LEGISLATIVE COUNCIL

Thursday 13 February 1997

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

MULTICULTURALISM

A petition signed by 72 residents of South Australia concerning ill-informed sentiments expressed by a Federal member of Parliament. The petitioners pray that this honourable Council will strongly urge the Prime Minister of Australia to take note of the matters raised herein and give a firm commitment that the Australian Government will uphold the principles of multiculturalism and denounce racial discrimination which could divide the Australian community.

Petition received.

PAPER TABLED

The following paper was laid on the table:

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

Department of State Aboriginal Affairs—Report, 1995-96.

MY WAY FINANCIAL SERVICES

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to make a ministerial statement on the subject of My Way Financial Services.

Leave granted.

The Hon. K.T. GRIFFIN: On Tuesday, 4 February 1997 the Commissioner for Consumer Affairs met with the solicitor and accountant for My Way Financial Services and its associated businesses, including the Australian Millionaires Club, to discuss their operation. The Commissioner made it very clear at the meeting that he has a number of concerns about the operation of the business. In particular, he is concerned that the business is marketing a combined lay-by scheme and investment strategy in a manner that suggests that money can be made principally by recruiting others to join. He is also concerned that, although the business has been operating for about eight months, he has no evidence that anybody has received any goods through the lay-by scheme.

An article then appeared in the *Sunday Mail* of 9 February 1997, in which a number of questionable statements were made regarding the attitude of the Commissioner toward this business and the way it actually operates. Let me deal first with the approval that it is claimed that the consumer affairs authority gave. The most serious of the statements is that made by solicitors on behalf of their clients in a letter to the *Sunday Mail* which read:

> Our client's activities have been the subject of investigation by the Department of Consumer Affairs, and on each occasion they have received an assurance that the activities are legal and proper.

The last part of this sentence is incorrect. At no time have the promoters of the business received an assurance that the activities of the business are legal and proper. It is not the role of the Commissioner for Consumer Affairs to give such assurances. There was one verbal statement, given soon after the business had begun operating, to the effect that there would appear to be no legal impediments to it continuing to operate. However, that statement was made after a short perusal of the paperwork only, and did not take into account verbal descriptions of the way in which the business works. In fact, publication of a statement that an assurance has been received from a consumer affairs authority without first gaining the approval of the Commissioner is in contravention of section 41 of the Fair Trading Act 1987, which provides:

> A person shall not, without the approval of the Commissioner, publish, or cause to be published, a statement promoting, or apparently intended to promote, the supply of goods or services or the sale or letting of premises that states, either expressly or by implication, that a consumer affairs authority has approved or refrained from disapproving
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> (a) the statement; or
>
> (b) any particular contained, or claim made, in the statement; or
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> (c) any goods or services referred to in the statement.
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> Penalty: $5 000.

Let me turn to the issue of the operation of the business. The Commissioner has been informed about the way this combined lay-by scheme and investment plan operates from a number of sources, including up to 30 calls per day from members of the public. However, a number of misrepresentations about the operation of the business were made in the article in the *Sunday Mail*. Foremost among the Commissioner's concerns is that money can be made through the investment plan principally by means of recruiting others to the business. Instead of a turnover of goods, it would appear that the investment strategy relies on a turnover of people. However, some participants have failed to realise that large numbers of people are required to join in order for them to make the maximum amounts of money that the promoters are saying can be made.

Each participant must encourage a 'brick' of 340 people to join in order to make the maximum amount of money through the investment plan. Until now, some 4 000 people have joined the business. Therefore, in order for all of them to make the maximum amount, about 1.3 million people must be signed up—approximately every person in South Australia. However, not everyone wants to join, and it may be that demand for My Way's investment plan is waning in this State. This may be why the promoters are planning to make their scheme available to Victorians in the near future.

It was twice mentioned that a lay-by payment of $20 a month is made on Victorian made jewellery. In reality, a lay-by payment of $8 a month is made, and the other $12 is apportioned between the participant, the administration account and the accounts of four 'uplines' (agents above the participant in the 'brick'). It was stated that 40 per cent of the money is used to buy the jewellery. Participants are told that after 12 months they will have enough in their lay-by account to buy goods, usually jewellery, even if they do not recruit anyone else to the business but, given that only $8 is going toward the lay-by every month, they will pay $240 for a piece of jewellery worth under $100.

Contact with the jewellery supplier in Victoria and its South Australian agent has revealed that no orders have been placed with either by any of the businesses in question. It would appear that there is no formal arrangement between the jewellery suppliers and the My Way businesses. Moreover, this is not a true lay-by system. A lay-by system is one where successive payments are made on physically identifiable goods. It is defined in the *Australian Concise Oxford Dictionary* as 'a system of paying a deposit to secure an article for later purchase'. If there are no identifiable goods, a payment to secure their later purchase would not be necessary.

It was later represented that this is a direct marketing business. However, this is not strictly correct. Direct market-

ing is defined in the draft Distance Selling Code of Practice as:

> The marketing of goods or services through means of communication at a distance where:
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> (a) consumers are invited to respond using a means of communication at a distance; and
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> (b) it is intended that the goods or services be supplied under a contract negotiated through a means of communication at a distance.

In the article Mr Brian Johnson also represented that 'people don't pay money to join us'. Officers of the Office of Consumer and Business Affairs have found that a person joins by opening an account with the Power State Credit Union, depositing $20 in it and issuing a direct debiting authority in favour of My Way Financial Services to take out $20 per month. It is hard to see how the requirement to do so means that people do not pay money to join.

The article recounted how a related business, the Australian Millionaires Club, was formed to try to educate people on how to manage their finances. However, it would appear that this registered non-profit organisation advocates no other investment plan than that offered by My Way Financial Services and actually charges $20 annually for the privilege of doing so.

I wish to refer also to some miscellaneous matters. The Commissioner is also concerned about other statements made in the course of the meeting that the *Sunday Mail* journalist attended and in the interview given by Mr Johnson. The attendees at the meeting were asked not to take notes. Although this may be to ensure that the terms of entry into the business and the potential returns are standardised by making them available at meetings only, it denies potential participants the opportunity to consider them at their leisure. Mr Johnson represented that he had previously been involved in multi-level marketing schemes with little success, partly because they were too complicated. The My Way Financial Services plan is itself very complicated, involving a number of interlinked businesses, a number of different accounts and strict terms of entry into the business. Some participants have attended multiple meetings and taken along their financial advisers in order to understand the operation of the business.

HEALTH, COUNTRY

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to table a copy of a ministerial statement made in another place today by the Minister for Health about regional country health services of South Australia.

Leave granted.

VARDON, Ms S.

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to table a ministerial statement made in another place today by the Minister for Correctional Services congratulating Sue Vardon, recently appointed to head the newly established Commonwealth Service Delivery Agency in Canberra.

Leave granted.

QUESTION TIME

INFORMATION TECHNOLOGY

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

Leave granted.

The Hon. CAROLYN PICKLES: The Minister's DECSTech 2001 project will need to be renamed DECSTech 2002 to reflect the fact that, seven months after the budget was announced, nothing has happened. Members will recall that last October I raised concerns expressed by schools that they were unable to order equipment and engage staff for programs in 1997 and the Minister told the Council in November that he would make an announcement before the end of term four and well in time for 1997. My questions to the Minister are:

1. Why did the Minister not announce the details of this scheme as promised in 1996?

2. What is the reason for the delay in allocating $4 million to schools for the purchase of computer equipment?

3. When will the $11 million announced this year to begin the roll-out of networks to schools be committed and how will this be spent?

4. Will a training program be substituted this year?

The Hon. R.I. LUCAS: The announcement of the Government's preferred supplier and the subsidy scheme will be advised to schools on Monday.

SAMCOR

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Primary Industries, a question on the subject of SAMCOR and the meat processing industry.

Leave granted.

The Hon. R.R. ROBERTS: Members would recall the contribution I made yesterday in the matters of public concern debate about the state of SAMCOR. Since the sale of SAMCOR some two weeks ago, there has been no kill. The Opposition has been given information that long-term tenants are now in a position where they do not know about their tenancy to operate their businesses in South Australia. We have been contacted by the trade union which represents the workers and which is concerned about the terms and conditions of employment for those people retained. Primary producers and small business butchers have also contacted us. They are very concerned that the state of the meat industry seems to be one of chaos. It seems that very little is being done about drawing the threads together.

An honourable member interjecting:

The Hon. R.R. ROBERTS: That is absolutely incorrect and you obviously do not know the history. If you read the documentation you will see that they have been offered a contract of employment which is being breached—but I do not want to go into the bits and pieces of that. Universally, the only thing that is consistent is that everyone involved in the meat industry is concerned about its future direction and stability. My question is: what action will the Minister for Primary Industries take to get stability and confidence back into the meat processing industry in South Australia, or will

he just say that it is now a private business operation and allow this chaos to continue?

The Hon. K.T. GRIFFIN: I will refer those matters to the Minister in another place and bring back a reply. I certainly do not acknowledge the accuracy of the statements made in the explanation and I think it is important to try to put those into perspective. I am not familiar with the immediate details of the difficulties, except in the media. Certainly there are reports of strike action, and I would have thought that—

The Hon. R.R. Roberts: There is no strike action. That is an outrageous lie.

The Hon. K.T. GRIFFIN: If there is strike action, it is in someone else's hands to resolve. So far as the Minister is concerned, he can give some consideration to the questions in due course.

GARDEN ISLAND DUMP

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General representing—in the absence of the Minister for Transport—the Minister for Environment and Natural Resources a question about landfills.

Leave granted.

The Hon. T.G. ROBERTS: The *Portside* Messenger of 12 February carries a headline 'Five year extension on cards for dump at Garden Island'.

The Hon. M.J. Elliott: Another five years?

The Hon. T.G. ROBERTS: Yes. A review is being carried out in relation to metropolitan dumps, and certainly there have been problems in the north-eastern suburbs around the Highbury dump which have resulted in its closure. A review process is being carried out to choose a site for a mega dump in the northern outskirts of the metropolitan area. The information that I have collected leads me to believe that the time frames for the mega dump to be granted a licence and operating, whether in the chosen sites now being examined or whether in another geographical location to be determined, really does not matter. There are complaints from nearby residents about the two applications which are either currently operating or awaiting outcomes for an EIS in the outer metropolitan area.

In the meantime, the closure of inner metropolitan dumps is putting pressure on the landfills that are still in existence. It appears to me that the opening of the mega dump and the closure of the inner metropolitan area dumps are not being coordinated too well. The article continues:

> The Garden Island dump, which was to have closed in October this year, could be forced to remain open for up to five more years following the closure of landfills across metropolitan Adelaide. The closure of the north's only dump in Coleman Road this April will mean that Wingfield, Garden Island and Pedler Creek in the south will be the only dumps operating in the city, which is rapidly running out of room to dump its rubbish. Garden Island has been used solely as a landfill up until 1996, when the MFP began rehabilitating the site.

The article goes on to say:

> The dump is located in one of the State's more fragile marine environments near the Barker Inlet, a major commercial fish breeding ground.

I think everyone has been fairly cautious about making too much noise regarding the closure of inner metropolitan dumps while the Government gets the priorities right for the outer metropolitan area dump program. However, there is a special case for the Garden Island dump not to get an extension, because of its close proximity to the fish breeding grounds. Given that the Garden Island dump is in such an environmentally sensitive location, will the Minister give a guarantee that it will close within the predicted time frames?

The Hon. K.T. GRIFFIN: I will refer the question to my colleague and bring back a reply.

WINE MUSEUM

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Leader of this House, representing the Premier, a question in relation to the Hackney wine centre.

Leave granted.

The Hon. M.J. ELLIOTT: The State Government is presently planning to establish a wine museum in the Hackney bus depot at the East Adelaide parklands. Project management has been appointed, and on Monday this week, 10 February, the Government advertised for architects to register their interest in the project.

Many different groups are opposed to the development at this site. These groups include the Friends of the Botanic Gardens of Adelaide, the Architecture Foundation, Adelaide Parklands Preservation Association, the South Australian Federation of Residents and Ratepayers Association, and the Civic Trust, as well as other groups. These groups are opposed not to the concept of a wine museum but to the site that appears to have been chosen for this development. Concerns have been raised that the present site is at odds with the present City of Adelaide plan of uses for the parklands.

The concerned groups believe that many more suitable sites are available, including several in the Victoria Square precinct such as the old Treasury buildings, the tram barns (near Victoria Square), and the site of the former Working Women's Creche. This is a more central location and more accessible for tourists. Other sites identified include the Magill Cellars, which has a strong historical link to the wine industry.

The Hon. A.J. Redford: Or Carrick Hill?

The Hon. M.J. ELLIOTT: If Iain Evans likes that idea, that might be looked at, too. All groups would like to see the project moved to maintain the integrity of the parklands, involving the return of the alienated areas to the parklands—including the Hackney bus depot.

One person who in 1989 recorded his strong support for the removal of the Hackney bus depot from the parklands is none other than Premier John Olsen, who now leads the Government pushing for further development on this site. In a letter to the Adelaide Parklands Preservation Association on 30 August 1989, Mr Olsen, then Liberal Leader, said:

> We recently congratulated the Government for announcing the restoration of parklands but criticised them for making a promise in 1985 to restore a greater area, including the Hackney Bus Depot. I believe it is a pity that this promise has not been honoured.

I repeat:

> . . . it is a pity that this promise has not been honoured.

He continued:

> We will continue to support moves to return alienated areas to parklands and to further delineate second generation parklands.

I seek leave to table a copy of that letter of 30 August 1989 from the now Premier and then Leader of the Opposition.

Leave granted.

The Hon. M.J. ELLIOTT: There is concern that the Premier is not now honouring his commitments on this issue. My questions are:

1. Why has the Premier done a complete about face from his previous opposition to development in the Adelaide parklands, particularly on this site?

2. Why is the Premier allowing development on this site to go ahead, particularly in the face of opposition from such a broad range of groups?

3. Why has the Government not actively sought other sites acceptable for this development, particularly since a recent assessment suggests that the project will lose at least $1 million a year for the first five years?

The PRESIDENT: I remind the questioner that there was a considerable amount of opinion in that question.

The Hon. R.I. LUCAS: I am sorely tempted to comment, but I will refer the honourable member's questions to the Premier and bring back a reply.

MILLICENT FOOTBALL CLUB

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Recreation and Sport, a question about passing off and impersonation.

Leave granted.

The Hon. A.J. REDFORD: In today's *Advertiser* an article headed 'Member for Blunt Talk' refers to the background of the member for MacKillop. The most startling revelation contained in that article appears in the following passage:

> From 1956 to 1968 he played several hundred games of football for the Millicent Magpies and today, at 57, is still in relatively good shape.

Members interjecting:

The Hon. A.J. REDFORD: The Hon. Ron Roberts talks about good shape as he rolls up and down the corridor. I have had a number of calls from constituents expressing alarm that Millicent, who are the 'Saints' and wear red, white and black colours similar to those of St Kilda, might be changing its name and colours. In fact, Kalangadoo, only some 25 kilometres away, has been known as the 'Kalangadoo Magpies' ever since I can remember, and they ask why should Millicent, which has not won a premiership for over 30 years, seek to cash in on the success of Kalangadoo, which has won a number of premierships during the Millicent drought? They say that Millicent does not deserve to wear the proud colours of the magpie.

Recently the Hon. Terry Roberts was elected unopposed, as I understand it, as the President of Millicent Football Club. He is known locally as 'Rough Roberts'. I am not sure whether this move to steal Kalangadoo's colours and name is merely coincidental or a deliberate attempt to cash in on Kalangadoo's obvious marketing strength. Indeed, for many elections Kalangadoo was one of the few booths that were in favour of the ALP over the Liberal Party. Some local ALP supporters fear that this move could cost the ALP the chance of ever recapturing that booth, particularly if the Hon. Terry Roberts is seen to be behind this outrageous move.

