the evidence given to the committee which could help us improve the situation. We will be never be in a position to report on it if we have such a delay in getting information. In commending the report I invite anyone who is interested at all in privatisation and accountability of Government bodies to read it: it is an eye opener.

The Hon. R.D. LAWSON: It is unnecessary to engage in a great deal of rhetoric and hyperbole about this interim report of the committee. Unfortunately, the Hon. Paul Holloway has overlooked the facts in delivering his speech on this subject.

The Hon. M.J. Elliott: He can't study the facts because he hasn't got all the information.

The Hon. R.D. LAWSON: The Hon. Michael Elliott is talking about something he knows nothing about. The Hon. Paul Holloway fails to mention, when he runs through the chronology of this matter, that on 30 November—and he read the letter to the Council—the General Manager of the hospital was given information about what the committee would be considering when evidence was given. Five days later the person to whom the letter was addressed came along and gave substantial evidence and material to the committee at its request. However, there were some matters, as there usually are with committees, that were left outstanding and information was to be provided. When one looks back over the correspondence, in my view the committee was insufficiently strong in drawing to the attention of witnesses—

The Hon. T.G. Cameron: Was it the Chair's fault?

The Hon. R.D. LAWSON: It was the committee's fault. It is a committee decision to follow up these matters. The secretary is directed by resolution of the committee and I make no criticism of the secretary in this regard. The transcript was sent to the witness—

The Hon. Anne Levy interjecting:

The Hon. R.D. LAWSON: There was no accompanying letter saying, 'Would you mind addressing the issues at these

pages?' It was simply a letter saying, 'Here is the transcript. Would you correct it for typographical errors?'

Members interjecting:

The Hon. R.D. LAWSON: That is right, that is what the honourable member says. Three months later the committee telephoned one of the gentlemen concerned to ascertain progress on the request. The committee can hardly be critical of public servants when it simply writes a letter and encloses the transcript. A parliamentary committee, which relies upon the cooperation of citizens, can hardly be critical of people if it does nothing for three months and then the Secretary makes a gentle telephone call to ascertain progress. So there is a telephone call in March. The committee does nothing until May. Another two months pass and then—

The Hon. P. Holloway interjecting:

The Hon. R.D. LAWSON: No, I am happy to accept my responsibility as a member of the committee. It lies ill in the mouth now of the Labor members of the committee to come along and condemn the recipients of this correspondence for failing to provide information when the committee ought to have been stronger about the matter.

Members interjecting:

The Hon. R.D. LAWSON: Members are uttering the refrain, 'They still have not responded.' They have indeed responded. Members have simply chosen not to read the information which has been supplied. Five months after the transcript was sent, the committee finally sent a letter requesting information and enclosing copies of earlier correspondence. Then there were a number of telephone calls—

The Hon. Anne Levy interjecting:

The Hon. R.D. LAWSON: Well, the usual 'The cheque will be in the mail' story was given. But it lies ill in the mouth of a parliamentary committee to condemn citizens for failing to respond when the committee is not sufficiently forceful in delivering its request and the detail involved therein. Likewise, the communications with the board of the hospital.

The whole purpose of this interim report, if it was to condemn these people, seems to the Hon. Bernice Pfitzner and me to be entirely inappropriate. That is the reason why it was necessary for both of us to make a dissenting statement, disassociating ourselves with the clear implication of the report, which was unnecessarily critical of citizens.

It is worth bearing in mind that a number of people, not all of them on the public payroll, have come along to this committee to give evidence. They have supplied a great deal of information, involving hundreds of pages of documents, and no credit is given to them for it. As I have said, it seems to me to lie ill in the mouth of those who are pushing this committee and who have supplied information. Accordingly it was necessary—

Members interjecting:

The ACTING PRESIDENT: I ask members on the Opposition bench to cease interjecting. An honourable member is on his feet and he is entitled to be heard.

The Hon. R.D. LAWSON:—for the Hon. Bernice Pfitzner, the Chairman, and me to disassociate ourselves from the suggestion that anyone or any organisation had deliberately sought to frustrate or delay the committee's deliberations.

The Hon. ANNE LEVY: I endorse wholeheartedly the remarks made by the Hon. Paul Holloway. As is made very clear to anyone who reads the one page interim report, its purpose is to explain why, 18 months after having been set up, the committee has not made any report to the Parliament or to the people of South Australia. We are frequently asked, 'When are you going to report?' We felt that we needed to explain why no select committee report had been brought down. The main reason, as we made very clear—

The Hon. J.C. Irwin interjecting:

The Hon. T.G. Cameron: You suggest that we do not go to the meetings.

The ACTING PRESIDENT: Order! The speaker is on her feet.

The Hon. ANNE LEVY: The committee has not been able to complete its work because it has not received the information that it has requested. The Hon. Bernice Pfitzner kept talking about the contract. It is made clear in the interim report that it is not the production or non-production of the contract that is the cause of this report having been produced. It is made very clear in the last paragraph, which the Hon. Paul Holloway read out, that matters relating to the contract and any commercial in-confidence information it may contain is not being complained about. We appreciate that that is being considered as part of a package of matters in discussions occurring between Government and Opposition. We are prepared to wait until those discussions are complete. That is not why this report has been brought down and that is very clear to anyone who reads the report.

The Health Commission has not supplied information requested over three months ago. The Modbury Hospital board of management took four months to supply information that was requested of it and Healthscope, the private manager of the hospital, still has not supplied information that was requested eight months ago. We may come back in three months' time and tell members that it is now 11 months since we requested the information. As the Hon. Paul Holloway indicated, it is not commercial in-confidence information that we are requesting: it is basic information which in no way can be regarded as commercial in confidence. No-one has ever suggested that it is commercial in confidence: even the Hon. Mr Davis has not made that suggestion. There is no reason for our not having received that information.

The Hon. Robert Lawson tried to suggest that it was our fault that we had not been forceful enough. I presume that if we had written stronger letters, not couched in the polite terms in which most of us are accustomed to corresponding with other people, he would have accused us of having been overly aggressive, nasty and unpleasant. It is a catch-22 situation where we cannot win.

I reject the implication drawn from our dissenting statement that these people have deliberately tried to frustrate us. They can best judge whether they are deliberately trying to frustrate us or whether the lack of provision of information is due to incompetence. I cannot think of any other reason. The old quote is:

> Whenever there is a choice between a conspiracy and a stuff-up, go for stuff-up every time.

It may well be that this is just a case of a plain stuff-up—unintentional, but a stuff-up nevertheless. I accept that the board of the Modbury Hospital consists of volunteers who are certainly not full-time. I give credit to them for doing their best. They have the services of only a part-time executive officer, so it is not surprising if they have difficulties in responding rapidly to requests for information. I am nowhere nearly as critical of them as of other players in this saga because of the situation in which they find themselves. No doubt, they are under-resourced with only a part-time

executive officer, and they have obviously done their best to provide us with information. Information requested on 4 April finally arrived on 31 July, a period of four months. Perhaps that is understandable given that it is a voluntary board with only a part-time executive officer.

However, that does not mitigate the fact that the Modbury Hospital board has still not produced its annual report for the 1994-95 financial year. I am sure that the Hon. Mr Davis, the Hon. Mr Stefani, the Hon. Angus Redford and the Hon. Trevor Crothers will be extremely interested in that piece of information, as the Statutory Authorities Review Committee has been examining the late production of annual reports by a whole lot of Government organisations. It is now 13 months since the end of that financial year and Modbury Hospital still has not produced its annual report. Repeated requests for it keep being met with the statement, 'We hope to finish it soon.'

The Statutory Authorities Review Committee will soon present a report detailing information about late reports from Government agencies, authorities and bodies. I can assure members that there will be very few that match 13 months after the end of the financial year as Modbury Hospital is evidencing. I might say that it has not yet produced its report. It is now 13 months since the end of the financial year, but I do not know what the final length of time will be before the board's report is finally available. Is it to be 24 months before it makes it available?

How there can be proper accountability for taxpayers' money and monitoring by Parliament of the activities of Government authorities, agencies and bodies if annual reports are provided so late, I cannot imagine. Modbury Hospital must be one of the worst in this regard. Certainly, from information received by the Statutory Authorities Review Committee, if its report appears within a week or so it will not be the worst of all of them because there are some which have even a worse record, but it is getting close to being the worst. The longer the delay, the more likely it is to hold the record of one of the worst ever agencies or bodies for producing its annual report.

The committee needs annual reports. An annual report is a public accounting of the activities of the board and the hospital. Every Government hospital is expected to produce such a report so that the public can be aware of what is happening in what are publicly funded hospitals. When we look at the Healthscope situation though, it is perhaps different. Healthscope officers and employees who gave evidence to the committee are not part-time volunteers but full-time paid officials.

The Hon. J.F. Stefani: But it is a private company.

The Hon. ANNE LEVY: It is a private company, but they are citizens—

The Hon. M.J. Elliott: Using our money.

The Hon. ANNE LEVY: Yes. They are as accountable for the spending of taxpayers' money as is anyone else who spends taxpayers' money. They gave evidence to the Committee at the beginning of December last year. At that time they certainly brought a great deal of information with them, for which we were very grateful and for which we thanked them, but there was other evidence which they did not have and which they said they would obtain for us. The transcript was sent to them so that they could see that they told us that they would obtain this information for us.

Despite repeated requests starting in March—and it is now 1 August—we still do not have that information which Healthscope last December said that it would provide to us. It is eight months since representatives of Healthscope sat in front of us and said that they would get that information for us. Here we are eight months later without having received it. Whether that is incompetence, a stuff up or a conspiracy to be deliberately obstructive, I leave it for members to judge for themselves. However, it is not what I expect of a company with which the Government is prepared to do business. I would have expected that any company that was sufficiently trusted by the Government to do business with would behave in a more competent manner than Healthscope has done.

I reiterate that the question of the contract is a separate issue which is not complained of in the interim report. Certainly, that matter has held up the workings of the select committee, but we hope that will be resolved shortly. If that were the only matter of concern, we would not have brought in this interim report, but we felt it was necessary to draw the attention of the Parliament and the people of South Australia to the difficulties we have had in obtaining basic standard information which should have been available and which still has not been made available to us. It is a matter which this Parliament should take very seriously or it makes a mockery of the whole process of inquiry by parliamentary select committee. I support the motion.

The Hon. M.J. ELLIOTT secured the adjournment of the debate.

DIESEL FUEL REBATE

The Hon. CAROLINE SCHAEFER: I move:

That this Council calls on the Federal Government to recognise the enormous financial contribution made by mining and primary industries to the wealth of this nation and seeks an assurance that any proposed changes to the diesel fuel rebate in the forthcoming budget will not be detrimental to those industries.

I need to apologise for moving this motion so late in the session. However, there are a number of issues which I believe to be crucially important to primary industries and, indeed, to the economy of this State and the nation. I will attempt to be brief but I wish to raise those matters now. When I gave notice of motion on Tuesday, the Hon. Ron Roberts, by way of interjection, suggested that I should declare my interest before speaking. As I am a member of a farming partnership I suppose, if you want to draw a long bow, I do have a pecuniary interest in the matter of the diesel fuel rebate. However, I would argue that I am no more or less qualified to speak on these issues than the Hon. Ron Roberts is to speak on union matters.

The Hon. Anne Levy interjecting:

The Hon. CAROLINE SCHAEFER: You may or may not agree with what I will say, but I intend to continue to say it anyway.

The Hon. Anne Levy interjecting:

The PRESIDENT: Order!

The Hon. CAROLINE SCHAEFER: Aside from the consternation I appear to have raised on the other side, a great deal of consternation is felt by primary producers and the mining community about the rumours which are circulating that the diesel fuel rebate could be removed or changed at the next Federal election.

To understand the issue, it is important to know the history of the fuel tax and the rebate system. The fuel excise was introduced in 1958 for two main reasons: first, to contribute to road building and maintenance; and, secondly, to ensure that diesel on road vehicles did not have an unfair advantage

over gasoline powered on-road vehicles that were subject to gasoline excise. The purpose of these excises was that they were used specifically for road maintenance and construction. In most cases they have now found their way into general revenue, which is the subject of a separate debate in itself. However, since vehicles used in farming, forestry, fishing and mining were not taken onto roads, they were not subject to what amounted to a road tax and were issued with certificates of exemption. The diesel fuel used in farm vehicles such as utilities or trucks, which do use the roads, are not exempt from the excise and never have been.

