LEGISLATIVE COUNCIL

Thursday 29 May 1997

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

ELECTORAL (MISCELLANEOUS) AMENDMENT BILL

His Excellency the Governor, by message, intimated his assent to the Bill.

DEAF-BLINDNESS DISABILITY

A petition signed by 47 residents of South Australia concerning the irregularity in the provision of educational services for deaf/blind people in South Australia, and praying that this honourable House will—

(a) investigate the above-mentioned irregularity and require the implementation of the recommendations of the Mary Ward Report; and

(b) request the Government to consider the funding of one deaf/blind person and one professional to attend the 6th Helen Keller Conference in Columbia in September 1997,

was presented by the Hon. P. Nocella.

Petition received.

VOLUNTARY EUTHANASIA

A petition signed by 12 residents of South Australia concerning voluntary euthanasia, praying that this honourable House will—

(a) reject the Voluntary Euthanasia Bill introduced by the Hon. Anne Levy, and the Voluntary Euthanasia Referendum Bill introduced by the Hon. Sandra Kanck; and

(b) urge the South Australian Government to make good palliative care available to all citizens who need it,

was presented by the Hon. J.C. Irwin.

Petition received.

TOURISM COMMISSION

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a ministerial statement made today in the House of Assembly by the Minister for Tourism on the subject of the appointment of the Chief Executive of the South Australian Tourism Commission.

Leave granted.

QUESTION TIME

CHILDREN AND THE LAW

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Attorney-General a question about children and the law.

Leave granted.

The Hon. CAROLYN PICKLES: The Human Rights and Equal Opportunity Commission and the Australian Law Reform Commission have just released a comprehensive review of the interaction between children and the legal process. Appropriately, the document is entitled 'A matter of priority'. This draft recommendations paper is part of an ongoing ALRC and HREOC inquiry into children and the legal process, initiated in 1995 by the Hon. Michael Lavarch who at that time was the Federal Attorney-General. The Commissioners took evidence of many serious problems.

The Hon. A.J. Redford interjecting:

The Hon. CAROLYN PICKLES: You think it is a stupid report, do you?

The Hon. K.T. Griffin interjecting:

The Hon. CAROLYN PICKLES: I was referring not to the Attorney but to his backbench fool. The Commissioners took evidence of many serious problems in this area. For example, concerns have been raised about the following issues: failure to consult with children (that is, those under 18 years of age); marginalisation of children in the legal process, particularly when decisions of vital importance to the child's welfare are being made; care and protection systems in Australia generally are described as appalling; an increasingly punitive approach to children in a number of juvenile justice systems; and failure to take account of the circumstances of Aboriginal children and inadequate resources in non-metropolitan communities.

South Australia was not singled out as a trouble spot in respect of each of these issues, but clearly some of these issues are pertinent to us. Many of these issues are not new. I chaired a select committee inquiry into child protection issues, which reported in 1991. That committee heard a great deal of evidence about the inadequacies of our legal system as far as child abuse victims are concerned. Many of the recommendations of the select committee—for example, in relation to the methods by which children should be able to give their evidence in court—have never been implemented.

As I said, the ALRC and HREOC report is comprehensive and provides succinct reasons for each of the recommendations put forward. One issue that I particularly wish to highlight is the recommendation on page 19, which states:

> For economically disadvantaged children, fees can present a barrier to the high standard of education that is available to children from more affluent families. While there is no clear obligation at international law to provide free secondary education, fees and charges levied by public schools should not effectively discriminate against children from economically disadvantaged families by reducing their standard of education.

A whole range of important issues have been covered by the ALRC and HREOC draft recommendations paper, but in putting my questions to the Attorney I focus on an area which must be addressed urgently, and that is the problem of child witnesses. This problem is most acute when a young sexually abused child must give evidence in court against a person who is familiar to them. My questions to the Attorney are:

1. Does the Attorney support in principle the following recommendations which appear in Part 5 of the draft recommendations paper, as follows: child witnesses should have the opportunity to be videotaped when interviewed, and the video should be admissible evidence in court; pre-trial therapeutic counselling should be available for child witnesses; cases involving child witnesses should be given a priority in the listing of trials; a more flexible approach should be taken in respect of testing the competency of child witnesses; and children should be given an opportunity to give evidence via closed circuit television?

2. What steps has the Government taken to implement the recommendations of the Select Committee Report on Child Protection Policies, Practices and Procedures, which was tabled in this place in 1991?