I know that Millicent did wear black and white and was known as the magpies until about 1962. In that year Hamilton, which is in the same competition as Millicent, also wore black and white, and it was decided that whoever finished higher on the premiership table would retain those colours. In a move exceeded only by the loss of the Grand Prix to Victoria, Millicent lost both the colours and the name 'Magpies' to the Victorians. I am not sure whether the Hon. Terry Roberts was involved in that tragic loss to Victoria, but I am prepared to give him the benefit on the doubt on that one. My questions are:

1. Can the Minister inquire whether Millicent is seeking to cash in on Kalangadoo's success?

2. If so, can the Minister do anything to stop this outrageous move by Millicent?

The Hon. T. Crothers: As a supplementary question—

Members interjecting:

The Hon. K.T. GRIFFIN: I can detect, on the Labor side of politics, some anxiety about this question. I must say that the Hon. Trevor Crothers seemed to be most anxious to participate, perhaps to gain some glory in association with the Hon. Terry Roberts, but I am not sure about that. I will refer the questions to my colleague in another place. He may be able to provide me with a reply, but I suspect he will be most cautious in seeking to engage in a parochial battle which can only leave blood on the floor.

The Hon. T. CROTHERS: As a supplementary question, can the Minister also ascertain whether the Millicent Football Club is seeking to buy any land for its proposed new ground?

The Hon. K.T. GRIFFIN: I am sure that that is not within the knowledge of the Minister. I am not even sure that it ought to be referred.

SMALL BUSINESS

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services, representing the Premier, questions concerning planned changes to State Government maintenance contracts and their impact on South Australian small business.

Leave granted.

The Hon. T.G. CAMERON: A recent report in the *Advertiser* stated that the Olsen Government was planning to switch Government cleaning and maintenance contracts from small business operators to large firms. A request for expressions of interest were to be lodged by 31 January. The approximate total value of all possible services potentially to be provided under the facilities management contracts is at least $50 million per annum, but only four to five packages will be awarded.

The plan affects contracts for cleaning, security, gardening and waste disposal as well as the maintenance of all Government buildings. The switch in contracts has the potential to cause real problems for South Australian small business. One local operator said about 20 per cent of his business relied on Government contracts. Once his present contracts expired he would probably lose the work and be forced into sacking staff. The impending move by the Olsen Government could not have come at a worse time for South Australian small business. The most recent Employers Chamber of Commerce and Industry report states that South Australians can look forward to a bleak year ahead with few new job opportunities over the next three months. According to Mr David Rush, Project Officer for the Chamber of Commerce (*Advertiser* 6 January, page 3):

> [It was] probably the worst survey in the last 12 years. What it does show is that the economy has been flat for 18 months now and there is nothing to suggest it is going to get any better over the next year.

On 13 December last year the Premier released a media statement which stated:

> The State Government is committed to revitalising and changing the small business culture in this State.

My questions are:

1. Will the Minister explain how this proposal conforms with the Government's professed commitment to revitalising South Australian small business?

2. Considering the Premier's promise to small business and the current state of the economy, does the Government believe that now is the right time to be putting dozens of small businesses out of work?

3. Will the Premier review the decision to award only four or five contracts and, as a matter of urgency, examine the feasibility of breaking the contracts into smaller parcels so that South Australian small business can have a bite of the cherry?

4. When awarding these contracts, will the Government give preference to South Australian based businesses over interstate companies and foreign multinationals. If not, why not?

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

CHILD ABUSE

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Attorney-General a question about child abuse.

Leave granted.

The Hon. BERNICE PFITZNER: A recent publication, the source of which is *Child Abuse and Neglect, Australia 1994-95*, from the Australian Institute of Health and Welfare, Canberra, published in 1996, states that State and Territory welfare departments substantiated over 30 000 cases of child abuse and neglect in 1994-95. These accounted for 45 per cent of finalised cases. Over 2 000 further cases (4 per cent) were not substantiated, but the child was assessed as being at risk. Together these cases represent an increase of 7 per cent over 1993-94. Further, of the over 30 000 substantiated cases of abuse and neglect, 29 per cent were physical abuse, 28 per cent emotional abuse, 16 per cent sexual abuse and 26 per cent neglect.

There were more boys than girls in the substantiated cases of physical abuse, emotional abuse and neglect, while girls were represented in three-quarters (76 per cent) of sexual abuse cases. The highest numbers of substantiated cases of child abuse and neglect were for those children between the ages of 13 and 14 years. The highest number of finalised cases of child abuse and neglect were reported by friends and neighbours (16 per cent), school personnel (15 per cent), parents and guardians (13 per cent) and police (12 per cent). Reports of abuse and neglect from police had the highest rates of substantiation (61 per cent), followed by the subject child (58 per cent), then hospital and health centre staff (55 per cent) and social workers (55 per cent).

For the three States—Western Australia, Queensland and Victoria—and the two Territories—ACT and the Northern Territory—for which data were provided, more cases involved children from female single parent families (39 per cent) than families with two natural parents (30 per cent) or other two parent families, such as families with step-parents. Of neglected cases, 47 per cent involved children from female single parent families, compared with 26 per cent from families with two natural parents. Ten per cent of children aged 0-16 years in substantiated cases of abuse and neglect were Aboriginal and Torres Strait Islander children, a much higher proportion than they represent of the Australian population aged 0-16, which amounts to 3 per cent. Rates of substantiated abuse and neglect for Aboriginal and Torres Strait Islander children (19.1 per 1 000) were much higher than for other children (5.6 per 1 000). The corresponding rates for neglect cases were 7.7 and 1.3 respectively.

As to rates of substantiated cases, when we compare them with other States, the highest State was New South Wales, which had a total of 8.2 per cent, and the lowest was Tasmania, which was 2.7 per cent. South Australia was 6.3 per cent, and the national average was 6.1 per cent. So, South Australia is slightly above the national average. In Tasmania between 1990 and 1995 there was a falling in rates per thousand children. In the national average and in South Australia there were rising rates of child abuse per thousand children. In view of these depressing statistics, my questions to the Attorney-General are:

1. How does the Attorney-General's Department, together with FACS, intend to address the high rates of child abuse in the disadvantaged groups of female single parent families and amongst Aboriginal children?

2. With regard to the relatively new Children's Protection Act 1993, I understand that FACS officers in hospital units are finding some difficulty with interpretation of the Act—in particular, with regard to care and protection orders, section 37; with the process of obtaining investigation and assessment orders, section 20; and with the presentation of cases by legal officers. Will the Attorney-General look into those difficulties and provide a solution in line with the principle of the Act, which is for the best interests of the child?

The Hon. K.T. GRIFFIN: The Children's Protection Act is committed to the Minister for Family and Community Services. The Attorney-General's role is very largely peripheral to the main issues that the honourable member has raised and relates, essentially, to the court processes. I am not aware that there are the sorts of difficulties with respect to the interpretation of the Children's Protection Act to which the honourable member referred. It is probably appropriate for me to refer that question to the Minister for Family and Community Services to see whether in fact there are problems. I know that there are some issues relating to the interface between the Family and Community Services Department and the Youth Court in relation to children's protection matters, but there are amendments being proposed that will help to deal with those. However, they are not matters which, as I recollect, have been raised in relation to interpretation within the administration of the legislation.

So far as the first question is concerned, again, the Attorney-General becomes involved essentially through the criminal justice process, and members may remember that we have set up, very largely under the authority of the Family and Community Services Department, but in conjunction with the DPP Committal Unit and the Sexual Assault Referral Service at Flinders Medical Centre, an inter-agency child abuse assessment panel which is designed to deal with matters once they come to the notice of authorities and to speed up the process of determining the direction in which the matters should go—that is, channelled to the criminal justice process or a decision taken at an early stage that there is no reasonable prospect of a conviction and therefore the matter should be directed through the rehabilitation and counselling and support services.

In terms of the strategies to deal with the two categories to which the honourable member referred—female single parent families and Aboriginal children—the responsibility for developing strategies is primarily with the Department for Family and Community Services, although my department,

through the Crime Prevention Unit, is very much concerned to work in conjunction with agencies as well as with local community and other groups on crime prevention—and, of course, abuse of children is a crime. The difficulty sometimes is to be able to get sufficient evidence to prove the case beyond reasonable doubt. That, I think, will remain a contentious area for a long time to come, because there is that tension between the basic premise of our justice system that a person is innocent until proved guilty, and the burden of proof is upon the prosecution to determine that the facts are beyond reasonable doubt; and, on the other hand, to ensure that where there is some evidence of criminality, that the best evidence is available in the best form for the purpose of endeavouring to gain convictions where that is likely to be appropriate.

So, there is that tension, and the Attorney-General's Department has some involvement in trying to alleviate that, certainly through the amendments to legislation, a number of which have been passed over the past three years. However, in terms of dealing with abuse and preventing that abuse, even though there is an element of crime prevention in it, it is very largely the responsibility of other agencies, although as Attorney-General I take a keen interest in initiatives which seek to address some of those issues of prevention and provision of support.

I will refer the honourable member's questions to the Minister for Family and Community Services. If any aspects of the questions raised by the honourable member relate to my portfolio responsibilities and have not yet been answered, I will bring back answers.

RAPE

The Hon. ANNE LEVY: I seek leave to make an explanation before asking the Attorney a question about Crown representation.

Leave granted.

The Hon. ANNE LEVY: Recent figures from the Office of Crime Statistics annual report show that of 697 reported rape cases only 97 ended up in a court and that of these 41 were withdrawn as *nolle prosequi* and only 20 were found guilty. So, of almost 700 reports there were 20 guilty verdicts. So, I am sure that the Attorney would understand the concern of many people about the way in which rape is dealt with in our courts.

It has become the practice in recent times for defence lawyers to subpoena the records of women who claim to be victims of rape as well as the notes taken by counsellors in counselling sessions with rape victims. In South Australia, there is only one place which provides specialised assistance for rape victims, and that is Yarrow Place, which is completely funded by the State Government. It provides a very efficient service for rape victims.

This practice of defence lawyers subpoenaing notes from counsellors at Yarrow Place when they have been helping women is regarded as a fishing expedition by defence lawyers and grossly unfair to the women concerned as well as being extremely damaging to the service which Yarrow Place tries to provide. It is argued that sessions with counsellors are completely confidential and should be treated as such, that women will not trust the service for support when they most need it if they know that their records could subsequently be released, and that defence lawyers are merely conducting fishing expeditions looking for ways to smear the word of the chief witness: the victim of the rape.

This practice on the part of defence lawyers has been happening all over Australia. Members may have noted that Di Lucas, the Coordinator of the ACT Rape Crisis Centre, actually went to gaol rather than release confidential records which were in her charge. There have been a number of such cases in South Australia where Yarrow Place has been asked by defence lawyers to hand over records relating to the counselling of rape victims. It has been argued in court whether that should occur, but in most cases no decision has been made by the court because a *nolle prosequi* has eventuated. In one particular case a fortnight ago, this issue was argued in court and, to his credit, the judge said that it was not necessary for the records to be handed over.

In some of these cases, Yarrow Place had legal representation to argue its case regarding the confidentiality of records of support counselling for rape victims, but Yarrow Place, as are all Government agencies, is extremely strapped for cash and has run out of money to spend on legal cases. In the most recent case, the Director of Yarrow Place appeared for herself and had to argue the case without legal representation, but it seems grossly unfair that she should have to do so, and she is not prepared to do so again should other such cases arise, as I am sure they will.

Yarrow Place depends entirely upon State Government funding. It is apparently the view of many people that representation for the Director of Yarrow Place should be provided by the Crown: that, as a Crown agency, in any legal proceedings involving its staff, those staff should be represented by the Crown. I cannot see any conflict of interest between the Crown representing the staff of Yarrow Place as well as being the prosecution in such a case.

My question is: will the Attorney consider arranging for Crown representation for Yarrow Place in any future hearings or, if it is felt that there is a conflict of interest, will the Crown arrange for private practitioners to be briefed to appear on behalf of the staff of Yarrow Place without their either having to appear on their own behalf or deplete from the job they are supposed to be doing their already very restricted resources?

The Hon. K.T. GRIFFIN: The honourable member began with a reference to the Office of Crime Statistics report about the number of reported rapes and the number that ultimately end up in court. She then moved on to deal with the issue of access to counsellors' notes. I suggest that whilst she may not have intended to relate the small number of rape cases out of the total number of reported cases that actually get to court to the availability of the notes of counsellors of sexually assaulted victims, I want to make it clear that I do not think the two are necessarily related.

The Hon. Anne Levy: I was just trying to put it in context.

The Hon. K.T. GRIFFIN: Yes, but the issue of counsellors' notes is a specific one. It does not necessarily mean that a matter when reported to the police will or will not get to court. There is a variety of other reasons why so many rapes are reported and not proceeded with; it is not just because the notes are likely to be subpoenaed.

Regarding the sexual assault counselling notes, I understand the contentious nature of that issue, but I can inform the honourable member that a series of public meetings has been organised by the Commonwealth Office for the Status of Women to be held around the country to encourage discussion on this sensitive area of the law. Meetings will take place in Adelaide and Port Augusta in early March, and local

newspaper advertisements nearer the time will provide times, dates and places.

The Hon. Anne Levy: Will you let us know when they are?

The Hon. K.T. GRIFFIN: I will endeavour to identify to members when they are on, or it is more likely that I will identify the contact person within the Commonwealth office so that they can follow up that matter. I hope I will be forgiven for not necessarily putting all these things in the diary to remind me to do things for particular members.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: They do read *Hansard* and they will let you know the telephone number of the office dealing with these meetings. I have joined my interstate counterparts in asking that the issue of sexual assault councillors' notes be included in the final report of the model criminal code. A discussion paper on sexual offences against the person was released recently. That is the latest series of papers that seeks to provide a basis for uniformity and consistency across Australia in relation to serious criminal offences. So, in two areas the issue is being addressed.

There are two viewpoints. Presently there is no statutory or common law privilege that protects the confidentiality of communications between a councillor and a victim of sexual assault. As the Hon. Anne Levy has said, at least one councillor who refused to provide information has faced contempt charges and spent some time in gaol. As members would know, the only confidences that are protected are those between solicitor and client. There are compelling arguments both ways. On the one hand councillors fear that even more women will be discouraged from reporting sexual assault and seeking support to deal with the trauma they experience if confidentiality is compromised. On the other hand, there are specific cases where the discovery of the notes has been approved by the court and in this sense there is always a discretion by the trial judge. It is important to remember that when the application is made for the production of these notes the trial judge will look at the nature of the request, the context in which it is made and its probative value.

In a Western Australian case in 1995, involving repressed memory—again a highly contentious issue—in a sexual assault case, the accused established that there was a reasonable basis for a hearing about admitting evidence of the therapy that the victim had received.

The Hon. Anne Levy: I am asking for legal representation.

The Hon. K.T. GRIFFIN: In your explanation you dealt with a number of issues. I am trying to acknowledge the explanation and not merely focus upon the question. If I answer only the question I will leave other things up in the air. I am trying to put to the Council the issues as I see them. In terms of the question, I do not have an immediate answer. Because it obviously involves other Ministers' responsibilities, I will take on board the issues raised by the honourable member, refer them to the appropriate Ministers and bring back a reply.

GRAPE PICKERS

In reply to **Hon. R.R. ROBERTS** (28 November 1996).