Diesel fuel used for the generation of home based electricity and used in hospitals is also exempt. However, the amount used is quite small, and the total rebate amounts to only $17 million per annum across Australia. If anyone is unsure of the situation, there has never been a rebate for petrol, because heavy machinery used for the purposes of production is almost exclusively diesel fuelled. In 1982, the scheme was changed—apparently for administration purposes—to one where the exempt users pay the full price and are reimbursed the amount of the excise. Currently, that is 31¢ per litre for mining and 34.18¢ per litre for the others eligible.

Over the past decade, we have watched Treasury, and the public began to think that this rebate was a subsidy instead of it being a refund on a tax which these producers did not and should not have to pay. Quite the contrary is the case. If this rebate was to be removed, it would become a tax on production and would be an additional new tax on primary producers and miners. Just two years ago, in 1994, an Industry Commission report estimated that the reduction in national gross domestic product caused by the disincentive to production would be about twice the saving in Government revenue. The mining industry argues vehemently that the rebate removal would amount to a tax on their energy supply and would reduce their competitiveness on the international market. They also argue that they would be forced to reduce both the mining and exploration effort at a time when both are crucial to Australia's economy, and the greatest disadvantage would be to the smaller companies. That is a risk which, given the state of our economy, we should not be prepared to take.

The amount we are talking about is not small. In the year ending 30 June 1996, rebates in South Australia amounted to $35.7 million for agriculture; $9.5 million for fishing; and $2.5 million for forestry. Throughout Australia, 226 385 claims were processed, to a total gross amount of $1.2 billion. The split of this amount is $551.2 million for agriculture and related industries, and $705.3 million for mining. This compares with earlier figures for 1990-91 of $386.9 million for agriculture and $434.6 million for mining. The total has risen from $164 million in 1983-84. So it is easy to see why Governments of all persuasions would be keen to get their hands on this type of windfall. However, it must be stressed over and again that this would not be removing a subsidy; it would be imposing a tax.

The Federal Minister for Primary Industries (Mr John Anderson) stated in his address to the National Press Club on 18 July that he would like to see administration tightened to eliminate rorting. Certainly, if genuine rorting is taking place, I am sure we would all support him in that. However, I must say that I would be interested to see how this rorting—or, as it has been suggested to me double dipping—takes place.

In order to claim the rebate, one must quote an invoice number and producers are subject to random audits both on their properties and via their fuel supplier. Claims are made via the Customs Service and I imagine there must be a huge amount of expenditure in the administration of the scheme. No doubt there was a good reason for introducing a rebate rather than an exemption, but I must say that I am at a loss to know what it was. Surely quite a lot of money could be saved by an exemption scheme similar to that used by those eligible for sales tax exemption.

My research indicates that, in 1983-84, the rebate was 2.24¢ per litre as opposed to 34¢ per litre now. This goes a long way towards explaining the huge increase in the total amount of the rebate. It is also a fairly interesting comment on the huge revenue grab that the fuel excise has become. I also note that the mining industry gets a rebate of only 31.8¢ per litre now, so in fact it already pays 2.38¢ per litre in tax. I also note that the total price for diesel in 1983-84 was 9.4¢ per litre whereas today it is 64.38¢ per litre, and we wonder why primary industry and mining struggle to be cost effective.

I recognise that this is a difficult conundrum for the Federal Government, and none of us would support widespread rorting if that is occurring, but neither can we support the introduction of a production tax which would be so drastically detrimental to primary industries and mining. At a time when Governments of all persuasions are endeavouring to encourage industry and exploration, particularly small business, this would send exactly the wrong signals to those industries.

My estimation is that the additional cost to the average grain farmer would be $10 000 per annum for the fuel that is used in soil preparation, sowing and harvesting, and I note that the Grains Council of Australia also estimates that exact same cost per farmer on average per annum. Most of us know that the grain industry is just beginning to claw its way back to viability after an unprecedented period of low commodity prices, and these have been exacerbated by high interest rates and droughts. The last thing we need at this time is an imposition of a tax on production. As we look forward to the economy of this nation and State being put back on to a sound level by our vast mineral exports and wealth, so the mining community does not need the imposition of a production tax at this or, in my opinion, any further time. I urge the Council to support the motion.

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

SELECT COMMITTEE ON THE PROPOSED PRIVATISATION OF MODBURY HOSPITAL

Adjourned debate on motion of Hon. Bernice Pfitzner (resumed on motion).

(Continued from page 1978.)

The Hon. SANDRA KANCK: Those members who have read the report will note that I have agreed with almost all of it, although I have included a dissenting statement. The report details a litany of unproductive communications with various bodies, namely Healthscope, the Health Commission and the Modbury Hospital board. From my point of view, sheer logic says to me that one has to assume that the requests from the committee for information have not been complied with, either because it is an accident or it is not an accident. It sounds a little trite, but I cannot come at a position halfway between them.

If it is an accident, the relevant body is demonstrating a great degree of incompetence, which does not give us great hope for our health system. If it is not an accident, it must be a deliberate choice to thwart the committee. The length of time, stretching to many months in some cases, suggests to me that it is the latter. If it is incompetence, I believe some heads should be rolling, because such lack of service should not be acceptable in Government departments, instrumentalities or private enterprise.

While it is important that the lack of cooperation from Healthscope, the Health Commission and the Modbury Hospital board is placed on the record and brought to the attention of Parliament, unlike the other four members of the committee I believed it was important that this same lack of cooperation from the Minister for Health should also be noted. Members will note in the attachments to the report a letter to the committee dated 27 May 1996 from the Minister for Health (Dr Michael Armitage). Anyone who examines that letter will see that the Minister has not exactly bent over backwards to assist us. His letter confirms that the committee wrote to the Minister on 1 November last year requesting a copy of the contract. Nine months after that initial request, we still do not have a copy.

Other members of the committee have been prepared to accept the statement made by the Premier in early February that a protocol is being developed to handle commercially confidential information in the various outsourcing contracts, and those members have therefore not been willing to attack the Minister. I have to question the sincerity of the Government in its undertaking. It is almost six months since the Premier made that statement. He also claimed that the Opposition and the Democrats would be consulted at that time. I have to say that my colleague the Hon. Mike Elliott has had one meeting about the proposed protocol in that time, and that has been the extent of the Government's discussions with the Democrats.

When I talk to Opposition members, they do not seem to be aware of what progress is occurring and what discussions have taken place. I think that Opposition members are being conned if they are taken in by such an assurance from the Government. I guess it is their right to choose to be conned. Unfortunately, I am not so sure that the public gets the best out of it, because committee members are prepared to quietly sit back and wait and hope that the Government will be honourable.

I agreed to be a member on this select committee when it was set up some 18 months ago because I thought we would gain a better understanding of the processes leading up to the privatisation of Modbury Hospital and the rationale behind it. There is no doubt that this Government has a genuine belief that placing private managers in assorted institutions around our State will be to our benefit. I would like to share in its confidence. If we could only gain the information we are requesting, who knows, I might be converted. If it is to our benefit, surely the Government would want to provide us with the information that would assist us to gain the same understanding it has.

I, too, have a belief, and that is that, if we are handing over State institutions to the control of interstate and overseas companies that have no intrinsic commitment to the State of South Australia, we must ensure that accountability is built into the contracts which the Government has signed. We do not know whether that accountability is there.

I also express concern about a general practice of Government members serving on committees—and I stress that the practice is not occurring just at the present time but it occurred when Labor members in government were on committees—who act to protect the Government rather than working to find out the truth. If we in this State are to continue down the path of privatisation, and it seems that this Government is determined to do so, we all need to know the pluses and minuses. Working to shield the Government from criticism may well run counter to this. I am most disappointed that the committee has had to produce a report which says, 'We cannot get anywhere because those who have the information will not provide it,' but it is important that the public should be aware that this is what is happening. I support the motion.

The Hon. BERNICE PFITZNER: In closing, I would like briefly to add that I spoke at length on the contract because it is an essential piece of information. I am pleased that I spoke at length to obtain an assurance, especially for the Hon. Sandra Kanck, who places a high value on obtaining the contract. The report, in its last paragraph, said that it understands and is prepared to await the outcome. No doubt it says this, but it is said with a feeling of great impatience and frustration. I perfectly understand this because, without the contract, it is rather difficult to assess whether the outsourcing of Modbury Hospital has been done in a satisfactory manner.

I put to members that the tardiness is not a deliberate obstruction of information: rather, I think, it is due to a new concept of outsourcing of a health facility and, being a new concept, it is rather difficult to put such facts together in an understandable manner. I believe, having spoken just recently with the Attorney-General, that these protocols are being prepared and will soon be finalised. Documents are being prepared that will satisfy what we want to know, and if there are maladjustments, mismanagements, and dissatisfactions on whatever level, whether it relate to service, buildings or other outsourcing, those matters will be addressed and addressed in a very satisfactory manner. I ask members again to note the interim report but with caution.

Motion carried.

LEGISLATIVE REVIEW COMMITTEE: RACIAL VILIFICATION BILL

The Hon. R.D. LAWSON: I move:

That the report of the committee on the Racial Vilification Bill be noted.

This report, which is a unanimous report of the Legislative Review Committee, was the result of a reference of the Racial Vilification Bill by this Legislative Council to the Legislative Review Committee. It is worth mentioning, in very brief terms, the history of the Racial Vilification Bill, which was ultimately referred to the Legislative Review Committee. The Bill was introduced initially by the Premier on 29 November 1995. It passed in the House of Assembly and came to this place on 7 February 1996. It passed the second reading stage and, when the motion was moved that the Bill be read a third time on 11 April 1996, a motion was moved by the Hon. Paolo Nocella that the Bill be withdrawn and referred to the Legislative Review Committee for its report and recommendations.

In accordance with usual practice, the Legislative Review Committee advertised for submissions. It received a number of submissions on the subject of racial vilification. Not all of the submissions were directed to the issue that the committee

considered to be the particular issue on which it was called to report. The committee took the view that, owing to the course of this legislation through the Parliament, it should restrict its consideration to the issue of the amendments moved in the Legislative Council. In order to explain the effect of those amendments it is perhaps appropriate that I should mention the initial provisions of the Bill.

The Bill as introduced originally by the Government contained a novel regime for dealing with racial vilification. In Australia, there are only two States which have any form of racial vilification legislation. New South Wales has some provisions, and the criminal code of Western Australia also contains some criminal sanctions against certain aspects of racial vilification. In addition, the Federal Parliament has passed a Racial Hatred Act, which came into force in 1995. The South Australian Bill, as introduced, contained novel provisions. They were twofold: on the one hand, a criminal sanction is provided which prohibits racial vilification that is accompanied by threats of physical harm to persons or property, or incitement of others to engage in racial vilification accompanied by threats. That is a new South Australian offence. In many respects, it is similar to the New South Wales offence of racial vilification.

The second element of the Government's racial vilification legislation was a new civil remedy of racial victimisation. This civil remedy enables any victim of racial vilification who suffers detriment to apply to a civil court and recover up to $40 000 in damages. That is a civil rather than a criminal remedy. The Government took the view that these two remedies covered the field and that they provided appropriate relief. When the Bill passed through the other place it was in that form. When it came here, amendments were made in this Chamber to add yet another form of relief. These amendments, which are actually taken from the New South Wales legislation, made racial vilification unlawful but not a criminal offence. This is what is called a 'civil wrong'.

The amendments envisaged that complaints under these provisions would be made to the South Australian Equal Opportunity Commissioner, who would have the power to investigate the complaints, endeavour to resolve them by conciliation and the like. But if that process failed, the commissioner would refer the complaint to the Equal Opportunity Tribunal, which is empowered to make orders for apology or retraction and also payment of damages.

The new form of relief was introduced into the Bill in this Chamber. There was by no means unanimous support for those changes in this Chamber. It is a matter of record that the changes were supported by members of the Opposition and the Australian Democrats but were opposed by Government members in this Chamber. Against that background the Legislative Review Committee took the view that its mandate was to examine the differences and see whether there could be any resolution of those differences. The committee took the view that it was not part of its function or mandate to re-examine whether or not racial vilification legislation in South Australia was necessary because both Houses of Parliament had indicated overwhelming support for some form of legislation on this subject.