The Hon. K.T. GRIFFIN: If there is any criticism in relation to the 1991 report, it must fall as much on the previous Government as on this Government. In fact a number of initiatives have been taken in this State, for example, the vulnerable witnesses legislation introduced by the Hon. Chris Sumner as Attorney-General, supported on a bipartisan basis, about closed circuit television, one-way screens and other facilities designed to protect a child witness, in particular, as well as other vulnerable witnesses, from having to confront the accused in a criminal case. That for a start indicates that South Australia has demonstrated a concern and has done something about it. My understanding is that screens are available in most if not all courts around South Australia for the purpose for which they were designed.

The issue of videotaping evidence is currently being considered. There are difficulties with merely videotaping the evidence and allowing that to be the evidence in chief because of the extent to which inadmissible evidence may be raised in the course of that interview. That was one of the problems I recognised as being inherent in the questioning of children who were alleged to be victims of child sexual abuse. I raised this matter three years ago as Attorney-General and as a result set up a working group comprising one of my legal officers, a person who represents mainly defendants (Ms Marie Shaw), a representative from the office of the DPP and a representative from the Flinders Medical Centre, particularly in relation to dealing with child sex abuse cases. There may have been another person on that working group.

They looked at whether there should be a protocol that would address the issues of questioning children who ultimately might be witnesses in a criminal case. The concern was the number of times a child may be examined or interviewed before the matter ever gets to a prosecutor. If there is to be a prosecution, the real concern that has been reflected is the tainting of the evidence that a child may give in any trial. As a result of that work we established last year, on a trial basis, the interagency child abuse assessment panel, which is focusing upon the taking of evidence and the examination of children who are alleged to be the victims of child sexual abuse. It involves the DPP, the Flinders Medical Centre, the police and the Department of Family and Community Services, is based in the south of Adelaide and deals with the Fleurieu Peninsula and parts beyond.

That pilot project is directed towards achieving an assessment at an early stage whether a matter is likely to get into the criminal justice process or whether it is not likely to do so, and in those circumstances attention can be given at an early stage to assisting the child to deal with the trauma of that abuse. That is, there are two streams. If you talk to anybody about the criminal justice system who has had any experience in that system—putting aside the issue of the way in which evidence and what evidence might be given by a child witness—the fact is that, for a five or six year old in the criminal justice process, the experience is traumatic. The DPP frequently makes decisions in consultation with parents that a particular case is not appropriate because of the effect it will have on the child to go through the criminal justice process, and it would be better for the child to be counselled and receive therapy with a view to getting that child back into the mainstream and on with his or her life at an early stage, rather than being traumatised by the criminal justice system.

There are many people who feel that that is inadequate, and there are people who believe that, come what may, forgetting the impact upon the child, matters should go through the criminal justice system. I do not share that view. I do not believe that we ought blindly to say that every one of these cases has to go through the criminal justice system, even if the prospects of success in getting a conviction are not high. The fact is that, with the Interagency Child Abuse Assessment Panel, we are endeavouring as a multidisciplined group working together to identify those matters which are likely to have a reasonable prospect of success in the criminal justice system to actually go down that path and to ensure that, at an early stage, all the evidence that is necessary is properly collected and is not tainted by parts of the ways in which the matters might be dealt with in the investigatory and preparatory processes. That is a positive initiative.

In terms of the priority of cases, my understanding is that priority is given. One of the reasons for setting up the Interagency Child Abuse Assessment Panel was to try to get rid of the delay that occurs in the system. There have been a few hiccups in that. It is being evaluated every three months. At the end of this pilot project, we will properly evaluate it with a view to determining whether or not it is a good idea and, if it is, how it can be improved, and how it can provide an essential service to young people who are in the criminal justice system through no fault of their own.

In terms of flexibility of process, again the Interagency Child Abuse Assessment Panel is directed towards exploring and developing processes which might be flexible. I think they deal with the recommendations to which the honourable member specifically referred. I am having the recommendations of the report examined, but they are not easy matters to resolve.

I also want to put on the record that a number of actions have been taken, not just by our Government but by previous Governments, in relation to making it easier and less traumatic for young persons who are alleged to be the victims of child abuse or child sexual abuse in the criminal justice system to be able to deal more effectively with that. We have removed the unsworn statement—we tried it when I was last Attorney-General and it subsequently came to pass under the previous Labor Administration—and that focuses much more effectively on the rights of the victim.