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

During March 1996, when questions were raised regarding the payments made to and the working conditions of grape pickers in the Southern Vales areas, officers of the Southern Regional Office of the Department for Industrial Affairs carried out investigations. It quickly became clear that most pickers in the area worked for contractors on a piece work basis, being paid per bucket of grapes picked. This begged the question as to the legality of this approach, that is, was any Award being breached?

The Wine and Spirit Industry (SA) Award states the following:

". . . this Award shall be binding on the industry of the occupations of persons employed in or in connection with vineyards, wineries, distilleries or stores or laboratories thereof, owned or leased by respondents to this Award in the manufacture, storage, bottling, packaging or dispatch of wine, brandy or other potable spirit, liqueurs, vinegar or grape juice whether as employers or employees and whether members of an association or not."

Given the foregoing scope of the Award, contractors were clearly not respondents to the Award and therefore terms and conditions of employment of casual pickers were the subject of negotiation. No breach of the Award applied as the Award itself was not applicable.

Health, safety and welfare matters, such as the provision of toilets and first aid kits, were also addressed by Departmental officers. Section 19 of the Occupational Health, Safety and Welfare Act, which addresses the employer's general duty of care states, in part, as follows:

"19. (1) An employer shall, in respect of each employee employed or engaged by the employer, ensure so far as is reasonably practicable that the employee is, while at work, safe from injury and risks to health and, in particular—

(b) shall provide adequate facilities of a prescribed kind for the welfare of employees at any workplace that is under the control and management of the employer."

This leads to a consideration of what is reasonably practicable in the situation where casual grape pickers are working for a contractor. The issues addressed with the contractors were the measures put in place for toilet facilities. At that stage, the departmental officers determined that improvements could be made in terms of facilities and were satisfied that improvements would be made.

The amenities guidelines under the Occupational Health, Safety and Welfare Act were in draft format at the time of the investigation. The guidelines would provide practical assistance to those in the rural sector. Officers took the opportunity to discuss the content of the draft with contractors to enable their input to be included. It is anticipated that the guidelines will be widely available for the next picking season.

Some of the facts appear to have been misconstrued, hence the headlines in local media. There are no secrets about the facts; however, there was a legal responsibility for Department for Industrial Affairs officers to maintain confidentiality with respect to persons interviewed, including employers of casual labour etc., as the issue was to assess what requirements had to be met by them.

The following answers are provided in response to your specific questions:

1. It was neither necessary nor appropriate to trace previous casual pickers or interview those pickers engaged at the time. The issue was to ascertain the applicability of Award and legislative matters and to address compliance by those charged, i.e., the contractors.

2. Yes. The Minister considers that this was an appropriately balanced investigation.

3. The issue of future pay matters should now be clear, as presented above. The willingness of people to carry out work for contractors on negotiated conditions in situations where an Award does not apply will dictate whether or not contractors can attract persons to do the work.

4. There is no capacity, nor has there ever been any capacity, to introduce "an award to cover all workers not covered by an existing award" under the existing or any previous legislation in South Australia.

The previous Labor Government's legislation contained provisions allowing the Industrial Relations Commission to establish an award for wages and conditions which would be binding on all employers or employees in South Australia other than those covered by Federal awards or agreements. This was known as an award of general application, which was indiscriminate in its coverage, i.e., it covered both award free and award covered employees. Under the previous Industrial and Employee Relations Act only one such award was made, which in relation to adoption leave.

This previous power of the Commission was not continued under the new Act, which, in essence, establishes a three tier scheme of industrial regulation, i.e., enterprise agreements, common rule industry awards and legislated minimum standards. Schedule 2 of the new

Act complements the three tier scheme by allowing the Commission to establish a minimum rate of remuneration for specified classes of employees for whom there is not currently an award classification.

A major reason for the inclusion of the Schedule 2 provision in the new Act was to allow the Commission to establish and maintain a safety net for the wages of employees, particularly as they engage in enterprise bargaining. Schedule 2 did not, and can not, provide "an award to cover all workers not covered by an existing award".

5. The facts as they have been presented above are available to any body or group who wishes to access them.

TELEPHONE BOOKS

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services, in his capacity as Leader of the Government in this place, a question about telephone books.

Leave granted.

The Hon. CAROLINE SCHAEFER: I have been informed that telephone books are free in the city but not in the country. An irate constituent has contacted me saying that, while he can collect an Adelaide telephone book and Yellow Pages free in the city, the same two books cost him $11.60 in his home town. The real insult came when he found that not only could he get a free 08 telephone book in the city if he collected it but he could also pick up all area code books free in the city. In other words, only books in one's own area code are free in the country, but all area code books are free in the city. One wonders why someone does not take bulk books home and make a profit selling them at below the $5.80 charge. Given that Telstra is also considering putting a 50¢ charge on anyone who dials 013 for information, it appears to take making a profit to extremes. Is this ridiculous situation true and, if so, why?

The Hon. R.I. LUCAS: I am pleased to inform the honourable member that it would appear that the Prime Minister, consistent with his pre-election commitments, has ruled out any move by Telstra to charge 50¢ for an 013 call. I am sure the honourable member's constituents will be delighted by the Prime Minister's standing by his pre-election commitment, if one can believe the morning newspapers which reported that statement. I will certainly have my staff make some inquires for the honourable member in relation to the concerns of her constituents and will try to bring back a response as quickly as possible.

MIGRANT WOMEN

The Hon. P. NOCELLA: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Family and Community Services, a question about domestic violence.

Leave granted.

The Hon. P. NOCELLA: In its ethnic affairs policy one of the promises and undertakings of the Liberal Government was to establish a culturally appropriate trauma support system for abused non-English speaking background women. More than three years later this appears to be yet another of the many broken promises of this Government. This in itself is bad enough, but in addition we have now discovered that the Government is considering closing down the Migrant Women's Emergency Support Service, which is the only ethno-specific service for migrant women and children in crisis through domestic violence in South Australia. Its proposal is that the Migrant Women's Emergency Support Service be what is euphemistically called 'amalgamated' with the domestic violence outreach service. The net result will have dire consequences for this most valuable and unique service, which provides shelter for migrant women and their children who are trying to escape domestic violence.

The specific needs of women and children in such circumstances require a substantial level of support and in many cases for extended periods of time. The proposed new arrangement would remove such existence and simply provide telephone assessment and referral. Clients of this service consider this prospect highly unsatisfactory, particularly in view of the poor linguistic capability of the majority of the clients, which is further exacerbated by their lack of familiarity with the system. Ample evidence indicates clearly that for a variety of reasons non-English speaking background women are often not able to effectively access mainstream services.

The Government's proposed action is the latest in a succession of blows to the vital ethno-specific services patiently built up over many years and makes an absolute mockery of the lofty pronouncement made by the Government in its declaration on multicultural principles. My questions to the Minister are:

1. Will the Minister intervene as a matter of urgency to ensure that the Migrant Women's Emergency Support Service be able to continue providing its invaluable assistance to non-English speaking background women and children escaping domestic violence?

2. If not, will the Minister at least consider other options, such as joining forces with other ethno-specific organisations so that women of non-English speaking background in such dreadful circumstances can continue to receive culturally and linguistically appropriate services?

The Hon. R.I. LUCAS: I am sure that the Minister will not respond in a knee-jerk fashion to these questions from the honourable member or, indeed, from anybody else in relation to the issues. The issues will be considered sensibly and rationally, and a rational decision will be taken by the Minister, as is always the case with this Government. I will refer the honourable member's question to the Minister and bring back a reply.

WOMEN'S AND CHILDREN'S HOSPITAL

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Health in the absence of the Minister for Transport, a question about a shortage of high dependency units at the Women's and Children's Hospital.

Leave granted.

The Hon. SANDRA KANCK: I have been informed that ever since the former Queen Victoria Hospital and the Adelaide Children's Hospital united to become the Women's and Children's Hospital there has been a shortage of high dependency units. Apparently, as a way of resolving this shortage women who have given birth to stillborn babies may soon be forced to share a ward with other mothers who have given birth to live babies. My questions are:

1. Will the Minister confirm that there is a shortage of high dependency units at the Women's and Children's Hospital?

2. How far advanced are plans to force women who have given birth to stillborn babies to share rooms with mothers who have live babies?

3. Will the Minister advise the House what impact, according to psychologists, the sharing of a ward in this way would have on women who have had stillborn births?

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

ELECTIONS

The Hon. T. CROTHERS: I seek leave to make a precied statement before asking the Minister for Education and Children's Services and Leader of the Government in this House a question about Australian elections.

Leave granted.

The Hon. T. CROTHERS: A former Australian Prime Minister, Mr Gough Whitlam, recently stated that in his view Australia should elect all Federal and State Governments on the same day for fixed four-year terms. He further opined that the frequency and cost of elections was damaging the economy. He continued by saying that the frequency and number of elections was damaging the political and economic processes and that the cost of modern political campaigns was a major source of political corruption in Western democracies and was compounded even worse in Australia and its States by the frequency of early elections. My questions to the Minister are:

1. Does he believe that the costs of electoral campaigning, both here in South Australia and elsewhere in Australia, are very high and that for the major political Parties, where Government is not providing electoral finance, they can and do run into millions of dollars?

2. Does he believe that the frequent calling of early elections on a regular basis costs the Australian taxpayer more than would, say, the Whitlam proposal for simultaneous elections at both State and Federal level for fixed four-year terms?

3. Does the Minister agree with the Whitlam statement that the increasing costs of electoral campaigns and their ever increasing frequency, brought about in the main by early elections, will lead to political Parties having to endeavour to raise more funds for their campaigns which could lead to (and I quote Mr Gough Whitlam) 'a major source of political corruption in Western democracies'?

The Hon. L.H. Davis interjecting:

The Hon. T. CROTHERS: The Hon. Legh Davis asks me whether I really believe it. That is why I am asking the question: to find out.

4. Does the Minister agree with that statement and, if not, why not?

The Hon. R.I. LUCAS: The honourable member has referred to the issue of Australian elections and, of course, that is not a matter within my province on which to comment. He has referred in some of his explanation to South Australian and Australian elections as well. I do not accept the view, I think, that in Australia or in South Australia there has been a significant level of corruption, generally, in relation to our election process. Whilst there have been many accusations in relation to the democratic process in many other countries, fortunately to a reasonable degree that has not been evident in South Australia and in Australia.

In relation to South Australia, we had elections in 1973, 1975, 1977 and 1979—elections every two years during that period of the Dunstan decade—and there was a strong body of opinion within the South Australian community and the Parliament seeking to make some change. There was a debate along the lines of the Gough Whitlam model of precisely fixed terms, a la the American experience. The view of the Parliament at that time is the view that remains in the law today in South Australia: we do not support a fixed date every three or four years but we have a semi-fixed arrangement where, generally, a Parliament runs for three years. My colleague, the Hon. Legh Davis, reminds me that today or the end of this month is when the three years minimum component of the four-year term arrives.

As I said, it is a sort of minimum three years. There are circumstances where an election can be called before that three year minimum of a semi-fixed four-year term in South Australia. Certainly, during that period of the Dunstan decade we had four elections in six years between 1973 and 1979, together with a few Federal elections in 1972, 1974, 1975, 1977, and again in 1980, so we basically had 10 elections, both State and Federal, in seven or eight years. That was the reason for the change in South Australia.

Since then we have seen greater relative stability in terms of election dates. Elections were held in 1982, 1985, 1989 and 1993 and, of course, from today or the next week or so onwards the Premier could call an election if he so decided at any stage. Nevertheless, that would be 1997. So, there has been a greater degree of stability in length of terms during the 1980s and 1990s.

The Hon. T. Crothers: Julius Caesar was assassinated on 13 March.

The Hon. R.I. LUCAS: Is that right? Something else also happened in the 1970s on the Ides of March, but I will not refer to that.

In relation to the Federal experience, there has been a slightly greater degree of stability in relation to the three-year term during the latter part of the 1980s and 1990s when compared to the 1970s. That issue will be a decision for the Commonwealth. Certainly, the State Government has not announced any intentions or plans in relation to changing—

The Hon. T. Crothers interjecting:

The Hon. R.I. LUCAS: It may well be that the Australian Government considers that in the constitutional convention arrangements that are coming up over the next few years. I think the honourable member is right. There has been some discussion about the possibility of a four-year term rather than a three-year term. I am not aware that there has been a discussion about a fixed date for an election a la the American experience. As I said, I am not competent to comment on the Federal experience. I can say that the State Government has announced no intention to change our current arrangements in relation to election timing.

LEGAL PRACTITIONERS (MEMBERSHIP OF BOARD AND TRIBUNAL) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Legal Practitioners Act 1981. Read a first time.

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

That this Bill be now read a second time.

This Bill makes minor amendments to Part 6, Division 3, of the Legal Practitioners Act 1981.("The Act")

Part 6 of the Act establishes and regulates the Legal Practitioners Conduct Board ("the board") and the Legal Practitioners Disciplinary Tribunal ("the tribunal"). The board

investigates and receives complaints of unprofessional conduct by legal practitioners, and is able to discipline a legal practitioner or initiate proceedings with the tribunal, while the tribunal hears charges of unprofessional conduct against legal practitioners. By virtue of section 69(3)*(d)* and 79(1)*(d)* of the Act respectively, all legal practitioners on the board, and all members of the tribunal, must have a current practising certificate. Due to section 78(2) of the Act, members of the tribunal must also be admitted as a barrister or solicitor in the Supreme Court of South Australia.

While it is desirable that legal practitioners on the board and all members of the tribunal have been in practice, there is no particular reason why they should have a current practising certificate. This Bill proposes to change the qualifications for members of these bodies accordingly.

The new clauses will provide that members should have practised as a legal practitioner for five years (including for this purpose any period that the person has served in judicial office) to be eligible for appointment to the tribunal.

The requirements imposed on members of the board and the tribunal have also been strengthened in other ways. I believe it is important that the legal practitioners on the board and all members of the tribunal are beyond reproach. The amendments provide that a member's position becomes vacant if the member is disciplined under the Act, by the Supreme Court, or under an Act or law of another State or Territory of the Commonwealth for regulating the conduct of persons practising the profession of the law. This will mean that persons who receive an admonishment under the Act, and persons who avoid discipline under the Act or by the Supreme Court by voluntarily requesting that their name be taken off a court's roll of barristers and solicitors will be disqualified from membership of the tribunal or the board.

An example of the benefits associated with these amendments is the ability to appoint retired members of the judiciary to the board or the tribunal without needing to renew their practising certificate solely for the purpose of the appointment. Also, persons not fit to judge the propriety of other legal practitioners will no longer be permitted to remain on the board or the tribunal.

In 1995, one member of the tribunal allowed his practising certificate to lapse, causing his position to become vacant. The member has since obtained a backdated practising certificate for 1996. It may be that this is not sufficient to cure the vacancy. The amendments have therefore been made retrospective.

Section 80(4) is also amended. Under section 80, three members of the panel constitute the tribunal, and a decision by two members of the tribunal is a decision of the tribunal. The tribunal may continue to hear a matter if one member dies or is unable to continue, provided that the legal practitioner who is the subject of the proceedings consents. A decision of the remaining two members will be a decision of the tribunal if it is unanimous.

Where there have been delays in hearings caused by technical and procedural objections or evidentiary challenges it is not in the public interest for the practitioner to have a veto on whether the tribunal can complete the matter if the number of members is for some reason reduced to two. Given that in such a case the decision must be unanimous, the practitioner is no worse off than if three members had heard the matter in full and had made a majority decision.