A number of submissions were received from citizens and organisations on this matter. They were duly considered by the committee. I express thanks on behalf of the committee to those individuals and organisations which were sufficiently interested to make submissions. Those submissions were duly taken into account, even if the subject matter was not closely examined. By that I mean that, where people complained about the intrusion into free speech that racial vilification legislation represented, the committee noted that submission but did not seek to answer it or debate the issue, because there was overwhelming parliamentary support for racial vilification legislation.

In the report, which I commend to members, the different approaches of the original Bill introduced by the Government and the Bill as amended in the Council were examined. The principal issue was whether or not the Racial Vilification Bill should include redress under the South Australian Equal Opportunity Act. The Government's view, as reflected and recorded in the report, was that the Equal Opportunity Act should not be included and loaded on to the civil and criminal remedies contained in the Bill. A number of reasons were advanced by the Government for that. One was that there is already adequate protection for the equal opportunity type of relief provided by Federal legislation. The Human Rights and Equal Opportunity Commission provides a forum for the receipt of complaints which are dealt with in a non-criminal and non-courtlike environment. The Premier has noted, as stated in the report, that this Government does not favour the duplication of State and Federal services. The view was that to involve the South Australian Equal Opportunity Commission would be an unnecessary duplication. No-one in South Australia would be deprived of rights to go to the Federal commission if he or she so chose.

One other ground noted in the report for support of the Government's position was that an essential element in the new criminal offences is the necessity for a threat of violence to person or property. A certain degree of scepticism was expressed about the effectiveness of legislation which sought to conciliate and educate persons who would engage in actual threats of violence to person or property.

On the other hand, arguments were advanced in support of some inclusion of the Equal Opportunity Act. Those arguments are set out in paragraph 7.3 of the report. I might summarise them, as I am sure members opposite will in greater detail, by saying that the Leader of the Opposition in another place said that he wanted to see additional measures of conciliation and education for racially motivated offences which amounted to something less than threats of violence. The view expressed by the Leader of the Opposition was that the Commissioner could provide a flexible, inexpensive and accessible framework for conciliation. On the contrary, however, it was noted that within our ordinary civil remedies there is adequate provision for conciliation and mediation.

The conclusions of the report are set out shortly in section 8. First, the committee was unanimous in its support for some form of racial vilification legislation. All members of the committee considered that racial vilification is a very serious matter. The committee divided on the question of the need for a separate jurisdiction for the Equal Opportunity Commissioner to deal with racial vilification. Some members considered that racial vilification ought to be dealt with in the ordinary courts because there stringent standards of proof and procedural fairness are insisted upon. They believe that the model adopted by the Government in the original Bill was appropriate. They saw it as complementing the Federal Racial Hatred Act. They noted that the original Bill did not seek to exclude the role of the Federal Human Rights and Equal Opportunity Commission in these matters and, more importantly, the Bill did not seek to duplicate the role of that commission.

On the other hand, other members of the committee considered that complainants should have the choice of

pursuing redress through either the South Australian Equal Opportunity Commissioner or the courts, and they considered that the Commissioner should be involved in the process of mediation and conciliation of less serious complaints of racial vilification. They saw the Commissioner as having an important role in educating the public and point to the fact that the Commissioner already has a role because she actually acts as the agent in South Australia of the Federal commission.

Some members of the committee were opposed to the amendments to the Government's Bill because, in their view, those amendments created undue confusion and complication. In particular, they create two classes of racial vilification, which is a legal complication, namely, serious racial vilification and, by inference, non-serious vilification. They foresaw difficulties because the Bill creates two forms of civil redress, as well as empowering the criminal courts to award damages. It was the view of those members of the committee—the Government members—that the remedies in the original Bill were not enhanced by having some of the New South Wales provisions engrafted upon them.

However, notwithstanding the division of opinion about some procedural aspects of the Bill, members of the committee were unanimous in their concern to ensure that some legislation is enacted at the earliest opportunity. The recommendations of the committee are referred to in paragraph 8.3, and this is a recommendation by the majority of the committee:

> In order to see the earliest possible introduction of some form of racial vilification legislation, the original Bill should be enacted without delay. The report notes that the mechanism for that to be achieved is by restoring the Bill in its amended form to the Notice Paper, to there have it read a third time and the differences between the Houses can then be resolved by the constitutional mechanisms for the resolution of deadlocks.

In other words, it is the recommendation that the Bill should come back and the process that was in train on 11 April should be allowed to continue. As the report notes, Standing Orders do not enable this Bill to be considered again in the current session of Parliament because Standing Orders and the Constitution Act provide that a Bill on the same subject matter cannot be dealt with in the same session. However, the Bill may during the next session be restored to the stage it has reached in the present session.

Another unanimous recommendation was that, after the legislation has been in operation for two years, the Legislative Review Committee should again review its operation to examine what has happened over the ensuing years in consequence of the enactment of the legislation and to suggest any amendments that should be made at that stage if the legislation is found to be wanting.

I thank members of the Legislative Review Committee for their contribution to this report. I record my thanks and appreciation to the Secretary and Research Officer for the work done, as well as to those persons who made submissions to the report.

Since the tabling of the report I have been the recipient of a certain amount of criticism because in the political arena the Opposition has been criticised for delaying the introduction of the racial vilification legislation, the Government having pointed out that it was the decision of the Opposition, with the cooperation of the Australian Democrats, to withdraw the Bill in April. Undoubtedly that had the effect of delaying the introduction of this legislation. Any criticism of me as Chairman of the committee or of Government members of the committee in relation to this matter is unfair. It seems that it was open to the Government to make whatever statement it chose about the effect of any actions of any member of this place.

I commend the report and can only hope that the racial vilification legislation will be considered in a timely fashion and quickly introduced in the manner suggested at the earliest opportunity in the next session. I commend the report.

The Hon. P. NOCELLA: I rise on behalf of the Opposition to make some comments on the report that has just been tabled on the draft legislation on measures to combat racial vilification. It is with considerable disappointment that I address my remarks to facts surrounding the production and presentation of the report. It is a matter of record that Opposition members on the committee cooperated fully in the deliberations and, even though our view was clearly expressed and supported by the relevant submissions, it was a matter of the inflexibility of the Government that the suggestions and amendments introduced were not to be considered.

The Opposition members in the final stages of the preparation of the report had considered (certainly I had considered and prepared) a dissenting minority report. In the final analysis and in the interests of cooperation within the committee, I refrained from that and accepted some largely cosmetic modifications to the wording of the conclusions—conclusions which, as the Hon. Robert Lawson has mentioned, state that,'The committee is unanimous in its support for some form of racial vilification legislation' and, 'All members consider that racial vilification is a serious matter.'

It is against this background that I express my absolute dismay at the fact that simultaneously to the report being tabled in this Council the Premier thought it appropriate to issue immediately a press release headed 'Labour rejects racial vilification laws'. What a monstrous distortion of the truth. How can anyone reconcile this kind of a headline with the conclusions of the report that I have just quoted? I am appalled that the Premier would spread this sort of media release which can only have the effect of misleading and misinforming the recipients who will never be able to understand the reality or the conclusion of the report. The Premier goes on to say:

> This is a serious insult to the ethnic communities of South Australia. . .

What is a serious insult to the ethnic communities of South Australia is the cavalier fashion in which this Government has treated the advice repeatedly provided by the Multicultural Communities Council and the Italian Coordinating Committee, which may be considered as the representative bodies of the potential victims of acts of racial vilification. They have been totally ignored; they have been consigned to the wastepaper basket, not once but several times.

Let us see who these people are. The Multicultural Communities Council is an organisation that was recently established with the encouragement of the Government from two pre-existing organisations with the stated purpose of providing a strong united voice for the ethnic communities of this State. It is a sad irony that, at the very moment they did exactly what they were established to do, their advice was totally ignored and not taken into consideration. They have every reason to believe that they represent the potential victims of acts of racial vilification, and I imagine that, today, they have every reason to feel very disappointed because, having gone to the effort of providing their considered advice

on behalf of their constituents, they simply saw that advice totally and utterly ignored. That is a serious insult to the ethnic community. In its conclusion, the report also states:

> Notwithstanding the division of opinion about some procedural aspects of the Bill, the members of the Legislative Review Committee were unanimous in their concern to ensure that some legislation is enacted at the earliest opportunity.

How does that tally with the statement in the Premier's media release that the Opposition is interested only in delaying the introduction of this legislation and preventing the population of South Australia from having appropriate laws to combat racial vilification? It does not and it could not, because the fact that this legislation cannot be enacted is not an invention of the Opposition, it is to do with the Standing Orders. Standing Orders 124 and 139, as I had to learn as a relatively newcomer to this place, prevent Bills that have been withdrawn from being re-enacted during the same session. This is nothing new. This should have been known back in April by those who have been here for a while. So why the surprise? If Standing Orders allowed for this legislation to be introduced today, we would be the first ones to support it, but that is not possible, so what is the point of telling people that the delay is caused by our attitude? It is not. It is caused by the provisions contained in Standing Orders.

Members interjecting:

The Hon. P. NOCELLA: These are the normal processes provided by Parliament. In addition, the other matter that perhaps has caused some concern is the fact that we, as members of this committee, could have been right in expecting some protection from the Presiding Officer who, apparently, was aware of this media release being produced, and was talking to the press. It is a matter of some regret that, as Presiding Officer, he could not provide that sort of protection for the committee, for its members and for the deliberations that have been achieved with a great deal of cooperation from all sides. I am saddened by the way in which the process has been brought to its conclusion—at least for the time being. I simply confirm that it is an utter falsehood to say that the Liberal position rejects the racial vilification laws, it does not. The Labor Opposition was the one to introduce for the first time in the history of this State in this Parliament a Bill for the introduction of racial vilification legislation on 26 September 1995. It is almost an article of faith for the Liberal Party to uphold social justice now as if it was back in earlier times when the Labor Party introduced anti-discrimination legislation that became the envy of the world. In conclusion, after reading the wordings of this media release, I am reminded of those words that said that this text is like words of love from the lips of a harlot. I support the motion.

The Hon. J.F. STEFANI: I am conscious of the hour, but I cannot allow this opportunity to pass to make a short but very precise contribution about this matter. First, I want to congratulate the Presiding Officer of the Legislative Review Committee and the members of the committee for the presentation of the report, particularly the Presiding Officer for his eloquence in presenting the report to this place. The Hon. Robert Lawson has, indeed, given a very clear account of the legal aspects of the Bill, the report and the deliberations that were rightly due to be produced by the committee dealing with this measure.

When this legislation was first mentioned in the Governor's opening speech to Parliament on 26 September 1995, the Governor obviously referred to the Government's intention to introduce legislation. The Governor said, 'My Government will introduce racial vilification legislation in this session.' So it is quite clear that the Liberal Government had intentions of dealing with this legislation, but we know that the Opposition was up to games because the following day we had the Hon. Mario Feleppa introducing a Bill. If that is not a political stunt, I will never know what a political stunt is. The Hon. Mario Feleppa then resigned, and that is the intention of the Opposition in driving this legislation right through to the place where people will be protected by it. Then we had to wait for the new member to come on the scene. In the meantime, the Leader of the Opposition made a political play, so he introduced a Bill in the other place on 12 October 1995.

We therefore had another beating-of-the-drum political exercise to tell the ethnic communities that another bit of legislation had been introduced by the Leader of the Opposition in another place, and that is totally and utterly political opportunism. It was the sort of political exercise that the community has seen through very clearly. It was a totally smug and political exercise. The Opposition tried to take the ball away from the Government because it wanted to be the greatest.

The Hon. R.D. Lawson: They were grandstanding.

The Hon. J.F. STEFANI: We know that they are a big grandstanding lot. They looked pretty smug at the time, but we were very determined as a Government to deal with the matter in an appropriate manner by seeking the best possible legal advice and by making sure that the laws worked when they were introduced. We referred to the very best people from the Attorney-General's office, to eminent QCs and to the senior adviser whom the Hon. Chris Sumner used to have alongside him. We had only the best people advising us, working together with the lawyers in this place. I remind the Opposition that they do not have the legal capacity on their side to enable them to do anything like that. However, we had the ability to produce laws which, if tested in a court, could be dealt with.

So, after a lot of effort from a lot of people in taking on board the submissions made by the Multicultural Communities Council and by other people who came to us, we could explain why it was not possible to introduce their ideas. And they were only ideas, because they were not legal people and they had no idea of the legal implications involved. When we explained to them that there would be problems in trying to introduce a piece of legislation that would work in the courts, they were quite satisfied that what we were saying was correct, that is, that the Federal equal opportunity legislation dealt with minor complaints and that this law would be the very best protection that we could offer for the criminal and punitive sanctions.