The abolition of the requirement for corroboration and, more recently, amendments to the criminal law relating to persistent child sexual abuse make it easier to prove child abuse in a criminal case. The new juvenile justice system in relation to young offenders is another reflection of the progressive way in which South Australia has dealt with young offenders rather than with young victims.

In relation to paedophiles, we have introduced and passed through the Parliament the paedophile restraining order legislation. It is not as though in this State nothing has been done. We are, in fact, at the forefront of dealing with a number of these issues involving young people, whether as victims or as offenders. I would suggest that the report which has been made by the Australian Law Reform Commission covers matters which already in South Australia we have addressed. The fact is that we will never be perfect. It does not matter which political persuasion a Government may be, we will never be perfect. There will always be issues that have to be addressed. I think in good faith, certainly this Government has endeavoured to address those issues.

There are issues in relation to child testimony which only last night were addressed at a forum in the context of Law Week. Matters were raised at that forum. I could not get to the meeting—

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: Yes, the adversarial aspect, but I could not get to that meeting, nor could about seven other members of Parliament because we were sitting. The fact is that it raised some issues and I am prepared to look at them. They are not easy issues to resolve. On the one hand, you have the issue of proof beyond reasonable doubt of an allegation of a criminal offence, particularly in the context of someone facing life imprisonment in some circumstances. As a society we must be particularly cautious about seeking to change significantly the onus of proof and the processes, but we can make it easier and less traumatic for young people as well as older people who are witnesses in cases involving these sorts of issues. Ultimately, it is a question of trying to ensure that a person whose liberty is at risk is fairly dealt with as an accused person and, on the other hand, ensuring that victims of young or older age are properly catered for in the criminal justice system.

In South Australia, there has been significant progress: the introduction of victim impact statements; the DPP has a witness support service; the DPP talks to parents of young persons who are likely to be witnesses either as victims or otherwise; the Victim Support Service receives support from Government to assist those who are going through the criminal justice system. So, a range of things are already happening.

As I said earlier, we are not perfect, no-one is perfect, and if there are genuine things we can do to make the process easier, without compromising the issues about burden of proof, then certainly I am prepared to give consideration to those, and the sorts of initiatives we have already taken over the past three years should be witness to that.

PARLIAMENT HOUSE, SECURITY OF DOCUMENTS

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking you, Mr President, in your capacity as the Chief Presiding Officer, a question on the subject of security of parliamentary reports and other documents and your powers.

Leave granted.

The Hon. R.R. ROBERTS: It is not my intention to refer to matters that are being dealt with by way of substantive motion on the Notice Paper and, therefore, I indicate that it is not my intention to canvass matters in that area. Events over the past year and in recent weeks in respect of members' reports indicate that there may be flaws in our systems with respect to security and accessibility of reports. I am sure that members who lodge parliamentary reports stand by those reports and are happy to have those reports scrutinised by anyone—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.R. ROBERTS:—at any time, in line with Standing Orders, statutes and the rulings of the Legislative Council. Speaking for myself, I am happy to have legitimate, unadulterated and complete copies made available to legitimate and interested parties anywhere at any time. I am confident, indeed positive, that all members present would be happy to comply with the rules and responsibilities placed upon them by this House and accept that they must be accountable to the public of South Australia.

I assert that, having exercised those statutory and community obligations, I and all members are entitled to proper procedures for the security, integrity and use of those reports and protection from misuse when they become public documents. One must ask: as there are penalties for MPs or MLCs for non-lodgement, should there not be parliamentary as well as legal penalties for members of Parliament and members of the public who deliberately, maliciously or mischievously manipulate and misuse the system or who alter and reprint and distribute members' reports without the consent and knowledge of the author? This brings me to the question of your powers, Mr President, to supervise and administer our system. My questions to you, Mr President, are:

1. What systems have you in place to secure, record and allow organised open access to members—

Members interjecting:

The PRESIDENT: Order! I cannot hear the question.

The Hon. R.R. ROBERTS:—and the public for lawful and legitimate means? What do these systems involve?

2. What powers do you have as Presiding Officer to deal with breaches of rules and regulations, matters of privilege and contempt of the Legislative Council by members of the public or by members of the Legislative Council?

3. If you have powers, do you intend to initiate any changes to the system and rules in respect to the reporting, storage, security, public and parliamentary access, and accurate, honest and lawful distribution and representation of members' reports?