This amendment to section 80(4) will ensure that costly rehearings will not be required in future hearings where one member must retire from the panel for any reason. I seek leave to have the detailed explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for varying commencement dates for different provisions of the Bill as follows:

- clauses 1, 2, 3 and 5 are to be taken to have come into operation on the day that the principal Act came into operation;
- clause 6 is made retrospective to the day on which the *Legal Practitioners (Miscellaneous) Amendment Act 1996* came into operation;
- clause 4 is to come into operation on assent.

Clause 3: Amendment of s. 69—Conditions upon which members of the Board hold office

This clause amends section 69 of the principal Act to match up the circumstances that would disqualify a legal practitioner from continuing as a member of the Legal Practitioners Conduct Board with the circumstances that would disqualify a legal practitioner from continuing as a member of the Legal Practitioners Disciplinary Tribunal under section 79 of the principal Act, as proposed to be amended by clause 5 of this Bill.

The amendment would mean that a practitioner whose name is removed from the roll of practitioners maintained by the Supreme Court, or who has been disciplined, either here or interstate, would automatically be disqualified from membership of the Board. This requirement replaces the current requirement that a practitioner who is a member of the Board hold a current practising certificate.

Clause 4: Amendment of s. 78—Establishment of Tribunal

This clause amends section 78 of the principal Act to provide that a person cannot be appointed as a member of the Tribunal unless that person has been enrolled as a practitioner in this State for at least five years.

Clause 5: Amendment of s. 79—Conditions of membership

This clause amends section 79 of the principal Act to provide that a practitioner whose name is removed from the roll of practitioners maintained by the Supreme Court, or who has been disciplined, either here or interstate, would automatically be disqualified from membership of the Tribunal. This requirement replaces the current requirement that a practitioner who is a member of the Tribunal hold a current practising certificate.

Clause 6: Amendment of s. 80—Constitution and proceedings of the Tribunal

This clause amends Section 80 of the principal Act by removing the requirement that the legal practitioner who is the subject of proceedings before the Tribunal consents to two members continuing to hear and determine the proceedings where the third member has died or is otherwise unable to continue acting.

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

ELECTORAL (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 6 February. Page 852.)

The Hon. P. HOLLOWAY: This Bill contains a series of amendments to the Electoral Act. The Attorney introduced this Bill last November with the explanation that many of the amendments contained in the Bill arose from recommendations made by the Electoral Commissioner in a draft report on the 1993 parliamentary elections. The Attorney tabled the final report from the Electoral Commissioner on Tuesday. It is clear from the limited opportunity I have had to examine this report that not all the Commissioner's recommendations have been incorporated in this Bill.

Conversely, the Government has included some items which are clearly on the Government's agenda but not that of the Commissioner. The attempt to weaken the compulsory voting section of the Act (clause 15 of the Bill) is a case in

point. I would ask the Attorney whether he will indicate when he does respond at the end of this debate what is the Government's position on those of the Commissioner's recommendations that have not been adopted in this Bill. I also indicate that the Opposition may wish to raise other issues during the Committee stage or in the House of Assembly debate when we have had time to examine this report in more detail.

As is the practice when changes to the Electoral Act are proposed, this Bill has been circulated by the Opposition to those Party officials who are concerned with the day-to-day operation of the electoral system and, as a result of the feedback from those discussions, I will be moving several amendments to this Bill on behalf of the Opposition.

From the outset I indicate that the Opposition will not support the Government's backdoor attempts to dilute the duty of electors to vote. However, most of the other measures contained in the Bill will be supported by the Opposition. Many of the proposed measures simply replace outmoded language used in the original Act and are just penalties and expiation fees for offences under the Act in accordance with the Government's standard scale. However, there is one exception to the indexation of those penalties which I will indicate later.

In his second reading speech, the Attorney-General identified the more substantial changes to the Electoral Act under 15 different headings. I will shortly go through each of these headings in turn and indicate the Opposition's position on those measures. First, I will be moving one significant change to the Electoral Act which is not touched upon in the Government's Bill. It is the view of the Opposition that a committee of Parliament should undertake an ongoing review of the operation of our electoral system as is the case in the Commonwealth Parliament.

It is also our view that the Electoral Commissioner should be genuinely independent in the sense that the Commissioner should be appointed by the Parliament rather than by Cabinet. I have no doubt that the Electoral Commissioner is subjected to many subtle and not so subtle pressures by the Government of the day. The Electoral Commissioner does have a vital function which is at the heart of democracy, so I will be moving amendments to the effect that the Electoral Commissioner be appointed by a parliamentary committee in the same manner as is now the case for the Ombudsman. Following amendments to the Ombudsman's Act moved by the Attorney-General last year, I am surprised that the Attorney did not take the opportunity himself during this revision of the Electoral Act to give effect to this measure. After all, it is one of the promises made by the Liberal Party in its Parliament policy put to the people before the last election. The Liberal policy states:

> There is no structure in the Parliament for these office holders—the Auditor-General, the Ombudsman and the Electoral Commissioner—
>
> to raise issues, including matters affecting their budgets with a view to resolving them other than through reports to the Parliament.

The policy then goes on to state:

> A Liberal Government will introduce legislation to allow Parliament to appoint the Ombudsman, Auditor-General, and Electoral Commissioner; establish a committee of both Houses of Parliament to recommend appointments to these positions; and to act as the contact point for these office holders in relation to resources, administrative matters and any other issues relating to their role, functions and work.

The Attorney has fulfilled this promise for the Ombudsman and I trust that, in supporting this measure, he will honour his Government's election promise in the case of the Electoral Commissioner and, for that matter, the case of the Auditor-General, which is the subject of a private member's Bill which was recently introduced by the Hon. Michael Elliott. If my amendments giving effect to this are carried by Parliament, we can at least be assured that proposed amendments to the Electoral Act in the future will have been the subject of a detailed bipartisan or tripartisan consideration of the issues, unlike these proposals.

I will now go through the 15 headings identified by the Attorney and indicate the Opposition's position on those matters. As to remuneration of the Electoral Commissioner, this change returns to the position prior to 1991, so that the remuneration of the Electoral Commissioner and the Deputy Electoral Commissioner will now be fixed by the Remuneration Tribunal. We certainly support that. In his second reading explanation, the Attorney-General notes:

> The Government believes that it is more appropriate for an independent body to fix the remuneration of the Electoral Commissioner and the Deputy Electoral Commissioner to reflect the independence of those officers.

We support those sentiments. My amendments to appoint the Electoral Commissioner and his deputy via a parliamentary committee, which I have just outlined, will even more truly reflect the independence of those officers. The second heading relates to the provision of information to prescribed authorities. This change will bring the State Electoral Act into line with the Commonwealth Electoral Act. It enables non-public enrolment information to be provided to prescribed authorities. This new section will simply mirror the Commonwealth Act and we certainly support that.

The next change relates to registered officers of political Parties. The Attorney points out that in the past some registered officers, I guess of minor Parties, have resided interstate and could not be contacted during an election campaign. The change that the Government is making is to require them to reside locally and we certainly support that measure. The next matter is multiple nominations for candidates endorsed by political Parties. This is really an administrative matter to bring the Electoral Act into line with the common practice of registered Parties nominating all their candidates and it will certainly speed up administrative matters and we would support that change.

The next matter relates to proceedings on nomination day, which really applies only in situations where there is only one candidate nominating for a House of Assembly seat or the required number of candidates for the Legislative Council. I am not sure that we are likely to come across that situation often in the future. I know we have come across it many years ago but, nevertheless, there is an anomaly there in the unlikely event that we have only one nominee for a seat and we would support that sensible change.

The next matter relates to the display of certain electoral material and refers to the display of how to vote cards in polling booths. A problem has been identified by the Electoral Commissioner that, if there is a large number of candidates, it is difficult to put all that information within the required size in a polling booth and there are changes to the Act to deal with that situation which we would support. The next matter relates to declaration voting. The change is really to require that the register of declaration voters must contain the addresses of declaration voters and provision is also made in the Bill to allow persons, whose names have been suppressed, to be included on the register of declaration voters so that they qualify for a postal vote. These are matters that

have arisen from problems identified at past elections and we certainly support these minor changes.

The next change to mobile polling booths is to extend the time under which mobile booths can operate. As has been pointed out in the Attorney's speech and also in the Electoral Commissioner's report, large costs are involved if mobile booths can operate only in a small time (for example, two aircraft have needed to be chartered in the district of Eyre), and we would certainly support the extension of the time under which mobile polling booths could operate as it would reduce the cost of elections without in any way impeding the democratic process. As to voting near polling booths in certain circumstances, this change is simply to enable physically disabled voters to be able to cast their vote in the vicinity of a polling booth. It has been the practice in the past that electoral officers have used commonsense and have taken ballot papers out to physically disabled voters just outside polling booths. This is a sensible change and we support it.

I will address the next matter in more detail because it relates to compulsory voting. The Brown/Olsen Government has tried unsuccessfully on two previous occasions to remove the obligation of electors to vote.

The Hon. K.T. Griffin interjecting:

The Hon. P. HOLLOWAY: Is it three? I stand corrected by the Attorney. Here, the Government is adopting a less direct approach to weaken the compulsory voting provisions which have been part of the South Australian electoral system since Tom Playford introduced them in 1942. The attack on the compulsory vote is three-fold. First, in clause 15 the Government seeks to add a new clause to empower the Electoral Commissioner to decline to prosecute an elector for failing to vote if he is of the opinion that it would not serve the public interest to do so. Given that the cost of prosecuting non-voters may be in excess of the $10 expiation fine and $50 maximum penalty prescribed for the offence and given that the Electoral Commissioner has limited financial resources to operate the Electoral Office, he may well decide that it is not in the public interest to prosecute any person who fails to vote. Thus we could have voluntary voting by default if this clause is accepted, and the Opposition will not support the clause.

To exacerbate this situation, it is interesting to observe that the Government has not increased the penalty for failure to vote and this appears to be the only penalty in the entire Electoral Act which has not been brought into line with the new standard scale for penalty and expiation fees. This comes about in spite of the Attorney's statement in his second reading speech:

> The opportunity has been taken to bring the penalties for offences under the Electoral Act 1985 in line with the new standard scale for penalties and expiation fees. The penalties for bribery, section 109, and undue influence, section 110, have been substantially increased to bring them into line with the public offences in the Criminal Law Consolidation Act.

Why has the Attorney made an exception for offences under section 85 and, perhaps more pertinently, why did he fail to explain this fact in his second reading speech? Nevertheless, the Opposition will not seek to amend that section.

The third part of the Government's attack on compulsory voting is contained in clause 22 of the Bill, which seeks to delete the existing provision:

> A person must not publicly advocate—
>
> (a) that a person who is entitled to vote at an election should abstain from voting at the election;. . .
>
> (c) that a voter should refrain from marking a ballot paper issued to the voter for the purpose of voting.

Paragraph (b) in the original Act is the only part that is being retained in clause 22 of the Bill. The Attorney has justified removal of this provision on the ground that it duplicates section 267 of the Criminal Law Consolidation Act, which provides:

> A person who aids, abets, counsels or procures the commission of an offence is liable to be prosecuted and punished as a principal offender.

However, the penalty for advocating abstention under the Electoral Act is $2 000, or $2 500 under the new standard scale for penalties, whereas the penalty under the Criminal Law Consolidation Act is the same as for the principal offence, that is, $50 maximum for failure to vote. Thus, the Government has disguised a major downgrading of the offence to encourage an elector to abstain from voting, and the Opposition will not support this downgrading.

The reasons why the Opposition believes that the duty to vote should continue to be part of our democratic tradition have been discussed at length in past debates in this Parliament. For example, I refer to the excellent contribution made by the Hon. Chris Sumner on 23 March 1994 (*Hansard*, page 283), on the first occasion, I understand, that the Government attempted to abolish compulsory voting, but I will not rehash those arguments here. However, I point out that the changes in clauses 15 and 22 of this Bill are not recommended in the Electoral Commissioner's report; and, indeed, the Electoral Commissioner's comments on non-voters are most interesting. In the Electoral Commissioner's report on the parliamentary elections on 11 December 1993 (page 60) he concludes the section on non-voters as follows:

> Whilst it can argued that the follow-up of non-voters is an irksome and expensive exercise which does little to promote the user-friendliness of the electoral office, the process does contribute to the cleansing of the electoral rolls. In many instances, electors receiving notices respond with irate and abusive telephone calls. At each stage of the process return mail and unserved summonses are referred to the electoral registrars to initiate further inquiries and commence objection proceedings, if appropriate. Those proceedings culminate in the removal of names from the rolls which would not normally be removed until a statewide habitation review or door knock is undertaken.

This procedure, about which the Attorney has complained in the past—about following up people who do not vote when they are obliged to do so—does have a considerable benefit for the commission in terms of cleansing the electoral rolls and keeping them up to date. There is no doubt that, if voluntary voting were to become the situation in South Australia, our electoral rolls would fairly quickly become a mess.

I point out that support for compulsory voting is not confined to members of the Opposition or the Democrats. My colleague, the shadow Attorney-General, Michael Atkinson, recently showed me an article written by Mr Chris Puplick, who is a prominent former Liberal Senator, in which he argued the case against citizen initiated referenda. In that article he made some interesting comments which are very apposite to this discussion on voluntary versus compulsory voting. In the Constitutional Centenary publication of December 1995 he wrote:

> Australians use elections well—to warn, to punish and to reward. We have moreover one of the most open political systems in the world in terms of the ability of people to participate in public affairs and to seek public office. Supporting all of this is the device which I regard as one of the most important of all elements of Australian democracy—compulsory voting.

He later went on to explain:

> If there is ever to be anything like CIR [citizens initiated referenda] it must be on the basis of retaining compulsory voting. It is the absence of this element which has so perverted the use of this

device in the United States. Compulsory voting ensures that the power of money and organised pressure groups are kept in check and that the power of a pressure group at the ballot box is the same as that which it is in the community generally (not distorted by the effects of participation and non-participation).

They are very astute comments from Mr Puplick and I think it indicates that true Liberals, as opposed to the conservatives who appear to dominate this Government, appreciate the strength that compulsory voting provides to our democracy. I will not say anything further about the compulsory voting issue at this stage because there have been a number of debates in the past on that matter.

The next of the headings in this Bill relates to preliminary scrutiny. The proposal is to change the State Act to be in line with the Commonwealth Electoral Act so as to reduce the test of acceptance for declaration votes, and under the change it will be necessary for the returning officer to be satisfied of an elector's entitlement to vote in the district in which the voter has recorded a vote rather than a stricter test of address, which has caused some problems in the past that have been well identified by the Electoral Commissioner.

The next issue is the question of electoral advertisements. Under this group of changes the Attorney proposes the introduction of a new section 116A (clause 20 of the Bill) to assist in enforcing identification of authors or publishers of election material, and the Opposition has no problem with that section. The other changes are to section 113 of the Electoral Act (clause 19 of the Bill). The existing provisions of section 113 of the Electoral Act make it an offence to authorise, cause or permit the publication of an electoral advertisement if the advertisement contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent. These provisions have been retained under clause 19 but the penalties have been increased to $1 250 for a natural person and $10 000 for a body corporate. We do not have any problem with that.