Opposition members fiddled around with this matter and, when they could not take the heat in the kitchen, they carried on like spoilt little brats and withdrew the legislation. They said that we were inflexible. They just took their ball and bat and said, 'We will not play with you any more.' Ably supported by the Australian Democrats, they withdrew the legislation. If that is not a rejection of the Government's racial vilification laws, I will never know what is. It is a rejection, by withdrawing them, of the Government's position to introduce laws, and that is the action for which these people will be condemned because—

An honourable member: Refer them to a committee.

The Hon. J.F. STEFANI: It would make no difference if they were referred to a committee or to any other place

because, at the end of the day, the laws were withdrawn from this place by the—

The Hon. M.J. Elliott: They will come back.

The Hon. J.F. STEFANI: Yes, indeed, and delayed and rejected.

The Hon. M.J. Elliott: And got right.

The Hon. J.F. STEFANI: It never changed a thing. It has not changed a thing because it will come back in the same form.

The Hon. R.I. Lucas: What did they gain?

The Hon. J.F. STEFANI: Nothing, absolutely nothing. That was said tonight. It absolutely changed nothing. We have this exercise of going around in circles and, three months later, nothing has changed and we must then reintroduce the legislation as it was right from the beginning. If that is not a rejection of the law, I do not know what is. Quite frankly, I think these people ought to hang their heads in shame because, as the Premier correctly stated, they have deprived the community for the last six months or more of the protection of the laws that the Government had intended to introduce for the community's benefit.

It is a fact that they cannot accept that they were either ignorant in the process or stubborn in not accepting that the Government was acting in the best interests of the community. They will stand condemned, and I am very pleased that the Premier has taken the initiative to inform all communities that the Opposition and the Democrats delayed the legislation, and that it will not be reintroduced until October. I hope that no member of the community we were trying to protect incurs some damage, because if that happens—and we had an incident at the cemetery—we will refer them to the Labor Party and the Australian Democrats who have delayed the whole process. It was proper that I should at least put on the public record the sequence of events that occurred, the sequence of events that led to this legislation being delayed, the sequence of events that led to this legislation being withdrawn, and the sequence of events that led this legislation to be used as a political football and which has now backfired on the Opposition and the Australian Democrats. I support the report.

The Hon. R.D. LAWSON: I seek leave to make a personal explanation pursuant to Standing Order 173.

Leave granted.

The Hon. R.D. LAWSON: In his address to the Council on this motion, the Hon. Paolo Nocella suggested that I, as Presiding Member of the Legislative Review Committee, had been in some underhand way, involved in the preparation of a press release which was not disclosed to the committee. That is not the fact. I was unaware of any press release, nor did I make any statement to anyone from the press until after the report of the Legislative Review Committee was tabled in this place.

The Hon. M.J. Elliott: How did the Premier find out?

The PRESIDENT: Order!

The Hon. R.D. LAWSON: He had it after it was tabled.

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: It would be quite impossible to let such a dishonest contribution as we just heard from the Hon. Julian Stefani pass without some comment. Yes, there has been political opportunism, and the Liberals are up to their necks in it. I should begin the discussion by at least complimenting the Hon. Robert Lawson in making a well-considered and balanced contribution on what is an important matter before the Legislative Review Committee. The Hon. Robert Lawson did a good job in handling this matter the way it should have been handled. Unfortunately, the Hon. Julian Stefani just could not resist the cheap political shot. The Premier's little puppy dog had to go yapping around on this matter. Of course, it was during the—

Members interjecting:

The PRESIDENT: Order! I am not sure that that sort of language is terribly clever. I warn the honourable member.

The Hon. P. HOLLOWAY: In view of what we just heard from the Hon. Julian Stefani, I think it does require some contribution. What we have seen here is the misuse by the Premier of a serious report before one of the committees of this Parliament to score a cheap political shot. Within an hour of this report's being tabled in this Parliament, the Premier had a press release out.

The Hon. M.J. Elliott interjecting:

The Hon. P. HOLLOWAY: Yes, the Hon. Robert Lawson has told us that he did not let anybody know about it. That might be so but, somehow or other, a press release was put out by the Premier totally misrepresenting this report. What happened was that this Bill was considered on the last day before we had one of the smaller breaks in the session earlier this year. The Opposition had moved a number of amendments to it which we believed would improve the Bill. As a consequence of that, several things could have happened. It could have gone to a conference, where there may have been a deadlock and the Bill may have lapsed. The Opposition decided that a better course of action was that we should refer that Bill by the only means available under the Standing Orders to the Legislative Review Committee for a considered review. We hoped that the Government—

Members interjecting:

The Hon. P. HOLLOWAY: I guess we should have known better. We should have known that this Government would be completely inflexible and intolerant. We hoped that—

The Hon. J.F. Stefani interjecting:

The Hon. P. HOLLOWAY: I hope that interjection by the Hon. Julian Stefani is on the record. We can see how he operates. The honourable member said, 'This is what the previous Labor Government did to us for 10 years.' That illustrates quite clearly the motivation of the Liberal Party in a very serious matter that deserves better treatment by this Parliament.

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: The Bill went to the committee and evidence was received from various bodies to which my colleague the Hon. Paolo Nocella referred previously. None of the evidence we received in favour of racial vilification legislation opposed in any way the amendments put forward by the Opposition, which were to give the Equal Opportunities Commission a role within the operation of racial vilification laws.

I would have thought it was fair enough to have a reasonable difference of opinion without having to get into the political gutter and point score. One would have thought this was a serious matter and that we should have some serious discussion on the alternatives available. By sending this matter off to the Legislative Review Committee, and with the benefit of some of the evidence received, we thought we could come up with some sort of compromise or change that might be able to meet the requirements of both Parties. That was not the case because, after all, the Government has the

numbers on the committee, which the Hon. Julian Stefani forgot to mention.

The Hon. M.J. Elliott interjecting:

The Hon. P. HOLLOWAY: It does a bit.

The Hon. T. Crothers: Do you mean they could out-vote you on that?

The Hon. P. HOLLOWAY: Yes, something like that, but none the less we tried to do so in a spirit of compromise. The committee worked very well on this. I would not like anyone reading this debate to think that the Legislative Review Committee was as polarised as the debate tonight would indicate. All members on the committee—and that does not include the Hon. Julian Stefani, I point out—approached this matter in a reasonable way and tried to resolve the differences as best we could.

Unfortunately, that was not the case. There is one important point I need to make to rebut a comment of the Hon. Julian Stefani. He talked about the timing of the legislation and how Mike Rann first came up with the legislation one day after the Government announced it. It was well known for some time that the Opposition planned to introduce this legislation. How on earth does the Hon. Julian Stefani think you could draft a comprehensive piece of legislation in one day? Perhaps we should take it as a compliment that we are so good that we can draft a comprehensive piece of legislation within 24 hours. I let that speak for itself.

The Hon. J.F. Stefani: Nick Bolkus faxed it through for you.

The Hon. P. HOLLOWAY: In fact, the legislation we introduced was modelled on the New South Wales legislation that we had been looking at for some time. When the Hon. Julian Stefani makes the point that somehow or other with all the lawyers on his side they were able to do a better job, consider it thoroughly and that somehow or other it works better, he forgets that this legislation is virtually identical to the New South Wales legislation which has been in operation for years. The former Liberal Premier Nick Greiner introduced it, and it has worked very well in that State. How can the Hon. Julian Stefani say that the propositions we put up were in some way untried or not effective? The fact is that they have stood the test of time in New South Wales. It is worth putting those points on the record. It is regrettable that the Premier tried to score a cheap political point with this Bill. It was treated in the appropriate manner by the media, and it has sunk without a trace. That was really its just reward. I think the media were far too clever—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: The Hon. Robert Lucas tells us that all the ethnic communities have it.

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: I hope that all the Government's interjections have gone on the record, because they illustrate what this is about and what the Premier's press release is about: it is about trying to win votes. The Government treats a very serious matter in a way in which it does not deserve to be treated. The Opposition's approach to this legislation has been constructive and serious. We recognise the problem. We are trying to do our best to get the best possible legislation. We have acted in good faith all the way through. Frankly, we deserved a lot better than the shabby treatment we received with the Premier's statement. To get back to the report, as I said, the working of the committee was fortunately far more constructive than what we have seen in here tonight.

In conclusion, I endorse the committee's recommendation that this Bill come back since it was not possible to reach a compromise within the committee. We can only hope that the conference does better and that effective racial vilification legislation is introduced when Parliament resumes. I also compliment the Hon. Robert Lawson and the other members of the committee on their attitude to the report.

An honourable member interjecting:

The Hon. P. HOLLOWAY: No, I have not criticised the Hon. Robert Lawson.

The Hon. J.F. Stefani interjecting:

The Hon. P. HOLLOWAY: Again, the Hon. Julian Stefani is trying to misrepresent things. I complimented him earlier, and I compliment the Hon. Robert Lawson again for the comments he made. Anyone who reads *Hansard* will verify what I said. Let the *Hansard* record speak for itself. The members of the committee, the research officer and the secretary of the committee did a very good job in compiling this report in a very short time. It was important that this report be put together quickly, and with their help we were able to do that. It is worth pointing out that the one new initiative in the report is the recommendation that whatever form of law comes out of a conference should be reviewed by the committee within two years to gauge its effectiveness.

The Hon. Rob Lucas laughs at that. I do not know whether the laughter means that he thinks it is a silly suggestion. I do not know what the sneering means. I should have thought that it was a pretty good idea that, after two years, whatever form of legislation comes out should be subject to a sensible review by the Legislative Review Committee. I welcome the committee's report and look forward to some form of effective racial vilification legislation being introduced as soon as Parliament resumes.

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I had not intended to speak in this debate, but the intemperate speeches made by the Hon. Mr Holloway and the Hon. Mr Nocella require me, as the Leader of the Government in the Council, to respond briefly. I think that the readers of *Hansard* and those interested in racial vilification legislation will note that the Hon. Robert Lawson opened the debate in a sensible, moderate and temperate fashion. I do not think that any member in this Chamber could criticise his contribution.

We then saw an intemperate, quite vicious attack by the Hon. Mr Nocella on an honourable member and the Premier. As a result of the Hon. Mr Nocella's quite vicious attack, Government members have to defend the position of the Premier and that of the Hon. Mr Lawson in relation to this issue.

Of course, the Hon. Mr Holloway sadly had to join in, using most intemperate language, which I think at this hour was unfortunate, in his quite vicious attack on the Hon. Mr Stefani. I can assure the Hon. Mr Holloway that many people in ethnic communities in South Australia owe a great deal to the work that the Hon. Mr Stefani has done over many years. When they become aware of the Hon. Mr Holloway's vicious and underhanded attack on the Hon. Mr Stefani and the work that he has undertaken in relation to this and other issues for ethnic communities, it will not do much good to the Hon. Mr Holloway or, indeed, members of his own Party who have conducted themselves in such a fashion over this issue.

I do not intend to speak for as long as the Hon. Mr Holloway or the Hon. Mr Nocella, but I should like to summarise this matter. The Labor Party deliberately withdrew the legislation and prevented for many months the introduction of racial vilification legislation for people within our community who want to see it. I understand from the Hon. Mr Stefani and the Hon. Mr Lawson that it may be October before we will see the introduction of racial vilification legislation because of the actions of the Hon. Mr Nocella. He knew what he was doing. He quite deliberately withdrew the legislation, supported by the Hon. Mr Holloway and others within the Labor Party.

I am advised that, with the support of the Hon. Mr Rann, the Leader of the Opposition, the decision was taken to seek deliberately to frustrate the Government's attempts to introduce racial vilification legislation. I thought at the time that it was a petty decision. The view seemed to be, 'We are not going to let the Government have its way. If we cannot get our Bill in, we will not let the Government introduce racial vilification legislation, so we will do whatever we can.' I was stunned when the Hon. Mr Nocella, at the end of the debate, withdrew the legislation, with the agreement of the Hon. Mr Rann and others, knowing that he was preventing for many months the protection that racial vilification legislation would give to people who need it.