The PRESIDENT: You are referring particularly to travel documents in this case, although you did broaden it out to cover other documents. Regarding travel documents, a change was made from where they were deposited in the library and became public documents in the library. This allowed the public and other members of Parliament to access those reports. Being a public document, I have no control over them once they leave the Parliament. There is a slight change now. So that we do know who does access those documents, as with pecuniary interest files, the Clerk keeps those documents and keeps a record of the people who access those documents. Again, they are a public document and I have no control over them once someone takes them away from Parliament.

The Hon. Anne Levy: You cannot take them away from Parliament.

The PRESIDENT: Someone can copy the document. It is a public document. If someone sits down and handwrites and copies the document, they can take it away. I have no control over that whatever. Regarding matters within the Parliament, if they are against Standing Orders or the rules and regulations that normally apply, I will deal with them as they are presented to me.

The Hon. R.R. ROBERTS: I desire to ask a supplementary question, Mr President. What powers do you have? What remedies are available?

The PRESIDENT: For what? I am not sure what the honourable member is getting at.

Members interjecting:

The PRESIDENT: Order! It is not helpful to be getting advice from everyone. If there are breaches of parliamentary procedure or breaches of access to those documents, I will deal with them as they are presented to me, but, so far as I am concerned, members of the public are eligible to come in and look at the documents. They are a public document and I do not have control over them once they are lodged with the Clerk.

The Hon. R.R. ROBERTS: With greatest respect, Mr President, I understand the procedure now. I am interested in the procedures that are available to you, Sir, to enforce—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.R. ROBERTS: —the rules or discipline breaches. Do you, Mr President, have the power personally to do that or is there another process that has to be accessed? Is it in your hands?

The PRESIDENT: If breaches are brought to my attention then the Council—this body—will determine if there has been a breach of that code. As far as I am concerned, nothing has been brought to my attention in any of the—

The Hon. R.R. ROBERTS: I am asking you about the rules, Mr President, I am not making an accusation.

The PRESIDENT: Order! I really think the honourable member—

Members interjecting:

The PRESIDENT: Order, the Hon. Legh Davis, the Hon. Ron Roberts, the Hon. Terry Cameron and the Minister for Transport! No-one will be left in here in a minute if members continue down this track.

Members interjecting:

The PRESIDENT: Order! The honourable member has asked what are the powers. They lie within this Chamber. If the honourable member has any evidence or believes that there has been a breach of Standing Orders, he should bring them to this Chamber.

NORTHERN ADELAIDE AND BAROSSA CATCHMENT MANAGEMENT BOARD

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for the Environment and Natural Resources, a question about the Northern Adelaide and Barossa Catchment Management Board.

Leave granted.

The Hon. T.G. ROBERTS: In the Messenger Press for Salisbury, Elizabeth and Gawler of 28 May, under the heading 'Flow-on Effects', there are a number of articles relating to the formation of the Northern Adelaide and Barossa Catchment Management Board. This board will take over control of the greenfields and paddocks wetlands that the Salisbury council has put into place over a number of years. I understand that this council has been managing these projects in conjunction with the MFP and other interested bodies which have assisted and supported in the formation of the wetlands.

The problem that seems to be emerging is that the Salisbury council is concerned that the responsibilities for the management of the wetlands will fall under the influence of the Northern Adelaide and Barossa Catchment Management Board and that it will lose control of the direction that it feels the project should take. One article in that paper quotes the Chair of the catchment management board, the Hon. Bruce Eastick (a former member of another place), as saying that the Salisbury council need not panic because the Northern Adelaide and Barossa Catchment Management Board has not determined its priorities on how it will spend its budget—or even how it will raise it, I suspect.

However, the council is quite concerned that another rate may be struck on Salisbury ratepayers and that they may have to pay a double rate. This is one of those issues which the Opposition raised when the legislation went through the House; one of our concerns when the amalgamated bodies were formed was that if the catchment management boards and the local government did not have a management structure that worked cooperatively together this dilemma could emerge.

What action will the Government take to make sure that the Northern Adelaide and Barossa Catchment Management Board and the Salisbury council work cooperatively together to achieve the best possible environmental outcomes for the region when the board is set up?

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

ESSENTIAL OILS

In reply to **Hon. T.G. ROBERTS** (20 March).

The Hon. DIANA LAIDLAW: Consumption of essential oils is growing, particularly for pharmaceutical uses. PISA has been active for a number of years fostering the development of essential oil industries.

In 1993, PISA managed a major national conference on essential oils in Adelaide. This conference brought together national and international specialists to plan development of Australia's essential oil industry.