The Attorney also pointed out in his second reading explanation that it has been the practice of the Electoral Commissioner, when satisfied that an electoral advertisement is misleading, to allow the person the opportunity to withdraw the advertisement. That has been the practice in the past. However, the Government, in this Bill, proposes to give this practice statutory backing and, further, to allow the Electoral Commissioner to require the publication of a retraction and to be able to take an injunction against advertising that he believes to be misleading. The Opposition will oppose these new measures. It is interesting that, in the Electoral Commissioner's report, that they are not sought by him; indeed, I believe that they may impose added burdens on the Electoral Commissioner during a very busy period of an election. I refer to section 5.7 of the Electoral Commissioner's report on the last election (page 66). In relation to election complaints he said:

Dealing with complaints is extremely time-consuming and one can only hope that briefing sessions with candidates and parties at which they are told what is acceptable and what is not will reduce the number. Publicly investigating complaints during the election period can of itself affect the outcome of an election. However, those being challenged must be given the opportunity to correct the matter. There are those who believe the Electoral Commissioner should not get involved in such matters, while others see him as an umpire. The reality is that I am responsible to the Minister for the administration of the Act. I simply cannot ignore the portions of the Act that may have unfavourable outcomes for me or whomever may need investigating. Consequently, I see no need to review the approach outlined in Parliament by the former Attorney-General.

Basically, they are the existing provisions. During debate on this Bill the Hon. Bernice Pfitzner also made some comments in relation to misleading advertising. I think her contribution showed a degree of perhaps not paranoia but certainly a rather worrying misunderstanding, I believe, of political debate. The Hon. Bernice Pfitzner is the Chairman of the Social Development Committee. The committee released a report on prostitution last year, and the Hon. Bernice Pfitzner was happy to use her position as the Chair of that committee to gain publicity when she presented the majority report of that committee, which favoured the legalisation of prostitution and brothels, in particular, in industrial and commercial areas. The Hon. Bernice Pfitzner was quite happy to be photographed and to have her comments published in the papers on this matter.

Subsequently, the Labor candidate for Peake, Tom Koutsantonis, issued a pamphlet in industrial areas of the Peake electorate warning voters of the consequences if this report was adopted. This is what appears to have upset the Hon. Bernice Pfitzner. The honourable member, and indeed all members of this Parliament, have the opportunity if they wish to say anything, within the Standing Orders, in this Parliament under the protection of parliamentary privilege. As Chair of a committee the Hon. Bernice Pfitzner has a vehicle to make comments that give her access to the media that is not available to other members of the public—and, in particular, to political candidates who are not members of Parliament. I would suggest that not only did Tom Koutsantonis have a right to circulate information to electors from whom he is seeking support, but he has an obligation to inform those electors of issues which he considers important.

If the Hon. Bernice Pfitzner wishes to refute anything that a Labor candidate says, then she has a ready forum in this Parliament to address that matter. If she has not adequately explained details of a proposal issued in her name as Chairman of the committee, then I would suggest that is her problem. If she believes she is being defamed or misrepresented she has the option of legal remedies. If the electors of Peake believe that they are being misled, they will take action accordingly at the polls. However, I believe the electors of Peake are grateful that Tom Koutsantonis has raised this issue with them. I believe his action has contributed to the decision of the Government to bury that report, and I believe that the electors will reward an energetic candidate who is prepared to stand up for their interests and make these sorts of issues public.

The real point is that democracy depends on the free flow of information in an electorate. The electors are not fools and can judge for themselves who is acting in their best interests. What I find rather frightening is that with all of the resources at her disposal as an MP, and with a monopoly newspaper in this city that unquestionably favours her Party, the Hon. Bernice Pfitzner appears to want to censor fair debate and has described what is legitimate political comment as misleading advertising simply because she does not agree with it. If this is the way the Government intends to operate, we will have elections rather like those in places like Singapore, where the Opposition is harassed and muzzled simply for opposing the Government of the day. Under her proposal, every single pamphlet would end up being vetted by lawyers and so couched in qualifying language that they would, in my view, not serve the public interest.

If one wants to talk about pamphlets being misleading, we could talk about pamphlets put out by the Government. At the time of the last budget, for example, we had a document put out by the then Brown Government which stated, 'We are coming into the home straight to a better future.' It made all

sorts of claims about reducing waiting lists, the number of people waiting for surgery, and so on. Each of those claims were just opinions; it would be very easy to dispute many of the claimed facts in this document. I really think if we were to change our laws as the Hon. Bernice Pfitzner suggests we would completely stifle parliamentary debate in this country.

In relation to particular clauses being proposed by the Government we believe that the measure should stay as it is. If there are instances where the Electoral Commissioner believes that there has been misrepresentation he can take the appropriate remedies, as he has done in the past, and he can deal with those after an election. But to give him the power to have injunctions during an election campaign would not only be highly distracting in relation to the Electoral Commissioner's time during a busy election period but also I believe it would pose all sorts of dangers to our political system. I believe we would be better to leave the situation as it is.

The Hon. Bernice Pfitzner also suggested that the law should be changed so that the misleading advertising provisions would apply even outside election periods. I am comforted somewhat by an answer that the former Deputy Premier gave to my colleague in another place on 17 October when he said that no changes to the law were necessary to change the period under which the misleading advertising provisions would apply. So I am at least comforted by that assurance from the Government.

To return to the other parts of this Bill, the next section concerns the prohibition of the advocacy of forms of voting inconsistent with the Act. I have already referred to this section in relation to compulsory voting. As I have indicated, we will be advocating that the original provisions of the Act continue to apply and that the original penalties for an offence in that section continue to apply.

The next heading in the explanation of the Bill covers the Miscellaneous section, in relation to which the Attorney points out:

> The opportunity has been given to bring the penalties for offences under the Electoral Act in line with the new standard scale for penalties and expiation fees.

I have already indicated that there was one notable exception to that, namely, the fee in relation to compulsory voting. The final part of the Attorney's explanation of the Bill concerns changes to the Freedom of Information Act. Under this change the electoral roles would become an exempt document, because there is some doubt at the moment whether people seeking the electoral roll under FOI could be able to obtain the roll in the street order form, which obviously would be of benefit to some commercial operators who may wish to use it for purposes that would not necessarily be desirable. So the Government intends to amend the Freedom of Information Act to provide that electoral roles are exempt documents so that that situation cannot come about. We will certainly support that amendment.

In conclusion, the Opposition will be introducing one significant amendment to this Act, to ensure that the Electoral Commissioner and his deputy are appointed by a parliamentary committee which would also have the task of oversighting the Act, in the same way as is now the case with the Ombudsman. In relation to rest of the Bill we will be opposing those provisions which seek to weaken the duty of an elector to vote. For the remainder of the Bill we will be supporting the largely sensible suggestions which have come from the Electoral Commissioner on changes to the Electoral Act.

The Hon. R.D. LAWSON: I support the second reading of this measure and express gratitude to the Attorney for, yesterday, having tabled in this Parliament the report of the Electoral Commissioner in relation to the parliamentary elections of 11 December 1993. The Commissioner's report is most comprehensive and helpful although, as I will mention shortly, given its comprehensive nature it contains at least one curious omission. I see most of the amendments made in this Bill as machinery or technical administrative amendments to enhance the efficiency of elections and to facilitate the work of the Electoral Commissioner.

I think it is appropriate and consistent with his independence that the salary and emoluments of the Electoral Commissioner should be determined by an independent authority such as the Remuneration Tribunal. It seems to me that the existing arrangements by which Executive Government fixes that remuneration are unsatisfactory and inconsistent with the approach adopted in relation to other statutory office holders. I have not researched the point, but I note that, until 1990, the remuneration of the Electoral Commissioner was fixed by the Remuneration Tribunal and that, for some reason, in 1990 that ceased to be the case. I am intrigued by that point, and I seek enlightenment from the Attorney in his response as to the reason for that alteration which was made in 1990.

The Hon. Paul Holloway has commented upon the subject of voluntary voting. He has said that in at least two respects these amendments and this Bill weaken the current provisions of our law relating to compulsory voting. The honourable member would know that in 1993 the Liberal Party went to the election with a clear electoral commitment to reintroduce voluntary voting in this State, it being the belief of the Liberal Party that the democratic process is enhanced if people have the freedom to choose whether to exercise or not exercise the vote.

Three separate and differing measures have been introduced by the Government in this Parliament and defeated in this Council by the combined activities of the Labor Party and the Democrats. That is notwithstanding the fact that the Government had a clear mandate to introduce such measures. The view might easily be taken that both the Labor Party and the Democrats are showing contempt for the electors of South Australia in their refusal to embrace—

Members interjecting:

The ACTING PRESIDENT (Hon. T. Crothers): I call members to order.

The Hon. R.D. LAWSON: The measures described by the Hon. Paul Holloway do not undermine the principle of compulsory voting. It is true that the fine for failing to cast a vote has not been increased in this Bill. That is perfectly reasonable, sound and consistent with the Government's policy, a policy which was endorsed at the last election by the people of South Australia. The people of South Australia want voluntary voting. There is no mandate at all for increasing the penalty for failing to vote.

The other matter on which the Hon. Paul Holloway commented was that provision of the Bill which states that the Electoral Commissioner may decline to prosecute if in his opinion it would not serve the public interest to prosecute an elector. In my view, that provision empowers the Electoral Commissioner in individual cases to decide not to prosecute an elector for an offence against the section. I do not believe that as a matter of statutory construction and interpretation the Commissioner could make a policy decision not to prosecute any elector at all. The Electoral Commissioner holds a statutory office. He is obliged to comply with the

provisions of the Electoral Act and other legislation. Proposed section 85(9a) (clause 15) does not have the effect which the Hon. Paul Holloway contends.

The honourable member also referred to the fact that the provisions relating to misleading advertising in the existing Act are to be altered and the role of the court in relation to offences enhanced. True it is that the Electoral Commissioner did not specifically recommend any alteration to the Act in this respect. In section 5.7 of his report (page 66)—a section which I note somewhat curiously he had printed in bolder type than the rest—the Commissioner said that he saw no need to review the approach outlined by the former Attorney. I am not sure from my fairly quick reading of the report whether the Commissioner precisely identified that particular approach.

However, notwithstanding the views of the Electoral Commissioner, it is for the Parliament to decide what are appropriate mechanisms in relation to misleading advertising. Every member of this Parliament would know that there are frequent public calls for improving the standard of political advertising and for strengthening measures to ensure honesty and integrity in the electoral process. The measure which is being introduced strengthens the provisions relating to misleading advertising. The existing provisions create an offence for publishing or authorising the publication of material that contains a statement purporting to be a statement of fact which is inaccurate and misleading to a material extent.

That language is picked up in the proposed provision. There has been no change to the fundamental offence. The section seeks to improve the efficacy of that provision in that it gives a ready remedy to any person affected by an inaccurate and misleading statement being distributed during the course of an election. The difficulty with the current provision is that there really is no mechanism to prevent the circulation of an inaccurate and misleading advertisement during the course of an election campaign.

The Hon. Terry Cameron, as a former Secretary of the Australian Labor Party, would well recognise the political value of distributing material during the course of an election campaign, especially late in an election campaign, to stem the tide of a swing or to influence the result in a particular seat.

An honourable member: What makes you think he might recognise the value of that?

The Hon. R.D. LAWSON: I will come to that in a moment. The defect in the present provision is that, apart from prosecution for a particular offence, there is no redress at all. The damage can be done and continue to be done, notwithstanding that the material might be outrageously inaccurate, misleading and most damaging to one or the other side in an election.

The courts at common law do not grant injunctions ordinarily to prevent the commission of offences. The granting of an injunction is an equitable remedy, and in many cases the courts have held that it is inappropriate, in the exercise of the equitable jurisdiction, to seek to prevent someone committing an offence.

South Australian cases in which this principle was adopted and referred to related to, for example, the performance of *Oh! Calcutta* at a time when it was perceived that public nudity on the stage would contravene the Police Offences Act. I remember that in one such case an application was made to the court for an injunction and was rejected on the grounds that the court would not grant that type of relief. Unless there is a provision such as that now proposed to be inserted, this mechanism provided for in section 113 relating to misleading advertising is really a toothless tiger.

I must admit that I had some reservations, when first seeing the section, about involving the courts during the heat of an election campaign. It must be borne in mind that, contrary to what the Hon. Paul Holloway was saying about the complaints of the Hon. Bernice Pfitzner in relation to a grossly misleading advertisement being distributed in the western suburbs of Adelaide recently, this provision applies to electoral material only. I would read the Electoral Act (and I understand that the Crown Solicitor takes exactly the same view) as relating only to electoral material during the period of an election.

Section 113 relates to electoral advertisements which are defined as 'an advertisement containing electoral matter', and 'electoral matter' is defined as meaning 'matter calculated to affect the result of an election'. The view is taken—although it is not completely free from argument—that this material really relates only to advertising material which is distributed after the calling of an election. So, the sort of material that the candidate in Peake was distributing so disgracefully would not, regrettably, be caught by this provision in any event.

Notwithstanding the fact that I have some reservations about involving the courts in an election period—and bearing in mind that election periods are now relatively short and usually fought in a fairly heated atmosphere—unless the courts have this specific power to issue an injunction the provisions relating to misleading advertising are not very effective.

It is curious that the court must be satisfied beyond reasonable doubt that the electoral advertisement complained of contains a statement purporting to be a statement of fact that is misleading and inaccurate. A high standard of proof is required, namely, the criminal standard of proof, whereas one would ordinarily expect to find in a provision such as this only the civil standard. So, there is a measure of protection in that the court must be satisfied beyond reasonable doubt.

Another protection is the fact that the application can only be made by the Electoral Commissioner. The Electoral Commissioner is in a sense the umpire in elections, notwithstanding the fact that the holder of that office might not wish to become involved in a matter as highly political as misleading and inaccurate advertising. In the past the Electoral Commissioner has involved himself. It is a responsibility which the statute casts upon him and which he should be prepared to accept.

I do not know that I can agree with the passage in the Electoral Commissioner's report where he washes his hands of the issue in stating:

> There are those who believe the Electoral Commissioner should not get involved in such matters—

and here we are talking of misleading advertising matters—

> while others see him as an umpire. The reality is that I am responsible to the Minister for the administration of the Act.

It is too simplistic to say that the Electoral Commissioner is merely responsible to the Minister for the administration of the Act. That is a truism, but he is more than that: he is cast in the role, in a practical sense, as umpire in certain circumstances. This is not a power that I would expect the Electoral Commissioner to have to exercise often, and it is not a power that I would see the court being keen to exercise, for a couple of reasons: first, the fact that the courts are most reluctant to become involved in the political process; and, secondly, a high standard of proof is being imposed. After giving the matter some considerable thought, I support the introduction

of this measure and regret that the Labor Party, at least from what the Hon. Paul Holloway was saying, does not appear to want to support this aspect of the measure.

I notice in the summary of recommendations that the Electoral Commissioner recommended that the deposit for candidature be increased to, in his words, 'deter candidates who are less than serious in their parliamentary aspirations'.

The Hon. M.J. Elliott: What about $20 000?

The Hon. R.D. LAWSON: The Hon. Mike Elliott suggests $20 000 as an appropriate form of deterrence for those who might have parliamentary aspirations, but this measure does not contain any increase in the deposit requirements, and I think that is a sensible approach. I do not believe that citizens should be deterred from participating in the electoral process by the imposition of substantial deposit requirements. No doubt the revenue would be improved if the deposit requirements were increased, but I do not believe that the number of candidates or the type of candidates we have in South Australian elections have caused such problems as to warrant the imposition of substantial deterrents. The Attorney-General and the Government are to be commended for not embracing that recommendation of the Electoral Commissioner.

I mentioned before that the Commissioner's report was a most extensive report which goes into a large number of complaints, naming individuals and describing the whole electoral process in a great deal of detail. However, it is regrettable that in relation to the matter of misleading advertising he did not put on the record the one prosecution which did occur following the 1993 election. It is not necessary to go into the details of that but I feel, for the purposes of an historic record, this report of the Commissioner is deficient. I do not believe that by giving a factual account of that prosecution he would have in any way compromised the independence of his office but, if these reports are to be of historic assistance and to record the events, it seems to me that it would have been appropriate for that prosecution to be described in some detail.