I do not intend to go through all the other detail, but that is the reality of what occurred. I do not think that the language used by the Hon. Mr Nocella about the Premier this evening does him any credit at all. The Hon. Mr Nocella might have thought he was clever, but it did him no credit at all. I believe that the position of the Premier, whether one agrees with that person or not, deserves some respect. Frankly, the Hon. Mr Nocella's contribution in that respect did him no credit tonight. The Hon. Mr Holloway's contribution in terms of his personal abuse and vilification—we are talking about racial vilification legislation—of the Hon. Mr Stefani, a prominent member of the ethnic community and of Parliament, did him no good, either.

The honourable member's vilification of a prominent member of the community and a prominent member of Parliament this evening did him no good at all, when we are debating racial vilification legislation in this Chamber. I do not intend to pursue the matter any further, but it does Mr Holloway no credit at all for him to have conducted himself in that fashion.

Members interjecting:

The PRESIDENT: Order!

Motion carried.

EQUAL OPPORTUNITY (APPLICATION OF SEXUAL HARASSMENT PROVISIONS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 31 July. Page 1902.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): I thank members for their courtesy in allowing me to deal with this Bill very briefly before we go on to other private business at this late stage. I do not intend to take up too much of the time of the Council. I would like to close the debate and have the Council vote on the second reading without proceeding into Committee. This will allow me to reinstate the Bill when we come back after the break.

I have noted the comments made by the Hon. Mr Griffin and I am pleased to note that he will consider introducing legislation to deal with this and other issues when we return after the recess. However, I believe it is important to have a Bill on the Notice Paper (I intend to reinstate the Bill) that will allow the issue to be kept alive.

The Attorney has made some critical comments about the content of my Bill, but of course he would be at liberty to amend the Bill along the lines he suggested, if he so chose. The Attorney has indicated that he intends to introduce a more extensive array of amendments to the Equal Opportunity Act which cover a wide variety of matters and which will also cover the issues that I have dealt with in this legislation.

I still believe it is very important that we consider the recommendations that were made by the Select Committee on Women in Parliament in relation to the issue of sexual discrimination by members of Parliament against their staff or by members of Parliament against each other, because I believe that is an issue that will not go away. As I said in my second reading speech, I think that members of Parliament should set an example to the rest of the community. We do not have a particularly good reputation out there in the community, and the fact that we are not covered by this legislation and are seen in some way to be different from the rest of the community does not set a very good example. I will await with interest the Attorney-General's legislation, and urge members to support the second reading.

Bill read a second time.

STATUTES AMENDMENT (SENTENCING OF YOUNG OFFENDERS) BILL

The following recommendations of the conference were reported to the Council:

That the House of Assembly do not further insist on its amendment but makes the following amendment in lieu thereof:

Clause 30, page 7, lines 9 and 10—Leave out all words in these lines after 'is amended' and insert as follows:

(a) by striking out paragraph (b) of subsection (2);

(b) by inserting after subsection (2) the following subsection:

(2a) In imposing sanctions on a youth for illegal conduct—

(a) regard should be had to the deterrent effect any proposed sanction may have on the youth; and

(b) if the sanctions are imposed by a court on a youth who is being dealt with as an adult, regard should also be had to the deterrent effect any proposed sanction may have on other youths.

FIREARMS (MISCELLANEOUS) AMENDMENT BILL

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

DEVELOPMENT (MAJOR DEVELOPMENT ASSESSMENT) AMENDMENT BILL

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

ROAD TRAFFIC (MISCELLANEOUS) AMENDMENT BILL

Returned from the House of Assembly without amendment.

FRUIT AND PLANT PROTECTION (ENFORCEMENT) AMENDMENT BILL

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

STATUTES AMENDMENT (UNIVERSITY COUNCILS) BILL

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

STATUTES AMENDMENT (SENTENCING OF YOUNG OFFENDERS) BILL

The House of Assembly intimated that it had agreed to the recommendations of the conference.

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 major issue in relation to the disagreement between the two Houses related to the issue of deterrence. The Government had made it clear that it sought to ensure that when a court was dealing with a young offender it should have regard to the issue of deterrence. In relation to a particular youth and the deterrent effect of any proposed sanction on that youth if the matter was being dealt with in an adult court then, in the same context as deterrence is a matter that the court should have regard to under the Criminal Law Sentencing Act, so also should the court have regard to the issue of general deterrence in respect of that young offender. The Government was also of the view that where a young offender was being dealt with in the Youth Court, then the court should have a discretion to have regard to the deterrent effect of any proposed sanction because of the nature or circumstances of the offence in so far as it related to other youths.

The Opposition and the Democrats were opposed to the court having regard to the issue of general deterrence as proposed by the Government, but Mr Atkinson (the shadow Attorney-General) has indicated that he and his Party would be prepared to consider, again, the issue of the court having regard to general deterrence in appropriate circumstances if the Youth Court Advisory Committee which is a considering a review of the juvenile justice scheme was to make recommendations or at least observations in relation to general deterrence.

The Government was not finally prepared to lose the whole of this Bill which has a number of significant beneficial consequences for the community, particularly in relation to dealing with young offenders. Home detention and community service are two issues which are dealt with, as well as a number of other matters which help to tidy up some difficulties which have been drawn to the Government's attention by the Senior Judge of the Youth Court. There are a number of matters which are contained within the Bill and which we believe are important and, in consequence of that, the compromise which the conference has agreed is that deterrence will be a matter to which the court shall have regard on the particular youth who is before the court. If sanctions are imposed by a court on a youth who has been dealt with as an adult, the court should have regard to the deterrent effect of any proposed sanction on other youths, that is, general deterrence.

It is important to put that into context. The matters referred to in section 10 of the Criminal Law Sentencing Act and the various matters to which the court should have regard in relation to the sentencing of a young offender are all matters that continue to have relevance to the sentencing of young offenders by either an adult court or the Youth Court. It is important to point out that what the conference has now agreed to is at least a recognition that some regard should be had to deterrence and, in some limited circumstances, general deterrence, but it may disregard the matter once it has given consideration to it. So it can give weight to it or it can decide not to give weight to it. It is entirely a matter of discretion.

The Government believed that the court should have even wider discretion in relation to general deterrence, but reluctantly we conceded that that is an issue which can be revisited, and it is likely to be revisited either later this year or early next year as an issue upon which the Juvenile Justice Advisory Committee may make observations.

Whilst the Government expresses concern about the loss of one aspect of the proposals in relation to general deterrence where the courts would have had a broad discretion and would not have been required as a matter of compulsion to give weight to the issue of general deterrence but may have taken it into consideration, which has not been supported by the Opposition and by the Australian Democrats, we are realistic enough to recognise that, if we had insisted, the Bill may well have been laid aside. The significant changes that are proposed in the Bill in other areas of the law relating to young offenders are of importance and we seek to preserve that.

I reiterate what I said earlier that the provisions of section 10 of the Criminal Law Sentencing Act in my view and on all the advice that I have had continue to apply. They require the courts to have regard to certain matters, but they do not require the courts to give any particular weight to any of those specific matters, nor does the amendment before us, which was agreed at the conference, require the courts to give weight to the issues of deterrence, but only to have regard to them. The court will continue to retain a discretion, and that is appropriate and the Government supports that. Contrary to the views of the other Parties within Parliament, the Government believes that the issue of general deterrence ought to be reflected in the law, to which the court can have regard and which it may also discard if of that view. We were seeking to give the courts wider options and discretions which, reluctantly, will not now be the case in respect of the principle of general deterrence. Be that as it may, I report on the conference in the way in which it handled its affairs. It has been a productive outcome in order to preserve the remainder of this Bill.

The Hon. CAROLYN PICKLES: The Opposition is pleased that there was an agreeable outcome to the conference. We thank the Attorney for his patience in what was a fairly lengthy conference, but we believe it is a good outcome. As we indicated, we did have concerns about some issues, but we believe that they have been accommodated by this amendment, so we are happy to support it.

The Hon. SANDRA KANCK: I started from the position that I do not believe that general deterrence works for young people in any situation. I maintain that position at this stage. However, what has occurred as a result of this deadlock conference is that the Bill that will leave this Chamber tonight will be an improvement on what was first introduced either in June or early July. The issue of general deterrence for young offenders who are being sentenced in youth courts as

young offenders is basically *status quo*. That is positive, and I am grateful that the Government gave ground on that issue. The other issue of young offenders who are sentenced as adults—which is probably only about .1 per cent of young offenders; we are not talking about very many people—has a much better outcome for me in that this is just one of the principles the court will take into account when it looks at the sentence for a young person who is sentenced as an adult.

My concern was that, as it was worded, it meant that a judge would have to take it into account, and it gave it a weighting above all the other principles that apply in the Criminal Law (Sentencing) Act. Now it is just one amongst the other 15 principles, which is much more appropriate. It is not giving the court an instruction as to how much weight it gives it. In terms of some of the correspondence that I have had on that, particularly from people in the judicial field, we believe that the judges will feel much more comfortable about having that flexibility. As far as one can come to some sort of consensus from the two extreme positions, which says that general deterrence is something that should be applied basically in all cases of young people offending—

The Hon. K.T. Griffin interjecting:

The Hon. SANDRA KANCK: Yes, I know we do say now that it should have regard to it, which is consistent with the Criminal Law (Sentencing) Act. However, given the gulf in the views ranging from the Attorney's view to mine, between us we have made a lot of progress tonight.

Motion carried.

CRIMINAL INJURIES COMPENSATION (LEVY) AMENDMENT BILL

The House of Assembly intimated that it had agreed to the recommendations of the conference.

ABC RURAL BROADCASTING

Adjourned debate on motion of Hon. Caroline Schaefer:

1. That this Council regards the rural and regional broadcasting activities of the Australian Broadcasting Commission as a critical part of its charter, and urges that the Federal Government's proposed review of the ABC ensures that any changes take into account the commission's important public responsibility to remote area broadcasting where commercial opportunities for information services are severely limited.

2. That this Council requests that these sentiments be conveyed to the Minister for Communication and the Arts, Senator Richard Alston, and to the board of the Australian Broadcasting Commission.

which the Hon. Anne Levy has moved to amend as follows:

Leave out paragraph I and insert new paragraph I in lieu thereof—

1. That this Council regards all broadcasting activities of the Australian Broadcasting Commission (ABC) as critical to fulfilling its role for the Australian people, and is particularly concerned that current Liberal Government cuts will affect Regional Radio and ABC FM in South Australia, and the continued expansion of the youth network Triple J. The Council is of the opinion that the ABC's charter should remain one of a comprehensive service for all Australians, and condemns financial cuts which will prevent it undertaking its full charter.

(Continued from 3l July. Page 1911.)

The Hon. M.J. ELLIOTT: I move to amend the Hon. Anne Levy's amendment as follows:

Leave out the words 'Leave out Paragraph I and insert new Paragraph I in lieu thereof:-' and insert 'Insert new Paragraph A1 as follows—'.

Delete the Roman numeral 'I.' prior to the new paragraph moved to be inserted by the Hon. Anne Levy and insert 'AI.'.

The effect of this amendment is to add what were the proposed amendments by the Hon. Anne Levy to the original motion of the Hon. Caroline Schaefer. I do not see them as being alternatives: I see them as being complementary. I certainly understand that the motion moved by the Hon. Caroline Schaefer focused solely on the ABC and its services in rural South Australia and rural Australia generally, whereas the alternative motion of the Hon. Anne Levy looks at the ABC in a much broader context: not only regional radio but also ABC FM and the youth network, Triple J.

The Democrats have been strong supporters of the ABC, and continue to be so. As a person who was born and raised in regional South Australia, and having spent a lot of my working life before entering Parliament in regional South Australia, I agree absolutely with the sentiments of the Hon. Caroline Schaefer. The role of the ABC in rural South Australia is even greater than it is in metropolitan South Australia in relative importance. Its market share, if you like, is far greater. In fact—

The Hon. Anne Levy: That would not be true for individuals.

The Hon. M.J. ELLIOTT: If one goes to regional South Australia one would find in many areas that over 50 per cent of the audience would be ABC listeners, and the relative market share in Adelaide is much less. I am not saying in terms of the total number of people serviced that it is more important, but it does play a crucial role in regional South Australia. It is a very important supplier, particularly of news information, which it certainly is in metropolitan South Australia, but its news gathering is very comprehensive in regional South Australia, and there is a very strong emphasis on ensuring that local relevant news is provided. I can understand that in rural South Australia any significant cut in ABC services has a very clear impact in relative terms on the quality of what people are getting relative to at least the diversity of what is available in metropolitan Adelaide.