In conclusion, this amendment Bill contains a large number of very sensible administrative measures, and I commend it.

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

CRIMINAL LAW CONSOLIDATION (SELF DEFENCE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 6 February. Page 854.)

The Hon. A.J. REDFORD: I support this legislation. I acknowledge at the outset that this is a difficult issue, and I do not propose to inflict upon members a lengthy legal lecture on some of the difficulties that this issue raises. Many of the legal aspects that arise under this legislation were comprehensively covered by my colleague, the Hon. Robert Lawson, last week and I will not go over the same ground.

This legislation is important and has been the subject of considerable comment in the media, led largely by the member for Spence on talkback radio. It is a difficult matter, not in the sense that there is a dispute on matters of principle but in the sense that it is difficult to put down the precise form of words that adequately and properly reflect our common intention. I might say that, despite the mischievous activity and statements made by the member for Spence, I have yet to see any disagreement on the issues of principle involved in this law. Let me make it clear: on no occasion has the Attorney-General or the Government sought to introduce an objective test in assessing the merits of a defence of self-defence in the criminal law.

Indeed, my contribution in this matter was delayed because I was most interested to await the attempt by the member for Spence, acting in his capacity as shadow Attorney-General, to draft up his own formula for self-defence. Lo and behold, less than one hour ago I received a copy of the amendments to the Bill to be moved by the Leader of the Opposition in this place. I will comment on those suggestions in due course.

It is disappointing to hear the member for Spence on talkback radio, generally speaking to Bob Francis on 5AA, trying to con his listeners into believing that he is tough on law and order and suggesting that the Attorney-General is seeking to undermine or obviate the rights of people to properly protect themselves. Indeed, in my view he has a credibility problem. We know that if he does get tough he will be rolled by his Caucus. The ALP, given its record and its revolving door prison policy overseen by the Hon. Frank Blevins, will never play tough on law and order. All that the Leader of the Opposition can do on law and order is talk about New Zealand bikie gangs and knives—very little on the basic issues of criminal law.

I must say that, notwithstanding my views, I went through in detail a copy of a letter which was sent to me by the member for Spence, Michael Atkinson, and which is dated 31 January 1997. As I understand it, from talking to my colleagues, we all received a copy of that letter. I will not go into some of the more extravagant language that the honourable member uses, but I will draw members' attention to the following comment:

> I ask you to consider this letter in defence of the 1991 law in conjunction with my Criminal Law Consolidation (Intoxication) Bill now on the Notice Paper for private members' time.

As I understand it, the member for Spence is seeking to have the state of the law reflect not only the amendments that he has moved today but also the suggestions contained in the Criminal Law Consolidation (Intoxication) Bill. As I understand it, he wants and has said on the public record that there ought to be a subjective test. As I understand his position, he means that if a person is confronted with an incident or a situation that person can act in accordance with what they genuinely believe to be the case.

If I can use a simple example, if someone has a small knife in their hand and they are advancing towards the accused, and the accused thinks it is a machete or gun, and the accused reacts on that basis, provided that belief is genuine, then the accused is entitled to an acquittal. I take no issue with the member for Spence in that case. Indeed, the member for Spence is never reluctant to go on the public record to say that a person's home is their castle, and that a person is entitled to defend their home. Indeed, I would take no issue with that principle. He goes on and says that a person in their home should not be subjected to legal niceties or have some lawyer much later determining what he should or should not have done in the cool light of day, ignoring the heat of the moment, and I take no issue with that.

But where the honourable member gets himself completely mixed up is where you have an accused person who might be intoxicated at home, and we should all remember that most of these circumstances—as the Hon. Robert Lawson said in

his contribution—occur when people are intoxicated, and that is the fact of the matter. In our community, there is nothing wrong with a person sitting at home, drinking alcohol and becoming intoxicated. In fact, that is quite a permissible activity in our community.

Members interjecting:

The Hon. A.J. REDFORD: I am just trying to demonstrate how ridiculous the member for Spence's position is on this issue. I am sure if you follow the honourable member's viewpoint, a person intoxicated in their home, confronted with a burglar, is entitled, if that person has a genuine belief, to defend themselves, their family or their home, and they are entitled to do so on the basis of their genuine belief as it exists at the time. So, in fact, if I happen to be intoxicated at home and someone comes in or breaks through my front door, and I happen to believe that they are carrying a gun, when in fact it might be some other inanimate object, and I genuinely believe that I have to defend myself, I am entitled to do so. I am sure the member for Spence would say, 'Yes, he is. He is in his home and someone has broken in; he is entitled to defend himself.'

But when you look at his Bill on intoxication, we really do get to a very confusing position. For the benefit of members, I will read the relevant clause in his Bill. It provides:

> A person charged with an offence—
>
> let us say in this case it is an offence of murder—
>
> who is in a state of self-induced intoxication—
>
> and let us say in this case it is a person who had been drinking quite a lot at home—
>
> at the time of the alleged offence will be taken to have had the same perception and comprehension of surrounding circumstances as he or she would have had if sober.

In other words, the court is to totally disregard the fact that that person may well have become legally, in his own home, intoxicated, in taking into account whether or not that person has a genuine belief. It further provides:

> That person will be taken to have intended the consequences of his or her acts or omissions, so far as those consequences would have been reasonably foreseeable by that person, if sober.

In other words, what the honourable member is saying in his Bill is that we will have this artificial direction to the jury that, despite the fact that he was intoxicated, and despite the fact he genuinely believed in his intoxicated state that his family or he was in physical danger, they are to ignore that. They are to take this man as if he were sober. I for the life of me cannot understand what the member for Spence is seeking to achieve, and I cannot be led to any other conclusion than that the honourable member has deliberately embarked upon a course to build this up into a great furphy in the mind of the public for the sake of short-term electoral gain.

In fact, unless in another place he can come up with a reasonable explanation as to why I misinterpret and misunderstand his global approach to the law, I cannot but come to any other conclusion than the man who would be Attorney-General, following an election, is playing politics—and very dangerous politics—with a very important and serious aspect of our criminal law. I am prepared to give him the benefit of the doubt, but I must say I am very suspicious about it.

The Hon. R.R. Roberts interjecting:

The Hon. A.J. REDFORD: But you cannot. I will read his legislation to the honourable member again, because I am sure the honourable member, having regard to the body language and the reaction he has had, understands the point I am making, and that is this.

The Hon. R.R. Roberts interjecting:

The Hon. A.J. REDFORD: I will read to the honourable member what the member for Spence says in his letter, out of his own mouth, to me and many other Liberal members, on this topic. He says:

> I ask that you consider this letter in defence of the 1991 law—
>
> and by that he is referring to the law of self-defence—
>
> in conjunction with my Criminal Law Consolidation Intoxication Bill.

He stands condemned by what he says and it is all there in writing on the public record, he who would be Attorney-General after the next election, he who continuously goes on talkback radio and mischievously scares ordinary people in South Australia on this topic of self-defence. I have to say that, if he has done that deliberately, he does not deserve to be considered as an Attorney-General of this State following the next election. On the other hand, if he has made a genuine mistake or misunderstands what he has done, then he ought to stand up and say so, and we can judge the quality of his advice as a potential first law officer in this State by what he says.

There are many other issues which I would like to cover, but I will just deal with a couple. First, there was a recent article in the *Advertiser* by an academic, a Mr Leader Elliott, and the Hon. Robert Lawson referred to it, and the Leader of the Opposition quoted from it in support of the position advanced by the Opposition. Mr Leader Elliott (and I will say this so that members of the Opposition understand this very clearly) is on the record as saying there ought to be an objective test in relation to the law of self-defence. He has gone on record, not just in the *Advertiser*, but in many legal articles he has written on this particular topic, that he wants an objective test. Neither the Australian Labor Party nor the Liberal Party supports that particular position. All Parties are agreed, quite frankly, about what we want the law to be. The difficulty has been putting it in words so juries can be properly directed. There have been a few attempts to try to get the words on this right. Parliament last attempted this back in 1991, and there have been attempts by the Attorney-General on previous occasions to get this law right.

The Hon. Carolyn Pickles interjecting:

The Hon. A.J. REDFORD: I was not here, but there may well have been a select committee. Everyone here has a good feel about what the law ought to be. I sent a draft of this legislation off to a number of my colleagues who practise in the criminal law and almost universally, when I rang them and asked them what they thought, they said, 'Look, Angus, it really doesn't matter what you people write—the jury will make up their mind.' The Hon. Ron Roberts nods his head and I am pleased he does so. When the jury goes in, it will say, 'On the facts, that guy deserves to be acquitted or found guilty.'

I could say that that means that we can sit back and feel fairly relaxed about this process because we know that juries will get it right and we have confidence in the jury system. Unfortunately, I do not think we can be as glib as that because, if something goes wrong in the first instance, if a judge cannot properly direct a jury in simple terms, then it is grist for the mill for lawyers and judges in appellate courts. That has been where the problems have arisen.

I understand that the problems in relation to the existing law have not arisen at trials. There are many trials at which these issues are dealt with simply and easily. These problems have arisen in the context of appeals. I might say for the benefit of members that a difficulty arose in relation to the decision and facts in the Grosser case. Mr Grosser argued and

put to the jury that he genuinely believed it was necessary for him to fire to defend himself when the police officer was coming up. Justice Millhouse gave a direction to the jury on the issue of murder and self defence. I ask members to consider this in the light of some of the criticisms by Justice Mohr and some of the other Supreme Court judges, and I think they have been a little over the top. Members should consider whether Justice Millhouse's instruction was too complicated for any average member of the public to understand, as follows:

> The first element then is that the accused deliberately fired at someone, that he fired deliberately and not accidentally.

That is a pretty simple direction that most jurors could understand. He then said:

> Second, that the shooting was unlawful, that the accused had no lawful reason for shooting. This immediately raises the question of self-defence. The accused has said in shooting he was defending himself, Lorraine Bailey and the children. That is the essence of the defence to all charges. If the accused genuinely believed he was firing in self-defence and that the firing was necessary and reasonable to defend himself, Lorraine Bailey and the children, then what he did was not unlawful. The Crown would have failed to prove the second element of the crime and therefore the accused should not be guilty of attempted murder, a crime which we are now considering.

What is so hard or difficult about that? I suggest it is an appropriate and adequate direction and one that a jury can understand. That is in the context of the existing law. Some amendments are on file and I will comment on them in Committee, but I will comment on one amendment to be moved by the Leader.

The Hon. M.J. Elliott interjecting:

The Hon. A.J. REDFORD: The Hon. Mr Elliott asks whether the changes will keep it that simple. I am an optimist and I think they will. Perhaps the judges will take the same approach as the lawyers I rang who said, 'Don't worry about it too much; the juries will make up their own mind and they are pretty good at judging what is a good and appropriate community standard in this area.' It is only when it gets on appeal and lawyers start going through it line by line, word by word and marrying it back to the section and trying to find some prejudice from that to the accused that we get such problems. It is only if a judge has perhaps not had much experience or is not confident to say—

The ACTING PRESIDENT (Hon. T. Crothers): Order! I gently remind the Hon. Mr Redford that he should be talking to the substance of the Bill and not framing an answer to the interjector. You can do that in Committee, if that is your wish.

The Hon. A.J. REDFORD: Before I was interrupted, I was saying why it was important to get it right, because lawyers will go through it from a dozen different angles to see the section marries up with what might be a perfectly reasonable—

The Hon. CAROLYN PICKLES: Mr Acting President, I rise on a point of order. The honourable member should direct his remarks through the Chair.

The Hon. A.J. REDFORD: Mr Acting President, I have addressed every single comment through you.

The ACTING PRESIDENT: Order! I will not uphold the point of order, but I indicate gently to the honourable member that the custom of the Council is that remarks should be addressed through the Chair. I am not upholding the point of order.

The Hon. A.J. REDFORD: I accept that. The fact is that I can look at the roof if I want to. For the benefit of members opposite, I am happy to go through on this topic for a couple of hours. It is an area I know and in which I practised for a number of years and, if the honourable member wants to sit here till 6 o'clock, I am happy to keep her here until then. I want her to understand that. As I was saying, it is difficult—

The ACTING PRESIDENT: Standing Orders tell us that members should address their remarks through the Chair. I did not uphold the point of order but, if you want to fly in the face of my gentle reminder, I will have a somewhat more forceful reminder for you of what Standing Orders say with respect to how and why speakers should address their remarks through the Chair.

The Hon. A.J. REDFORD: Mr Acting President, I mean no disrespect, but I have addressed every single remark through the Chair.

The ACTING PRESIDENT: I have not taken any disrespect. I refer to Standing Orders.

The Hon. A.J. REDFORD: As I was saying, for the third time, the difficulty is when it gets on appeal and lawyers try to marry the section to what the judge directed. It is usually defence lawyers, because they are the only ones who have a right to appeal from the result of a criminal trial. That is where the difficulty is and that is why it is important to try to get the section down to the most simple terms possible.

The Hon. M.J. Elliott interjecting:

The Hon. A.J. REDFORD: They have expressed worries about it. As to an amendment to clause 15, it is suggested by the Hon. Mr Elliott that the word 'reasonably' be deleted before the word 'proportionate'. What the Attorney has attempted to do is bring in a subjective test followed by an objective test, and the Hon. Mr Elliott argues that it is a subjective test in relation to whether or not there was a requirement to act and it is an objective test in determining how much of a response an accused person should be given in that circumstance. The honourable member says that the word 'reasonably' should be deleted because it brings an objective test to the level of force that a person might use if they genuinely believe that they need to use that force.

As I understand it—and I am sure the honourable member will correct me if I misunderstand what he is saying—he says that there is a degree of objectivity. So, if a person has a genuine belief that they need to defend themselves—if it is objective—the next stage is that they can be convicted. I invite the honourable member to consider the words 'defendant genuinely believed them to be'—in other words, a subjective test: it protects a person acting in that context.

If a person understands and genuinely believes a set of circumstances to be the case, a jury would always look at a reasonable and proportionate response. If this amendment were to be successful I am concerned that a person who has a genuine belief that he or his family are in some danger may be protected by this legislation. Based on the amendment, if a person embarks on an act of vengeance because they genuinely fear for their family and immobilise another person and continue to apply force as a consequence of anger, they may be protected under this section. I invite the honourable member's comments and view when the Bill comes to the Committee stage as to whether or not I am incorrect—

The Hon. R.R. Roberts interjecting:

The Hon. A.J. REDFORD: I suggest that it should be. If a person has exercised enough force—he might have shot the person in the leg—and has immobilised him, objectively that is the end of it. But someone may argue that the fifth shot, which went through this person's head and killed him, was proportionate because, after all, he had just finished raping his wife and killing his children. I may be wrong in interpreting it that way: as I said, I invite the honourable

member's comments about that interpretation. If we are not genuine about this debate, it is an example of how mischievous any of us could be on talk-back radio late in the evening.

The Hon. Carolyn Pickles: Are you referring to my amendments?

The Hon. A.J. REDFORD: No, I am referring to the member for Spence, as I said earlier. I invite the member for Spence to show this place how he can draft a simple direction to a jury incorporating his amendments and proposed new subsection (3)(a) and (4)(a), and the exceptions referred to therein. It is my view that the Opposition's amendments make it much more difficult for a judge to simply, clearly and easily direct a jury. I invite the honourable member to consider that.

On the basis of the honourable member's proposed intoxication amendment legislation, I invite him to consider how would one direct a jury if one has the situation of an intoxicated person who enters through a back window, approaches a person who has nothing but a coin in his hand, but that intoxicated person genuinely believes that it is a gun and shoots him dead? I invite the honourable member to consider how one would direct a jury in the situation of a person arriving home, finding a man on his premises having either murdered or attacked his children and in the process of attacking his wife, shooting that man a couple of occasions and immobilising him, and then firing two further shots thereby killing that man? What direction would the honourable member give a jury in both those situations on the basis of his amendments? I think that he would find that it would be an extremely difficult task.