I do not intend to make a long contribution but, having made those brief comments about rural South Australia, I must say that, whilst market share may not be as great in Adelaide, I do believe that the quality of the news service provided by the ABC sets the standard for news services that the others really must match. It is generally a superior supplier of services and again, in terms of diversity, the service provided by ABC FM simply would not be provided by the private sector.

Triple J also led the way in terms of provision of radio relevant to younger South Australians and younger Australians generally. The ABC has always played an important and innovative role, providing diversity and quality, and the Democrats, as I said, have always been supporters of the ABC and do not want to see cuts.

I hope I am not misrepresenting the Hon. Caroline Schaefer, who is one person in Government who realises that Government has a very clear responsibility for service provision and that one cannot rely upon the private sector supplying everything everywhere.

Regional South Australia is particularly susceptible. If the Government did not underpin standards, regional South Australia would suffer probably even more than the metropolitan area. That is not to understate the importance of the role that the ABC plays within Adelaide itself. With those few words, I support both the motion of the Hon. Carolyn Schaefer and the sentiments of the Hon. Anne Levy, who has broadened out the motion to cover other services besides the regional services of the ABC.

The Hon. J.F. STEFANI secured the adjournment of the debate.

JOINT COMMITTEE ON RETAIL SHOP TENANCIES

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

That the report of the Joint Committee on Retail Shop Tenancies be noted.

The select committee into retail shop leases was established as a result of some discussions which surrounded the shop trading hours debate early in 1995. As a result of concerns expressed by tenants and those representing tenants about extended shopping hours, particularly on Sundays, the Government agreed that there would be a further review of the Retail Shop Leases Act, even though it had not even at that point come into operation and was regarded as a significant piece of legislation that would provide benefits for tenants in their relationships with landlords. Of course, because it was the most recently enacted, it was generally regarded as the most significant retail shop leases legislation of any in Australia.

The select committee met over a period of a year and received evidence from a number of witnesses. Some of the evidence was taken in confidence, and for that reason the evidence, whilst noted by members of the select committee, is not on the public record but did play a part in the deliberations on recommendations.

We were well served by a research officer, Ms Mary-Louise Hribal. Before making observations about the report, I want to place on record the appreciation of the committee for her capable and supportive service to the committee.

The Hon. Anne Levy: Hear, hear!

The Hon. K.T. GRIFFIN: She has a young family; she is a lawyer. Subsequent to being engaged as research officer after a period of six months, which we believed was to be the duration of the committee's activities, she obtained part-time employment, which made her task of fitting meetings of the select committee in even more difficult. I commend her for the work which she did, and all members of the committee have joined in recording that in the record of proceedings. I also put on record our appreciation to the secretary who, in the latter period, was Mr Chris Schwarz.

For those witnesses whose evidence is on the record and which has now been tabled, it is available for scrutiny. I do not think it appropriate to work through that evidence. It is referred to, where appropriate, in the body of the select committee's report. I do, though, prefer to focus upon the recommendations of the committee. In doing so I should say that the Retail Shop Leases Act, which has been in effect for just over 12 months now, has not been in effect for sufficiently long to be able to make a judgment about its longer term effectiveness in dealing with issues affecting both landlords and tenants. But, certainly, it is the Government's intention that after another year or so of operation we will seek to review that legislation.

There is one part of the Retail Shop Leases Act which has not yet been brought into operation and that relates to mediation. The select committee has recommended that the mediation provisions be brought into operation as soon as possible. I can indicate to the Council that that will occur. There have been extensive discussions with the Retail Shop Leases Advisory Committee and with the Office of Consumer and Business Affairs. It is intended that that will come into effect in the very near future.

It is acknowledged that that will not have any compulsive jurisdiction or power, but all the experience in New South Wales where mediation in a similar format is available is that it is effective in providing a means by which disputes or disagreements between landlord and tenant can be effectively resolved. I look forward to that being implemented in the near future.

The whole area of retail shop leases is complex. There are competing interests. There are concerns by investors on the one hand about their ability to control the effective use of their properties and the capacity of tenants to effectively run businesses which contribute, particularly in a shopping centre complex, to the overall health of a centre. There are also concerns by tenants that they have not been dealt with fairly. Those tenants who did give evidence were generally of the view that the law should provide more of a framework to enable them to have landlords address their grievances.

The evidence, though, is that there are people who enter into retail shop leases believing that they will be good shopkeepers, notwithstanding their lack of experience. In some instances, no independent advice has been obtained, but in others where advice has been obtained that advice might not have been taken. All in all, those who go into tenancies should, on the recommendation of the select committee, be provided with all relevant information upon which they can make a proper and informed decision.

There are a number of recommendations which have been agreed unanimously by the committee. There is a small number where there was not unanimous decision. In respect of those, there is a minority report which sets out comprehensively the reasons why there has been disagreement.

The first recommendation is that a statement of legal consequences be made available to prospective tenants whether entering into a new lease or taking an assignment of an existing lease. That statement of legal consequences is regarded by the committee as being of considerable importance in ensuring that prospective tenants will be informed if, for example, no automatic right of renewal is granted.

In relation to oral representations, the clear statement is made that they will not be relevant and that only the conditions and terms within a written lease document will have relevance to the relationship between the prospective tenant and the prospective landlord. Warnings about the obtaining of independent legal and accounting advice are also proposed. The essence of a statement of legal consequences is that prospective tenants should have all relevant information and make a judgment based on their own advice, and on the statement of legal consequences, whether they should enter into a lease and accept the responsibilities as well as the conditions which are negotiated or required, or, on the other hand, take a hard-nosed business decision and walk away from something which the heart suggests they should attempt but which the head suggests they should not. That recommendation was unanimous.

The next recommendation dealt with the first right of refusal of a new lease being given to an existing tenant unless it can be established that the landlord would be disadvantaged by the granting of the right or that any of the following has occurred: that the tenant has been in breach of the lease; that the landlord has plans to redevelop the centre; that the centre would benefit from a change of tenancy mix; or that the landlord can obtain a higher rent for the tenancy.

I was in a minority of one in relation to that recommendation. My view is that, provided the prospective tenant has all available and relevant information at the time when the lease

is being negotiated, it is the responsibility of the tenant to make a commercial judgment whether or not he or she will enter into such a lease which is being proposed. If the lease is entered into, it then becomes the contract between the lessor and the lessee with the terms and conditions negotiated and agreed. In that context, in my view, the law should not impose on a landlord the obligation to grant to the tenant a right of renewal if that has not been negotiated at the outset.

The proposal has the potential to involve costly litigation and allow the courts to rule whether or not a lessor is disadvantaged if a first right of refusal is granted by law. I also make the point that South Australia will be the only jurisdiction in Australia which imposes that curb on property rights and seeks to vary the contractual obligations entered into by the parties where proper information has been available. Consequently, South Australia will be a less desirable place in which to invest. As a general rule, as I said in my minority position, the law should not allow the courts to interfere with commercial judgments based on disclosure of all relevant information and in the absence of fraud or misrepresentation.

The majority of the committee also proposed that written reasons for a lessor's decision not to grant a renewal should be available, if required by the outgoing tenant, and that the reasons should provide a basis for judicial review of the lessor's decision. Again I made the point that, in my minority view expressed in the report, potentially this will lead to costly litigation. It will in fact override the agreement that has been made and put the courts in the position where they can review the validity of the reasons. I was prepared to concede that reasons could be given by a lessor to a lessee if requested by the lessee but not if they could be the subject of judicial review.

The committee also recommended by majority that there be a power for the Magistrates Court to review rent if an applicant believed that it was harsh and unconscionable. I raised a number of issues about that, particularly again in the context of the agreement which may be negotiated at the commencement of the lease. If a court is to become involved in reviewing rents it will substitute its own judgment for that of the tenant and this recommendation raises a question as to when a rent may be harsh and unconscionable. Is it at the point of entering into a lease? If so, one then has to question why a tenant would be entering into a lease if at the time of entering into the lease the rent is regarded as being harsh and unconscionable. Is that to be determined after the event, so that the tenant then has a second chance to negotiate in respect of that condition of the contract?

Or, is the judgment about rent being harsh and unconscionable to be made maybe three years after the lease has been entered into or some other period well into the lease when the commercial and economic environment has deteriorated so that the rent may no longer be commercial but well in excess of that? That then means that the contract entered into is subject to review in accordance with commercial circumstances rather than in accordance with the terms that have been entered into by the parties.

In relation to that issue of rent review, one might well ask whether, if a landlord and tenant enter into a contract and subsequently the rent falls below a commercial rent, that then is also to be the subject of review to be brought up to a commercial rent level. In my view the position should be that the parties live by the judgment they have made and the contract they have entered into.

In relation to tenancy mix, the Hon. Michael Elliott makes a dissenting report in respect of one aspect of a change in tenancy mix. The committee was prepared to agree that some information about tenancy mix and any changes that may be in contemplation by the landlord at the time the tenancy is entered into should be available, but the Hon. Mr Elliott wished to have that as a matter which might be the subject of some form of review by a court or tribunal.

In my view, and I think in the majority view, that is inappropriate. In respect of other matters in the report, the committee has agreed that the outgoings statement under section 31(2) of the Retail Shop Leases Act should apply to old leases; that is, leases made before the new Act came into operation as well as those under the new Act. The committee has also proposed that, if a margin is added to the cost of services such as electricity, then the lessee is entitled to know what that margin is or at least the basis upon which that might be charged. I point out that at law a landlord is not permitted to charge any more than is the going rate charged by ETSA Corporation for the provision of electricity. The information about brief fit outs is required to be included in the disclosure statement, if a fit out is to be required. There are then also some relatively technical matters which have been considered by the committee and which I suggest are not controversial. I thank members of the committee for their participation in the work of the committee even though we did not ultimately agree unanimously on every aspect of the recommendations.

The Hon. ANNE LEVY: I have great pleasure in supporting this motion. The experience of being on this committee was an extremely interesting one and I felt it gave members of the committee an insight into areas of our community and the problems of which we were only slightly aware before undertaking the task of this committee. Of the 16 recommendations made by the committee, 13 were unanimous. The Attorney disagreed with the majority on three recommendations and the Attorney and another Government member from the other place disagreed with the majority on another recommendation. The picture which emerges from many of the witnesses is one which, in some respects, can be classed as appalling. A number of people who came in to give evidence were obviously scared of being victimised if their name should be known or if what they had to say to us were to become known to their landlords. It was very depressing to find that commercial relationships in our community should lead to that fear and apprehension on the part of so many hardworking, decent, sensible people.

As a result of the representations which were made to us, as the Attorney said, some on an anonymous basis, others not anonymous but *in camera* and others yet again off the record, there could be no victimisation occurring subsequently. While summarising the main recommendations, the Attorney clearly indicated why he was in a minority on three of them. So, it is worth saying something about those three as I was part of the majority which supported them.

Basically, I think the difference between the majority and the Attorney arises because the Attorney takes the view that a contract between a landlord and a tenant is a commercial contract and should always be viewed in this light. However, it seems that where the livelihood and shelter of people and their very necessities of life are involved different factors need to be taken into account and greater protections given. This is recognised in, for instance, the Residential Tenancies Act, which this Parliament debated not long ago where to a landlord the provision of accommodation is a commercial

transaction but to the tenant it is more than just a commercial transaction—it is that person's home and shelter. In consequence, there is a far greater emotional involvement, and extra protection needs to be given to the tenant to prevent exploitation by the landlord.

Much the same situation applies in the retail trading area. To the landlord, a shop is just a property, a commercial transaction from which the landlord receives an income, but the landlord's whole life is not affected. To the tenant in those retail premises, it is that person's livelihood; it may not be the shelter over his head, but it is the means whereby he puts food into his mouth. Consequently, I do not think that one can regard it as a purely commercial transaction where emotional factors and matters of public interest do not enter. Hence, I fully support the recommendations which give extra protection to the lessee in a commercial transaction. It means far more to a lessee and his whole life than it does to a lessor.

Given the hour of the night, I will not go through all the recommendations, but the three in which the Attorney was in the minority perhaps need a bit of explanation. The first is a strong recommendation from five of the six members of the committee that the landlord should give an existing tenant the first right of refusal on a new lease unless it can be established that the landlord would be disadvantaged or that one of the following occurs: the tenant is in breach of the lease; the landlord plans to redevelop the shopping centre; the centre would benefit from a change of tenancy mix; or the landlord can obtain a higher rent. These exceptions which have been included cover every conceivable risk which was put to us by either lessors or lessees as to why a tenancy might not be renewed.

There is also the catch-all phrase that the landlord would be disadvantaged. We cannot see that any lessor would be disadvantaged by the enactment of this measure as legislation, but it will give the lessee the first right of refusal. The Attorney claims that this would be a first in Australia. That may well be true—South Australia has often led the way in this country in progressive legislation—however, it would not be a world first by any means. In the United Kingdom, the tenant has far greater rights regarding renewals than have been proposed by the majority of the select committee. It would be excellent if South Australia led the way in this country in implementing this. I cannot see that it would result in an anti-business climate or inhibit investment in this country. As far as I am aware, much tougher laws on lessors have not had that effect in the United Kingdom. I would be interested if any evidence could be produced to suggest that they have.

The exceptions which are set out cover every conceivable situation that was put to us where a landlord might be disadvantaged if a tenant had the first right of refusal on a new lease. There is the added catch all phrase of the landlord suffering a disadvantage. I cannot imagine that, with the qualifications put in, any lessor would be disadvantaged in any way by giving the existing tenant the first right of refusal on a new lease. It would certainly alleviate the fears and anxieties of many small business people who have their whole lives and entire life savings thrown into utter turmoil when their lease is not renewed when the term expires for no good reason other than what appears to be a whim on the part of the lessor.

The second recommendation in which the Attorney was a minority of one is related to the first recommendation. That is the suggestion that, where the lessor does not offer a renewal to a lessee, written requests would be given. If the lessee wished to take the lessor to court, he would at least have some notion of what he had to fight. I can imagine that the reasons might not be explicit in many case and they might resemble the reasons why the Legislative Council sometimes does not accept amendments made to its Bills by the House of Assembly, in other words a formula of words which do not seem to mean much. However it would give the lessee some indication of the reasons which the lessor had for not renewing the lease and, in the light of a previous recommendation, it would then enable him to take legal action against the lessor if as a result of the reasons the lessee felt the lessor had breached one of the reasons indicated for not granting a new lease.

The two go together and, while it would be possible for recommendation No.2 to stand without No.3, obviously it would be much more difficult to implement. The third recommendation in which the Attorney was a minority was the recommendation that the Magistrates Court have jurisdiction to entertain an application to review the rent if it is harsh and unconscionable. There are precedents for this in our law. Our courts have the power to determine whether something is harsh and unconscionable. They know what the words mean. They are extreme situations. The courts do not treat lightly finding an extreme situation. They are well capable of doing so, or at least they should be capable of doing so, seeing that Parliament has given them that function on numerous other occasions.

Rent can be reviewed at any time in a residential tenancy situation, so I do not see why a commercial retail tenancy situation is any different. If a rent becomes harsh and unconscionable, that is, extreme at any time during the period of the lease, a residential tenant can go to the courts for relief, and I see no reason why a retail tenant should not likewise be able to do so.

We need to remember that, while a commercial contract has been entered into, to the small business person it is more than just a commercial contract: it is their whole livelihood and their whole means of feeding themselves and their families and providing for their lives. In consequence, a much more sympathetic view needs to be taken in the law. I fear that the Attorney is jumping at shadows when he tries to see difficulties in the implementation of this. It is so analogous to other situations which, as I said, already exist in our law.

Recommendation No. 7 is one which the Hon. Mr Elliott felt should have gone further, and doubtless he will speak to that. However, the majority of the committee felt that a tenant should be given full information before entering into a lease as to the tenancy mix in any shopping centre and any changes that might be contemplated. The tenant can then make their decision on that basis as to whether they enter into a lease. Furthermore, the disclosure statement, which has been mentioned several times, should make it very clear that no exclusivity is being granted if that is the case.

It appears that far too often people have relied on a verbal assurance that there would be exclusivity of the retail type within a shopping centre and, then, at a later stage, the tenant found that exclusivity did not exist and another similar tenancy was granted nearby, so affecting their business. Relying on word of mouth is a most unreasonable thing to do. Many people are honest and straightforward and always stick to their word, but unfortunately in our society all too often such people get taken down by others who are not so ethical in their behaviour, and it certainly helps to get things in writing.

The last recommendation deals with fit-outs, and the Hon. Mr Elliott will doubtless explain why he wanted it to go further. The majority felt that, before entering into a tenancy, a lessee should know exactly what would be required of him or her during the term of the lease: whether a fit-out would be required and, if so, when; who would have to pay for the fit-out; what would be the extent of the fit-out; and what would be its estimated cost or method of estimating the cost. Provided that the tenant was given all that information before entering into a lease, then the appropriate calculations and adjustments could be made by the lessee, and these could be taken into account when he made the decision whether to take the lease.

It was felt that, provided all the information was available, it was part of the commercial decision that a tenant would make before entering into a lease and that further restrictions would be unreasonable. If the information was given first, the lessor could not suddenly demand that a fit-out take place 12 months before a lease ended at great expense, unless the lessee had known that this was coming before he ever took on the lease.

I will not discuss any of the other recommendations. I imagine that a large number of people will find this a very important report and that it will be widely read in many different circles. The report has been produced in a spirit of trying to assist with what is undoubtedly a problem for a very large number of people in the community to find solutions which are as fair as possible to all concerned, to both lessors and lessees. I certainly hope that all 16 recommendations will be implemented by the Government to the great benefit of a large section of our community in the very near future. I support the motion.

The Hon. M.J. ELLIOTT: I rise to support the motion that the report be adopted. It must be noted that when the retail tenancies legislation went through this Parliament the legislation was based upon what the landlords and the tenants could agree on when they met with the Attorney-General. There is no doubt that the Attorney-General went through an extensive consultation period. Ultimately, the legislation was based upon what they could agree on, and there were a couple of areas of key disagreement.

Certainly, in the views of the retailers, both the Retail Traders Association and the Small Retailers Association, there were issues which were fundamentally important to them—in fact, the most important issues as far as they were concerned—but which the retail tenancies legislation simply failed to address. In this place, by way of amendments, I attempted to tackle a number of those matters but I was unsuccessful.

The issue of Sunday trading came up not that long after that debate. The small retailers in particular were very vigorously opposed to Sunday trading in the city, which was the Government's proposal, and I supported the small retailers in that position. As the debate proceeded, and as we studied things that were unfolding, it became apparent that a loophole was available that the Government could have exploited to bring Sunday trading into the city. If the Government had not worked it out, it was not too far away from doing so. It was felt that in the circumstances we should look to see whether perhaps Sunday trading in the city was conceded—which, as I said, we felt would be inevitable, in any case—and that, in any case, we should seek to find other matters which were of great concern to retailers and which would compensate for the real harm that was going to be done to small retailers.

The most important issue indicated by small retailers was the question of tenancies. They had unresolved issues of great importance to them, and they said that, at the end of the day, that issue was more important to them than the issue of Sunday trading in the city. I know that that was a very difficult position, because they continue to be opposed to Sunday trading in the city whilst wanting those other changes. In any event, there was an agreement in the concession package that there should be a select committee to look further at particular issues in relation to retail shop tenancies. I must say that, having been a member of that committee for almost 12 months and having heard a large amount of evidence, I believe that the move for a select committee was absolutely vindicated.

The evidence, in my view, was compelling in terms of the difficulties that retailers are facing. The fact that most of the 16 recommendations were carried unanimously—three were carried with only one dissenter, and one with two dissenting—I think indicates that the committee felt that the issues were very real issues that needed to be addressed further. The suggestion that the current legislation needs more time to work is not acceptable because it fails to recognise that some of the issues we looked at were issues that simply were not addressed by the legislation, and that was the complaint of retailers.

I note that it was not just the Small Retailers Association but also the Retail Traders Association that made submissions. And not only small tenants but larger tenants have similar problems. The small retailers suffer the problems to a greater extent, but it is a great mistake to think that they suffer them alone. As the Hon. Anne Levy noted—and this has always been a problem with this issue—it is very difficult to get retailers to speak publicly because the issue about which they are very concerned (renewal of a lease) is the point at which they are so easily attacked and on which they are so vulnerable.

They will not speak publicly. In fact, it is very difficult to get them to speak privately outside on a one-on-one basis because of the vulnerability that occurs at lease renewal. If they stick their head up and make any comment in a public context, or if there is any way they feel the landlord can find out that they made a comment, they fear that their business will be gone at the next lease renewal. That fear came through for those who did bravely come forward, and very few of them were prepared to go on the record publicly. We certainly did have a number speaking *in camera* and, of course, the Small Retailers Association spoke on behalf of a large number of people, as did the RTA, who at an individual level simply were not game to come forward.

It must be realised that we are not talking about an equal power relationship: the landlord clearly has significant power over the tenant and that power is exercisable in particular at the time of lease renewal. In fact, I argued when we were debating the previous legislation that so many other things that we were doing which, on the face of it, gave rights to the tenant, would, we have to assume, enforce it. If they sought to enforce their rights, they realised that they risked not having their lease renewed. There are a number of ways in which a lease will not be renewed, and the least subtle way is to put up the rent to an unbearable level. It was quite obvious in evidence that landlords have it pretty well worked out. In fact, when I questioned Westfield, it essentially

conceded that it puts up the rent as high as it can possibly get it—

The Hon. T. Crothers: As much as the market can bear.

The Hon. M.J. ELLIOTT: Almost beyond what the market bears. They get the tenant and squeeze them within an inch of their life, in a financial sense. They do not put the rent so high that they will leave, but they put it so high that they remain barely surviving. Eventually, some of them will leave. There is no doubt that some of the landlords have this worked out to a very fine art.

It must be noted that recommendation 2 in relation to renewal is not an automatic right of renewal, and I hope that nobody tries to pretend it is. It has been very carefully drafted to make it clear that we are talking about a first right of refusal. It is drafted so as not to disadvantage the landlord. In fact, if the landlord can show that he or she would be disadvantaged by granting a new lease to the tenant, that is sufficient grounds.

The landlord can also refuse to renew the lease on the basis that the tenant has breached the lease, that the landlord wishes to redevelop the centre, that the centre would benefit from a change of tenancy mix, or that the landlord can obtain a higher rent for the tenancy. Those four reasons are the only four legitimate reasons I could think of personally why a landlord would not want to renew a lease. And I stress the word legitimate. If people can come forward with other criteria, I will have no problems in adding them to the list.

In its majority report, except for the Attorney-General, the committee believed that the Act should be amended to require the lessor to give reasons to the lessee for non-renewal or extension, and that that could be subject to judicial review. I see the greatest value of that being in conjunction with the second recommendation in that, at the point where the landlord refuses to renew a lease, the landlord would provide the lessee with the reasons why he or she felt that they would be disadvantaged by granting a new lease or one of the other four stated reasons that were included in the second recommendation. In fact, if there is a legitimate reason, the landlord has nothing to fear from judicial review.

The fourth recommendation is also important in terms of the Magistrates Court having jurisdiction to consider whether or not a rent is harsh and unconscionable. This is most important in relation to people who have signed leases before the new Act was introduced. The very reason for the new Retail Tenancies Act was to respond to the fact that ratchet rents in particular were causing extreme hardship among some tenants. The legislation was introduced because there were severe problems. Unfortunately, the new Act offers no protection to those people whatsoever in that regard. It is not until they get into a new lease, should they survive, that they are offered the protection of the new Act.

Clearly, the test which has to be applied in the Magistrates Court is quite a high one. It is harsh and unconscionable. It is not enough to argue, 'My rent is high' or 'My rent is causing me great difficulty.' It is an extreme test to argue that it is harsh and unconscionable. In the circumstances, I cannot see that any reasonable person could argue that a person who has been subjected to ratchet rents—which we have now deemed to be so bad that they have been banned in new legislation—and who has been left with harsh and unconscionable rent should not be protected.

I supported the seventh recommendation in relation to current tenancy mix but felt that the committee could have gone further. In regional centres, in particular, a tenant is required to sign, in their lease documents, committing themselves to what they will sell. And they are limited in what they will sell.

On the other hand, the landlord has absolute flexibility. The landlord can put someone in next door to you—and you have committed yourself to sell only a certain range of products—who sells the same range or a significant overlap even though they may have given you an assurance that they did not intend to do it. In fact, according to the committee's recommendation, it may be written in writing that they did not intend to do it. There will be times when that occurs where a person may suffer a severe drop in turnover. I see this situation as being different in a retail shopping centre as distinct from in strip shopping. When you enter a shopping centre, in particular a regional centre, you pay very high rents. You pay high rents because you are offered, I suppose, certain privileges. One of those privileges is that you have a high degree of certainty about what will happen to you.