The Hon. Carolyn Pickles: The Hon. Michael Atkinson is not in this Chamber: he does not have any amendments on file. To whose amendments are you referring?

The Hon. A.J. REDFORD: The Opposition's amendments. I invite the honourable member to consider those situations and to perhaps play a little less politics and apply a little more law on this very difficult issue.

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their contributions to the Bill. I regret that the Opposition has chosen to oppose the Bill. I do not regard it as a partisan political measure. Indeed, I have tried, so far as I am able, to keep the Opposition and the Democrats informed and consulted as the Bill progressed.

I stress that the Bill was not introduced for political reasons: it was introduced as a direct result of increasingly urgent calls for reform from the Supreme Court and representatives of all parts of the legal profession. In formulating this part I have attempted to heed the calls for reform and the reasons which motivated these calls as well as the original intentions of the select committee and the Parliament. I have attempted, so far as is possible, to balance those concerns. Of course, I recognise that this is a difficult task and that this is a difficult issue of law and policy which has seen Parliament and the courts in knots over the past decades.

Nevertheless, I have consulted personally with the shadow Attorney-General, a representative of the Supreme Court, the Bar Association, the Law Society and the Director of Public Prosecutions. The amendments that are on file are a direct result of these consultations. The Bill that is before us was amended before it was introduced to accommodate a concern expressed by the shadow Attorney-General.

In short the Bill represents the results of an honest attempt to achieve the best balance between the competing ideas about the use of force in self-defence that can now be reached. The Hon. Carolyn Pickles spoke against the Bill. It is therefore appropriate for me to spend a little time on the arguments that she has raised. The honourable member accurately summarised one of the dangers of the current approach in relation to those who are over-ready to react with armed force when she spoke of the social necessity to discourage what she called 'the ready use of firearms' if there are less violent means of apprehending offenders, such as bank robbers, but she did not quite accurately summarise the effect of the Bill, which is, I think, the fundamental source of the Opposition's rejection of the Bill when she said that the object of the Bill is to introduce an objective element into the assessment of the actions of the accused persons.

There is a sense in which that is right and a sense in which that is misleading: such are the regrettable subtleties of law and policy in this area. First, one principal objective of the Bill is not to introduce anything new to the law at all. A prime objective of the Bill is to simplify the law by removing from it such difficult legal concepts as 'criminal negligence' and 'grossly unreasonable', with which courts, practising lawyers and, as a consequence, juries, have struggled. The honourable member has doubts about whether the Bill will achieve this aim. All I can say in response is that in this she differs from the Bar Association, the Law Society, the DPP and a judge of the Supreme Court. Second, it is true that an object of the Bill is to introduce some kind of standard of behaviour into the test for self-defence. However, it is not a wholly objective standard. I cannot stress too often that the standard of behaviour is to be judged by the jury on the facts as the accused genuinely believed them to be. I also cannot stress too often that this change brings the law in South Australia into line with the laws of other Australian jurisdictions and the great majority of law reform recommendations on the subject.

The honourable member cited the article by Mr I. Leader-Elliott in the *Advertiser*. What she did not say is that, although Mr Leader-Elliott criticised the Bill, he is an advocate for placing an objective element into the current law and, indeed, more than one objective requirement. In short, he is of the opinion that the Bill is too subjective. Mr Leader-Elliott is in favour of a requirement of reasonableness, but does not favour a requirement of proportion. The difference between the two is quite subtle. However, that is not a point taken by the honourable member. What Mr Leader-Elliott wants is to take the law back to what it was before the current section was enacted. Self-defence then (at common law) was available only where it was adjudged that a defendant had acted as a reasonable person would when faced with the same circumstances and the force used was reasonable.

The honourable member discussed the English decision in Oatridge, but made two errors in so doing. First, contrary to her statement, the compromise verdict of manslaughter for partial self-defence (or excessive self-defence) is not available under English law. This has been recently (and controversially) established in the House of Lords decision in Clegg, in which a soldier was convicted of murder while on duty in Northern Ireland for firing, with fatal results, on a motor vehicle fleeing a roadblock. The basis for the manslaughter verdict in Oatridge was provocation.

Secondly, the honourable member answered the question of the difficulty of proof by relying on cross-examination of the accused. The problem with this is that the accused is under no obligation to give evidence. What will be the case where the accused remains mute and relies on the evidence

of other witnesses? The honourable member asked: 'Should it be necessary for a woman in that situation to show that there was a genuine fear of being killed in a specific manner on that particular night?' The answer to that question is that the answer is the same under both current law and under the Bill. The primacy of the genuine belief of the accused as to the situation confronting her remains unchanged by the Bill.

I have attempted by all means possible to achieve a consensus between all centrally concerned with the formulation of this Bill in the light of the repeated criticisms that have been made about the current law by those who actually have to make it work. There are those who want to ignore those criticisms and want to wave the statute around like a flag. The fact is that the current law has been tried, and it has not been a success. While remaining firmly committed to a workable and just law in the area, I remain willing to work with all Parties in the Parliament to achieve a reasonable position in the law. I therefore commend the Bill to this Council.

The Council divided on the second reading:

AYES (11)

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

NOES (8)

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

PAIR

Laidlaw, D. V.	Nocella, P.

Majority of 3 for the Ayes.

Bill thus read a second time.

MATHEMATICS AND SCIENCE STUDY

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

That this House congratulates the commitment and work of South Australian teachers and schools in both Government and non-Government sectors in achieving outstanding student results in the Third International Mathematics and Science Study (TIMSS) which had South Australia ranked ninth overall in mathematics and seventh overall in science in a survey conducted in forty-five countries worldwide.

(Continued from 27 November. Page 588.)

The Hon. M.J. ELLIOTT: I rise to support the motion. I have many friends who are maths and science teachers, having taught myself and taught in that field and I must say the congratulations they are getting in this motion is very well deserved. I had the opportunity only last evening to watch on ABC TV a discussion of the relative rankings of different countries and as a South Australian it was pleasing to see that we managed to beat all the other States of Australia. In fact, we appear to have beaten all other western nations at least in the survey of maths and science. I was a bit worried about the flavour of the program in that it seemed to suggest that in some ways we had done very poorly overall in Australia. Of course, that comparison was in particular with Asian nations but I think that was taking an overly simplistic view of education and what we are achieving.

Nevertheless, I am pleased to see what has been achieved in South Australia. However, we must be honest and recognise that these are the results of students who have been in the system for quite a few years. They are not the results of what happened in the school during the year in which the tests were carried out but the cumulative effect of education over quite a few years. I am concerned about the fact that in South Australia we are well in front of other States except for, I think, Western Australia and the ACT: we are well ahead of Victoria, New South Wales, Tasmania and Queensland. As I said, those results are the cumulative effect of training over quite a few years.

In South Australia, the Government has been cutting us back to the pack. It has reduced teaching numbers and cut the number of SSOs, etc. This means that, while ranking well internationally and being in front of other States, if we go back to how the other States are functioning, we would be much further down the international scale. We are being moved back to average by what is happening in South Australia, although we might not see that occurring in our results for a few more years to come, because as I have said education is a cumulative thing. So it will take some time for what has been done to education progressively to have an effect.

A number of other things are happening now that put future results at risk. In the recent report of the Australian Council of Deans of Education it is noted that mathematics and science will now attract HECS fees higher than for many other courses. It must be recognised that particularly in the high school sector people will need to have five years of education before they can become a teacher: three years to get a degree and two years to get a post-graduate qualification for teaching. Their HECS debt will be between about $18 000 and $25 000. That will be significantly higher than for people in other areas of education. When you realise that within a short period of time (two years) the State will face a shortage of qualified mathematics and science teachers, and HECS fees will go up but wages will not, you do not need to be a genius to work out that that will put even more pressure on the number and quality of people going through the system and, ultimately, on the quality of people who go into education.

Unlike most other Western nations, virtually all mathematics and science classes are taught by teachers who are qualified in mathematics and science. In the United States, many mathematics and science classes in the equivalent of our secondary system are taught by people who do not even have a major (sometimes a minor) in mathematics or science. That is one reason why they are doing so poorly. We are moving towards that position in South Australia and Australia generally because of the reduced numbers of graduates. We now have the pressure of HECS fees still about to bite, although that bite is probably happening in respect of people who are enrolling this year to study mathematics and science. Of course, at one time, that would have led on to a teaching degree.

The Australian Council of Deans of Education report also referred to another report. I managed to get copies of that report from the Australian Council of Education Research. It looks at how teachers feel about themselves at the moment. The results of that report are frightening. It compares Australia with Canada, England, New Zealand, Korea, Belgium, Germany, Latvia, Lithuania, Portugal, Spain and Switzerland. Only 26 per cent of mathematics teachers feel appreciated by society compared with 44 per cent in Canada, 19 per cent in England, 40 per cent in New Zealand, 55 per cent in Korea, 65 per cent in Belgium, 45 per cent in

Germany, 19 per cent in Latvia, 44 per cent in Lithuania, 52 per cent in Portugal, 23 per cent in Spain and 84 per cent in Switzerland. It will be seen from those results that the way in which these teachers feel appreciated by society in Australia is comparable with England, Latvia and Spain. The level of appreciation in most other of those nations that I listed is significantly higher. With regard to the number of teachers appreciated by students, according to that survey Australia is the second lowest. I will table these documents in a moment.

In a similar survey carried out of science teachers, with respect to the question of appreciation, Australia fared the second worst. In England the figure is 18 per cent; in Spain, it is 19 per cent; in Australia 31 per cent; and most other countries are significantly higher, with Belgium scoring 71 per cent and Lithuania 73 per cent. What is even more interesting in that survey is that it also asked other questions of science teachers in Australia and other countries. The question is asked: was teaching your first choice and would you change? At the lower end of high school teachers, only 50 per cent of Australian science teachers listed teaching as their first choice. When asked whether they would change, 51 per cent said that they would. In Canada, 68 per cent had teaching as their first choice, and only 27 per cent would have changed. The survey shows that no other country had a lower percentage of teachers doing this as their first choice and no other country had a higher number saying that they would prefer to change to another occupation.

This indicates that at a national level not only are science and mathematics teachers feeling unappreciated when compared with other nations but also, first, that a much smaller percentage of them than in other countries went into teaching as their first choice and, secondly and more importantly, a much higher percentage of them (with the exception of New Zealand) would like to get out of teaching if they had another choice. That is a very real concern.

If members watched a program on ABC television last night which looked at these sorts of questions, they would well and truly understand why. The fact is that, on the whole, Australian teachers feel under valued. They feel that way for a range of reasons, but probably the most important one is because of the way that they are treated by Government. They must fight tooth and nail to get a reasonable wage or salary. At the same time as they must fight to maintain that income, they find that their support staff is being reduced and facilities are being cut back. So, this situation is simply no surprise.

If the Government wants to continue to maintain the good results that have been achieved in South Australia, it must reverse a great deal of what it has done so far. Amongst other things, I suggest that the Government should look at reducing the number of resignations from the education system. That will happen only if it provides proper financial and human resources to schools and a significant improvement in conditions. I stress that there must be a significant improvement in conditions in country areas, because they always come off worse when they are struggling for numbers and quality. Country schools tend to get the last pick of the teachers who are available and, if the Government tries to force teachers to go into the country, the very best of them resign.

It is also important that the Federal Government increase the number of graduate teachers, and it can do that in a number of ways. It needs to go back and look at the decision it made on mathematics and science. It made a dreadful decision to put the HECS charges for mathematics and science above those of a number of other fields. A large percentage of people with mathematics and science qualifications do not end up in particularly high paying careers and the assumption (although certainly not in relation to teaching) that they will is a wrong one, and the Federal Government has to re-evaluate that.

The Federal Government will also have to look at the funding of tertiary institutions, in particular at the teaching course intakes. My understanding is that the Adelaide University, as an example, was halving its intake of graduate diploma education students. That was all in response to a cutback in funding. That is tragic when you look at the situation that is currently confronting us. It is a course that many mathematics and science graduates in particular would have gone on to undertake. Now it will be that much harder to get in. The Federal Government again will have to look at funding.

Another issue at which the State Government could look—and the Federal Government may play a role in this—is to consider paying at least part of the HECS bill for teachers. It is not that dissimilar from the days when there was a teaching scholarship, but the Government may have to consider paying the HECS bill during the teaching years for a person who comes out of university and is teaching. That would work in a reverse but similar manner to the old teachers' scholarship in that it will at least encourage people to go in knowing that they will come out as teachers and knowing that the bill that they face at the end will not be so great and that the HECS bill that currently bites into a not so attractive salary will be reduced.

The Democrats opposed the HECS charge from the beginning and always predicted that it would continue to grow like topsy once it was introduced, but recognising that the HECS charges are there, the Government, for its own self-interest, should look at reducing HECS charges and perhaps even paying some part, if not all, of the HECS bill for people who are teaching.

The Hon. R.I. Lucas: Where do we get the money?

The Hon. M.J. ELLIOTT: You have a choice: either you pay the money or you do not have the quality of teachers—it is that simple. You must face up to what is happening and, if we do not do so and do not have the number and quality of teachers in the system, we will not continue to have the sorts of results that we have achieved in South Australia. That is the real world that the Government has to face up to.

I join the Government in congratulating the South Australian teachers and schools for the work they have carried out. They can be proud of what they have achieved. I stress that the results are the results of many years work and not just of the year in which the results occurred. Unless the Government bites the bullet in important areas, the next time one of these surveys is carried out South Australia will slide down the ladder and the Government, I hope, will not seek to blame the teachers or the schools.

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

MIMILI SCHOOL

Adjourned debate on motion of the Hon. R. R. Roberts:

That the Legislative Council—

1. censures the Minister for Education and Children's Services for providing an asbestos classroom to Mimili School against the express wishes of the Mimili Community Council

Incorporated, the Nganampa Health Council Incorporated and the Anangu Pitjantjatjara Services Aboriginal Corporation.

2. calls on the Minister to abide by the Anangu Pitjantjatjara Services Aboriginal Corporation order issued on 4 October 1996 to remove the building from the Pitjantjatjara Lands and make the site clean; and

3. calls on the Minister to provide appropriate classrooms to children at the Mimili School following consultation with the appropriate school, community and local governing authorities.

(Continued from 4 December. Page 713.)

The Hon. R.I. LUCAS (Minister for Education and Children's Services): Some time ago I commenced my response to the debate on the motion moved by the Hon. R.R. Roberts, and I do not intend to go back over all the ground that I raised in my previous contribution. Suffice to say that the Hon. Ron Roberts in his contribution at great length sought to defend himself from the accusation I had made previously about his behaviour in this Chamber being reprehensible in labelling me a racist over the actions of my ministry and my own actions as Minister in relation to the Mimili school. I was reminded of that oft quoted phrase, 'Me think he doth protest too much,' when looking at the contribution in *Hansard*, as I did on the weekend—

The Hon. Anne Levy interjecting:

The Hon. R.I. LUCAS: I did not say who it was: I just said that it was an oft quoted quotation. It does not matter whether it is accurate—it is oft quoted.

The Hon. Anne Levy: It is a misquote.

The Hon. R.I. LUCAS: It doesn't matter whether it is a misquote—it is an oft quoted quotation.

The PRESIDENT: Order! The honourable member might like to contribute.