You have to be aware that these people pay extremely high rents. For a landlord to make a decision where the disadvantage goes entirely to the tenant and where the landlord suffers no detriment at all is harsh and unreasonable. I proposed a further recommendation, about which I was not successful, to the committee that if a change in tenancy mix occurs of which the tenant was not warned and where it did have an extreme detriment to an existing tenant, the tenant should have some recourse to get rent relief. I did not believe that was unreasonable. I cannot see why the landlord should be able to make a decision which has no impact on them but which impacts on the tenant.

My final comment relates to recommendation 8 in relation to disclosure statements. Fit outs have been a major problem for tenants for a long time. There has been something of a habit of landlords to require a fit out towards the end of a lease. Fit outs can be quite expensive. In relation to some operations you could be talking $100 000 to $200 000 in a fit out. For instance, if you are involved in a small cafe-type arrangement, the fit out can cost those sums. You may have bought into a business, you may have spent a couple of hundred thousand dollars when you first went into it, your lease is not far off renewal, the landlord tells you that they want a fit out done and you expend $100 000 or more. You then go into a lease negotiation and the landlord tells you that he or she wants a much higher rent. You are caught in the double bind. Not only do you have no reasonable assurance that you may be able to continue in the tenancy, but you are being told your rents will go up—and that follows on immediately after the fact you have made a major expenditure on a fit out. Unfortunately, that is not an unusual situation.

This recommendation is important because it ensures that the landlord puts within the disclosure statement what the obligations in relation to fit out will be so that the tenant can plan accordingly from the very beginning and not suddenly have a big bill—and this has happened in the past—sprung on them towards the end of a lease period. I had a view that the timing of the fit out should be somewhat constrained within the overall life of the lease and should not be right towards the end of it, because I think it unconscionable to require a major expenditure close to lease renewal even if you were told four years previously that it was going to happen. That is a view with which I did not prevail. In the light of the time I do not intend to go through the rest of the recommendations, but, as I said before, I believe that the findings of this committee have vindicated its establishment.

There is a very real problem and, as the Hon. Anne Levy acknowledged, perhaps many members of Parliament are not

aware of how severe the problem is. It is not a problem publicly discussed for the reasons I have talked about. There is great fear amongst small retailers about losing their livelihood or their house—and people are doing that fairly regularly. Despite the pressure they are under and the hours they work, sometimes you will find a couple working extraordinary hours and sometimes even taking a job outside their retail operation to help subsidise it. They will not talk publicly about it because they know that if they do the lease will not be renewed and they know for a fact that they have lost everything. Sometimes they would be better off if they did walk away, but if you have been in a business for any period of time—and sometimes people facing this situation may have been in the business for 15 years or more—to suddenly have a landlord behave in an unscrupulous manner and for you to shrug your shoulders and walk away from a business in which you have invested not only your money but also your life and time, is something that people do not, cannot and should not have to do.

I look forward with anticipation to the Government's acting upon the recommendations of this committee and note that two of the three Government members supported even what the Attorney-General considered to be some more contentious recommendations. I would hope and expect that that probably reflects the position in the Party room. I note that the two people who supported it have had experience with small business, one also in retail, and therefore went in with some knowledge of the sort of situations that are occurring.

When I committed myself to helping small retailers some years ago I had an inkling of how bad the situation was and the more I looked at it and the more I talked to people the more stunned I was at just how bad the problem was. I cannot believe that it has been allowed to get to the current situation. While the Attorney-General is suggesting that we would be the only State in Australia to carry out some of the recommendations here, the feedback I am getting from interstate is that the same problems are growing rapidly there also. It is not a question of whether it will happen in Australia but when and where first. That is the only question. This is not just a South Australian phenomenon—it is happening right around the nation. I have been getting feedback from other States in terms of the similar problems occurring there also. I commend the report to members and hope they will all look at it. I suggest that they consider, when next they are shopping in a small shop, raising the issue with the shop owner. They will be absolutely stunned by the information they get back.

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

PROROGATION

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

That the Legislative Council at its rising adjourn until Tuesday 27 August at 2.15 p.m.

In so doing, on behalf of Government members in this Chamber I briefly thank all the staff at Parliament House. In particular I mention Ted Holland from *Hansard*. Mr. President, you would know Ted. I understand that he has been with us for a number of years now, and was formerly with the House of Commons for almost a quarter of a century. I understand that his last day was yesterday, but he loves the House so much that he has come back to be here for the last day of the session. That is the story someone was telling me—I do not know whether it is true.

On behalf of Government members—and I am sure I speak on behalf of all members of Parliament—we owe a debt of gratitude to all *Hansard* staff, but in particular I thank Ted for his service. I understand that he is a bit of a whiz at archery and that he plans to spend more time pursuing archery having already, I am told, represented South Australia in that sport. Given that we are all excited at Olympic type sports at the moment, I wish Ted well in whatever challenges he faces in the future—archery and otherwise.

I also thank all the staff of Parliament House. We always owe them a debt of gratitude. I thank Jan and her staff, the messengers and others who provide for us in the Legislative Council. I will not go through the whole list because I am sure to miss someone. On behalf of the Government, I thank all the staff of Parliament House who provide assistance to members. I thank the members of the Labor Party and the members of the Australian Democrats. In particular, I acknowledge the Leader of the Opposition, the Hon. Carolyn Pickles, and the Leader of the Australian Democrats, the Hon. Mike Elliott. Whilst on odd occasions we have our minor differences, we nevertheless share those differences within this Chamber and, like football players, we can still have a chuckle outside afterwards, a beer, a cup of tea or something such as that.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: As long as the shirt front is inside the Chamber and not outside, I do not think anyone has a problem. Certainly, I know that Government members approach the task in that way, as do all other members in this Chamber. I thank the Hon. Mike Elliott and the Hon. Carolyn Pickles for their willingness to cooperate. We have worked through much legislation in this past week. I will not take the opportunity, however tempting it might be, to make any comments about the passage of legislation from another place.

The Hon. M.J. Elliott: It was very slow though, was it not?

The Hon. R.I. LUCAS: I will not be tempted. I thank members because we have dealt with a lot of legislation. For example, in relation to the universities Bill, the Hon. Mike Elliott and the Hon. Ann Levy handled that Bill for the Hon. Bob Such within 48 hours whilst considering a whole package of amendments. So, it is appreciated and I thank members for their assistance. Finally, as always, I thank the two Whips, the Hon. Jamie Irwin and the Hon. George Weatherill. They are patient with all members, frontbenchers and backbenchers. Sometimes they pull their hair out trying to find out where we are on occasions and why we have not arrived at where we are meant to be at the right time and why no-one is doing backbench or frontbench duty at the right time. I thank Jamie and George for the work they do in making the operations of this Chamber run smoothly. In conclusion, I wish everyone well for the coming two month parliamentary break—and I know it will not be a holiday for most members, but the break between parliamentary sessions. I wish everyone well and I thank them for their assistance during the past few weeks.

The Hon. T. CROTHERS: I respond on behalf of my colleagues. I place on record the gratitude of the Opposition Labor Party in this Chamber in respect of the *Hansard* staff—including Ted, who has either left us or is leaving us—for the diligence and tolerance which they exhibit during many of the

long sittings and so accurately transcribe the work which must be very tedious in respect of their doing it and keeping up a very high rate of accuracy in discharging their functions.

To the messengers in this place, who are sometimes forgotten, I pay tribute indeed to Graham Kite and his staff for their fetching and carrying for members. They work over many long hours. I thank Margaret, who is very often forgotten, our ever ready, accurate and willing typist who discharges her functions out of sight but, I know from speaking with members, never out of mind in respect of those matters that she so regularly and furiously has to type up for Ministers and other members of this Chamber.

I thank the table staff for their due diligence in keeping us all on the right track. I thank Jan and her staff members on behalf of not only the Opposition but I am sure the Government members and the Democrats. We owe them a great deal of thanks for helping us to wade through the legislation in a fashion which does them credit considering the size of our Standing Orders. Their knowledge of Standing Orders is absolutely first class, and sometimes that might not be appreciated by members of this Chamber.

I thank you, Mr President, for your tolerant forbearance on all occasions in respect of the debate that takes place in this Council. It is my view, and I think that of the other 21 members in this place, that the Council functions the way in which it does under you, Sir, and past Presidents simply because our Presiding Officer, of whichever political Party, has always had a degree of tolerance which, from time to time, under other Presiding Officers has been sadly lacking in the other place. I think that is good for the type of debate that takes place here, and to that end I think that, at times, the Upper House is much undervalued by members in the other place for the work that it does.

I also pay tribute to the Democrats. We sometimes forget that there are only two of them in this Chamber. They have an enormous workload, which they discharge very capably and philosophically, but the strain on them at times must be enormous, and I acknowledge that. On most occasions, if you can catch up with them they are willing to listen and to talk. That adds to the smoother running of this Council and the way in which we proceed with our business. I conclude by wishing all members well over the break. I hope and trust that everything goes as well for them as it has for the Council and other members during this session.

The Hon. M.J. ELLIOTT: I rise on behalf of the Democrats. When you are on a political stage, speaking last is an enormous advantage because you can skewer everyone and there is no right of reply in terms of the order of the Parties. However, on an occasion such as this, when I was not intending to skewer anyone else, everything has already been said. In brief, I thank *Hansard*, the table staff, the clerks and the messengers, all of whom ensure that what is meant to happen here happens. They have to sit and listen to everything. I think there should be a medal ceremony at the end of each session. They would be mostly gold medals for those people. Their work is greatly appreciated.

This Council has worked extremely smoothly, and I think you, Mr President, can take credit for that. I thank the members of both the Liberal and the Labor Parties who, for the most part, despite philosophical differences, are prepared to accept that those differences exist and seek to work their way through them. I also appreciate, for the most part, the Ministers and shadow Ministers who spend a great deal of time working through what are real differences and what are not. There is just the odd Minister or shadow Minister who does not take the time to work out whether there are real differences or whether there are ways in which issues can be accommodated, and by that I do not mean compromised. Perhaps things are not as far apart as they seem on the surface. For the most part that is a rarity. The democratic process will continue to work well as long as people are prepared to work at it.

In relation to how the three sessions a year are working, I think it has been successful. We do not have the same size of backlog at the end of the session, and I think that makes for better legislation. The Government deserves to be congratulated for its introduction, and I hope the pattern now established will continue.

With those few words I wish everyone well until next we meet, probably October, although I expect to see most members around the House in the interim and certainly a number at select committees and the standing committees which continue to work despite the break in the Council's sitting.

The PRESIDENT: I thank honourable members very much for their kind remarks, but that is a credit to yourselves. That never came home to me more clearly than on the day on which we had the joint sitting.

The Hon. M.J. Elliott: They were terrible, weren't they?

The PRESIDENT: What an intelligent group I sit in front of! It does make it very easy for me when members are cooperative, and I must admit that you are a cooperative group. That is assisted by the Leaders working the business through properly and, in particular, the Whips, who help so much when a small request is made. They always have the Orders of the Day in front of me within a few minutes of the Parliament's opening and that is very helpful.

To Jan, Trev, Noeline, Margaret, Paul and Chris, who have backed me up—in fact, they run me—

The Hon. Diana Laidlaw: They make you look good.

The PRESIDENT: They do; they are particularly efficient and, when I look at other Parliaments and look at other people sometimes, I think I am most fortunate.

Mention has been made of Ted Holland's retiring from *Hansard*. The Speaker and I did see him last night and offered him a farewell on behalf of a number of people and gave him a bottle of port and a few other things to help him on his way. I hope that Ted does enjoy his retirement and can shoot another arrow into the air knowing not where it will land.

Trevor Crothers, thank you for assisting me when I wanted a coffee break. That was most helpful, and you have performed your job extremely well. I have not had any bad reports about you, either, so that is a credit in itself.

Thank you all for being cooperative. I hope that you have a good break. Of course, we will come back to a new Parliament in October. We will prorogue over this period. I hope that you all go home and hibernate for the latter part of this winter.

Motion carried.

At 12.58 a.m. the Council adjourned until Tuesday 27 August at 2.15 p.m.