The Hon. R.I. LUCAS: I am sure she would like to contribute later. When I read the contribution on the weekend, I saw that 60 to 70 per cent of his contribution was an attempted defence to indicate that he had not really called me a racist but was doing a whole range of other things.

I will not go into the explanation again, but the Hon. Ron Roberts was under considerable pressure at the time from his own colleagues. A number of them had approached me, apologising for the behaviour of the Hon. Ron Roberts during the debate on Mimili and distancing themselves from his claims on the issue. He then spent a considerable amount of time seeking to back away from or explain his reprehensible behaviour in relation to the issue.

The Hon. Ron Roberts is a much chastened person. Whilst he is not prepared to apologise to the Chamber, I know that he has been severely embarrassed in relation to this issue as a result of his behaviour. He has been criticised by a number of people, and I can only hope that in the absence of that apology the Hon. Ron Roberts, in his own behaviour in this Chamber on issues of race, will not play the racist card in future as he sought to do on this issue.

There is always room for differences of opinion on matters of policy and room for criticism, but it is reprehensible when a member stoops to play the racist card to try to defend a position on the issue. If a member has to stoop to that level, clearly the substance of his or her argument is lacking, as it was in the case of the Hon. Ron Roberts when he thought he needed to stoop to playing the racist card.

I will address some inaccuracies. I was disappointed in reading the honourable member's contribution again to see how he needlessly attacked an *Advertiser* journalist in this place, Mr Phil Coorey, who most members in this Chamber would believe fairly accurately reports the proceedings of the Legislative Council. The Hon. Ron Roberts unfairly attacked Mr Coorey, who was only undertaking his task in reporting accurately what occurs in this Chamber. He attacked him unfairly, accused him of writing an inaccurate story, accused him of being duped by the Minister and, in fact, being a pawn of the Minister. He also said that his treatment of the article disappointed him greatly and that he had not properly researched his material. It was quite a vindictive attack on Mr Coorey. It is to Mr Coorey's credit that in subsequent writings he has not sought to take revenge on the Hon. Ron Roberts and has continued, as a very fair and reasonable journalist, to report fairly and accurately the Hon. Ron Roberts—a lesser journalist may have been provoked into seeking revenge. Certainly, I do not think that many other members would join with the Hon. Ron Roberts in that vicious attack on Mr Coorey in this Chamber.

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: The substantive motion was your attempting to censure me on this issue so we are addressing all those issues. As I indicated previously, I was taking advice on a number of issues in relation to some of the claims being made by the Hon. Ron Roberts. The Hon. Ron Roberts had seriously misled the House in relation to a number of claims that he made in relation to Mimili. He has been forced into a retraction on at least one of those claims already, and there are number of others I want to highlight again this afternoon. The Hon. Ron Roberts said:

> That council is clearly in charge of any development that takes place on Pitjantjatjara lands and is an elected body. The Mimili council is the equivalent of any other local government authority and it was not consulted in any way.

I will read some other claims made by the Hon. Ron Roberts of a similar nature and then indicate where they are wrong. The Hon. Ron Roberts also said:

> We must remember in this whole sorry saga just what the position is with respect to that building, bearing in mind that I have already recounted that the Anangu Pitjantjatjara Services Aboriginal Corporation comprises the people who have jurisdiction over this issue. Jurisdiction is an important issue here because when the Opposition raised serious questions in this place we were derided.

In an attempt to defend his position, the Hon. Ron Roberts quoted from material that his friend from the north had sent him and quoted a resolution as follows:

> The Anangu Pitjantjatjata Services Governing Committee on 4 October 1996 has assessed the application for placement of the structure at Mimili. The committee wishes to inform you that the application has been refused and the structure is to be removed from the lands and the site made clean on completion by 18 October 1996. The decision is final. The corporation has power to recover reasonable costs and expenses incurred by it in issuing this notice and taking any further action pursuant to its powers under the Anangu Pitjantjatjata Land Rights Act and the construction and development policy. To this date this Government and this Minister have completely ignored the express direction of that council which is statutorily empowered to make those decisions. This would not happen to a local council anywhere in South Australia but in the Pitjantjatjara lands. The treatment of these people going about their statutory obligations and using their legislative powers has been despicable and they have been ignored.

A number of other claims were made by the Hon. Ron Roberts during that contribution. I did warn him to be very careful, that he was going out on a long limb in relation to claims that he made, but, as the Hon. Ron Roberts is want to do, he chose to ignore the warnings about this issue. He based his whole case on the premise that this order had been given by a body which had the statutory authority to make these directions in relation to buildings, and even though he had been warned to be very careful he chose to ignore the warnings.

I now want to indicate in broad terms the legal advice that I have taken in relation to some of the claims made by the Hon. Ron Roberts in relation to who has statutory authority on the Anangu Pitjantjatjata lands and who has the authority to direct, in the way the Hon. Ron Roberts claims, development on those lands. I want to refer to legal advice that I have taken on this issue as Minister on behalf of the department. The legal advice indicates, for example, amongst many other things:

> I nonetheless conclude that any such resolution is unlawful and that the Pitjantjatjara Land Rights Act does not authorise AP to empower AP Services to grant building and development approval.

Any such resolution is unlawful because the legislation does not allow such a direction or resolution to be given. The whole basis of the Hon. Ron Roberts's argument was that the duly authorised body had issued this direction or authority. He chose to accept the advice from his friend from the north rather than my friendly advice as Minister warning him not to listen to his friend from the north in relation to this issue. He took the advice of his friend from the north but the legal advice is that any such resolution is unlawful. There is no power in the Act for that to occur. Further on, the legal advice is that AP Services is not authorised to approve building and development on the lands pursuant to the Act. There is also an extensive discussion about the appropriate process for authorities on the Anangu lands. It is fair to say that there is some confusion in relation to the Development Act as it applies to the Anangu Pitjantjatjata lands. Clearly, a considerable amount of work must be done with the respective bodies, but the advice I have received is that the Development Act does apply to the Anangu Pitjantjatjata lands and therefore one of the appropriate bodies which must give approval is the Development Assessment Commission.

I have received advice that it is not the responsibility of the Department for Education and Children's Services to seek that authority because it is supplying the building at the request of the Mimili Anangu school and with the support of the Mimili Community Council and PYEC, and that one of those bodies with the approval of AP or AP through the executive should be looking to obtain consent from the Development Assessment Commission before proceeding with building on the Anangu lands.

I received this advice in January this year. It confirmed my suspicions. As I said, I did try to warn the Hon. Ron Roberts; I do not like to see him inflict great damage on his own credibility too often. It is clear that the advice upon which the Hon. Ron Roberts has based his argument is fatally flawed. The legal advice has made that clear; the resolution and claims being made are unlawful. There will need to be a considerable amount of discussion between the respective authorities and Government departments to work out what the appropriate process will have to be in terms of gaining the appropriate approvals for any building, but particularly in relation to this building on the Anangu lands. But, as I said, the relationship with the Development Act is something else that will have to be worked out.

Given the fact that the Hon. Ron Roberts's contribution was based on the claim that he did not call me a racist and that the rest of the argument was based on this resolution and the fact that the law required these things to occur, and as I have now indicated that the law does not require those processes to be followed, there really is not much left of the Hon. Ron Roberts's argument. As Minister, and on behalf of the Government, obviously we are more interested not in the petty politicking of this issue but in the genuine attempt to try to resolve the issues up at Mimili.

To that end, I have had further advice in relation to the building and I want to update members as to the current status of the situation up there because, knowing the Hon. Ron Roberts, and given that his major arguments have been defeated, he will seek to move on into other areas and conveniently neglect those issues. I believe that the Hon. Ron Roberts would have a copy of a fax sent to the department on 3 February this year from Mr Ian Benjamin.

The Hon. R.R. Roberts: You can table one if you like.

The Hon. R.I. LUCAS: No, I will just read it. Mr Benjamin says:

> Further to correspondence received from Mimili Community of today's date relating to the above, a serious health problem has now become evident with the major breakage of sheeting to the structure. Although a meeting has been set for 10 February at Mimili time 1300 hours to resolve the outstanding matter, it would be seen that a Duty of Care under Occupational Health, Welfare and Safety by your department still exists in protecting the community against any hazard still requires to be exercised.
>
> It would be appreciated by all parties that portions of this building that have been damaged and causing concern to the Community, to be immediately made safe. It would be required that documentation presented to the meeting should clearly indicate the works that will be carried out in all aspects, and that any plans presented are in accordance with the Private Certifiers Certificate No. 174/96.
>
> Signed Ian Benjamin, Construction Coordinator, per Anangu Pitjantjatjara Services Director, Leonard Burton.

There is a note from Mr Geoff Iversen, Manager of Anangu Education Services, the following day (4 February) which reads:

> Dear Ian
>
> I have received your fax of 3/2/97 concerning the damage to sheeting at Mimili school. I am advised by the Principal that now all panels have extensive small puncture marks. The only way that this sheet can now be satisfactorily 'made safe' is replacement of each panel on site.
>
> These replacement panels are ready for installation and we are ready to proceed as a matter of urgency as soon as we have your approval to do this. As soon as we are advised we will then mobilise Services SA tradespeople who will replace them under the required occupational health and safety processes.

I need to talk about that particular aspect, because the issue will remain whilst Mr Iversen is of the view, consistent with the claims that have been made, that the approval had to be given by the Anangu Pitjantjatjara Services. As I said, the recent legal advice available to the department, and not available to Mr Iversen, would cast some doubt as to whether or not Anangu Services is the appropriate body to provide that particular approval. That issue will have to be further explored expeditiously.

My advice is that the Department for Education and Children's Services has been anxious since the start of the school holidays late last year to get onto the premises to replace the asbestos sheeting. The advice has been that in very short time, within a matter of days, once approval was given, the asbestos could have been repaired and made suitable for future use by the community. The department has been prevented from going onto the premises by what it believed to be the appropriate authority to grant that approval refusing to acknowledge letters or refusing to give that particular approval.

In relation to the further damage, I want to share with members the advice I have received as to how that further damage has been caused. There was a meeting on 10 February when a number of issues were discussed. My advice reads as follows:

Prior to the meeting, an inspection of the total site was undertaken, given the damage that had resulted from an influx of people for secret men's business ceremonies during the Christmas vacation. At any one time there was upwards of 3 000 young people in attendance at the community, which appears to accommodate less than 500 normally.

Despite the attendance of police aides and elders of the community, significant damage was done to at least two of the school buildings, including the demac building. Both buildings were broken into and severe damage caused. The building fabric of the demac and a solid building were attacked with what appeared to be stakes. The internal area of the demac building was trashed and extensive damage done to a number of panels, including some covered with Colourbond. The most extensive damage to the panels was caused to those panels not containing asbestos but some damage was also caused to asbestos panels, mainly small holes less than 5 centimetres in diameter.

That is evidently why there has been further damage to the building. My officers have advised me that it has been the department's view, and certainly supported by me as Minister, that we should get whatever necessary approvals are required to get into that building to replace the asbestos according to what was thought to be the previous agreement on this issue.

My department and Services SA personnel have been frustrated by the unwillingness for some reason, I am not sure what that might be, of the people to give the appropriate approvals to repair the damage. My advice is that Services SA people can be in there very quickly and, within a matter of a few days, they can repair and make good the damage, both the original damage and the more recent damage which resulted from events relating to the secret men's business ceremonies in the lands at the Mimili school.

A number of other aspects of the honourable member's contribution were factually incorrect. Time does not permit me to go through all the inaccuracies in the honourable member's contribution, but some of the more significant ones need to be corrected on the public record. The Hon. Ron Roberts claimed:

Therein lies another failing of this Government. I am advised by an expert in this field, Mr Jack Watkins, who inspected the Hillcrest site and who states that under the previous Government the practice was for a properly qualified asbestos inspector to look at any asbestos building that was to be removed from one school to another, and supervise the work at the Netley site. It would have been reclad under proper conditions and under the purview of a recognised expert and then transported to the school.

Again, those claims by the Hon. Ron Roberts are extraordinarily misleading. I now refer to a ministerial statement I made on 27 November on this issue, as follows:

I am advised by the Minister for Industrial Affairs that the decision taken by the previous Labor Government to allow non-licensed contractors to remove asbestos in certain circumstances will now be reviewed. Whilst no decision has yet been taken, I understand that the department is considering the possibility of changing the Labor Government decision by amending the occupational health, safety and welfare regulations to delete the 200 square metre limit for the removal of asbestos cement fibres on all non-residential sites.

No decision has been taken on that. I know that there are arguments for and against that decision, but it was a Labor Government decision, supported by the Hon. Ron Roberts, to allow for that change in asbestos handling regulations. In Caucus in 1991, the Hon. Ron Roberts supported those changes in regulations; yet he comes into this Chamber and says that, under the previous Labor Government, this would not have occurred.

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: Let me quote the Hon. Ron Roberts, who stated, 'Under the previous Government.' Who was the previous Government?

The Hon. Anne Levy: Dean Brown.

The Hon. R.I. LUCAS: This was November.

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: The previous Government was his own Government—the Labor Government—in 1991. It was the Labor Government which changed the regulation by indicating that a non-licensed contractor could remove asbestos in certain circumstances. It was a non-licensed contractor.

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: The Hon. Ron Roberts comes into this Chamber and makes claims about circumstances under a Labor Government, forgetting that he put his hand up in 1991 supporting his own Government in Caucus to make these changes so that licensed contractors—

The Hon. T.G. Roberts: How do you know?

The Hon. R.I. LUCAS: Because his colleagues have told me.

Members interjecting:

The Hon. R.I. LUCAS: The same colleagues who apologised for his behaviour in relation playing the racist card on this issue of Mimili and Hillcrest. The Hon. Ron Roberts' claim is demonstrably wrong and deliberately misleading. Again, he claimed in relation to Mimili that a note was sent to the principal ordering her and the children back to the school and that they were sent back into the school again. As I indicated before, I sent no note. There was no directive from my office on this issue and the coordinating principal at the local level took a decision in the best interests, as the principal saw it, of the children at Mimili. Again, the circumstances between Mimili and Hillcrest were different, as I indicated, in that at Hillcrest the girls had to use the girls' toilet. There was no other alternative for them with the damage in relation to asbestos in the girls' toilet. There was no way for the students to continue to use the girls' facilities at the school and therefore there had to be different circumstances.

At Mimili, the advice was that the facility and buildings could be quarantined and students kept away from those facilities and buildings. I have referred to my disappointment at the Hon. Ron Roberts' contribution in referring to a private conversation he had with me—inaccurate—which he then sought to place on the public records.

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: I am very disappointed that the Hon. Ron Roberts stooped to play the racist card and then stooped deliberately to concoct a version of a private conversation he had with me. Of course, I will be very wary about any private conversations that I had with the honourable member.

Members interjecting:

The Hon. R.I. LUCAS: That includes private conversations I had with the honourable member during Question Time today which I will respect and not share with other members, even though it might give me much pleasure to share the observations that he made on a matter during Question Time.

The Hon. Anne Levy interjecting:

The Hon. R.I. LUCAS: I do not have private conversations with you, Anne, so don't worry.

The Hon. Anne Levy: After what you did to Sumner I would not have a private conversation with you.

The Hon. R.I. LUCAS: Well, I do not have them with you full stop—whether I want them repeated or not. As I have indicated, the honourable member's basic premise for his

whole motion has been destroyed by the legal advice that I have shared with members in the Chamber. If the honourable member has a shred of integrity left in his being he will gracefully not only apologise but also ask to withdraw the motion before the Chamber.

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

ALICE SPRINGS TO DARWIN RAILWAY BILL

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

ADJOURNMENT

At 6.4 p.m. the Council adjourned until Tuesday 25 February at 2.15 p.m.