PISA also has an ongoing program working with oil manufacturers and growers in the South East of the State to develop an essential oil industry. This group is focusing on oil extraction from a range of herb species, and carrot oil from waste carrot seed. This group has been assisted through provision of cultural and technical information.

New technology in mobile small scale oil extraction plants now makes it more feasible to undertake small volume oil extraction in remote locations and with smaller quantities of plant material.

A project extracting essential oils in a low rainfall environment would need to be carefully focussed on an appropriate species that would thrive in that environment and for which there is a market opportunity for the oil. This would require a rigorous feasibility and economic study before embarking on the project. Environmental impact of such an enterprise would also need careful consideration in arid rangeland areas.

PISA may be able to provide some input to such a feasibility study through providing technical and cultural information on appropriate plant species.

SOUTHERN EXPRESSWAY

The Hon. DIANA LAIDLAW: I seek leave to provide a reply to a question asked by the Hon. Terry Cameron on 27 May in regard to Southern Expressway blasting and a subsequent story in the *Advertiser* today following up those allegations.

Leave granted.

The Hon. DIANA LAIDLAW: Further to the honourable member's question last Tuesday and his supplementary question regarding an independent inquiry, I advise as follows. The Department of Transport has contracted the construction of the road works for stage 1 of the Southern Expressway to MacMahon Constructions Pty Ltd. As such, MacMahon has a contractual obligation for any blasting it undertakes and the consequences that may arise from that blasting. The contract with MacMahon stipulates that:

1. Prior to the start of any construction activity in a particular area of the site, property inspections must be conducted to establish the condition of all properties and infrastructure that it considers may be affected by the activity.

2. To design its blasting operations in such a way that it meets all legislative and regulatory requirements in order to minimise the risk of damage to neighbouring structures.

3. To monitor the blasts in order to confirm the adequacy of its blast design to minimise the risk of danger.

4. To take out the necessary insurance to protect nominated parties, including the public, in the event of damage arising as a result of the contractor's activities.

For those contractual undertakings that MacMahon has signed off with the department, I would not order an independent inquiry. However, I want to make some further observations, because the *Advertiser* today sought to follow up the allegations made by the Hon. Terry Cameron in this place.

I refer to the article in today's *Advertiser* with the photograph and accompanying caption 'Mr Kym Hall, with a major crack in a wall of his Darlington home'. The photograph shows a distinctive archway which is indeed at a house at 11 Graham Road, Darlington. The house was surveyed by MacMahon on 28 January 1997, well before the blasting commenced on the Southern Expressway. I seek leave to table a photocopy of a photograph taken by MacMahon Contractors, Archicentre, which undertook the survey of 11 Graham Road, Darlington, on 28 January this year.

The PRESIDENT: I point out to the Minister that it will not be going into *Hansard*, of course, but it can be tabled.

The Hon. DIANA LAIDLAW: No, but I want honourable members to see the crack in the house on 28 January, well before the blasting started.

Members interjecting:

The PRESIDENT: Order!

Leave granted.

The Hon. DIANA LAIDLAW: I cannot table the photograph because it is MacMahon's only copy. It has a large survey book of all such photographs which it keeps for instances such as this. The crack, as members will see in the *Advertiser* today, was photographed in January, well before the blasting started. It has no relationship to the blasting.

It is also interesting to note that the *Advertiser* says that the house is owned by Mr Kym Hall. Mr Kym Hall in fact does not live at that house at 11 Graham Road, Darlington: he lives across the road at 10 Graham Road, Darlington. I do not need to say much more on this matter, and I suspect that the Hon. Mr Cameron may wish to speak to me before he takes the matter further.

POINT PEARCE ABORIGINAL SCHOOL

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Education a question—

The Hon. T.G. Cameron interjecting:

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order!

The Hon. T.G. Cameron interjecting:

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order! The two of you do not have to tell the world that you are having a disagreement, because we understand that. I will ask you to hold your tongues, or you will not get the call again.

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister of Education a question about the Point Pearce Aboriginal school.

Leave granted.

The Hon. M.J. ELLIOTT: During this Aboriginal Reconciliation Week we have seen politicians apologise for past atrocities and Parliaments around the country pass motions of regret. Yesterday, the Point Pearce Aboriginal School on Yorke Peninsula was told, without any warning or consultation, that the Principal of the Maitland Area School would also take over as Principal of the Point Pearce Aboriginal school as of next week. I understand that it has been difficult for the school to get a person to accept the permanent Principal's position. The community is greatly concerned that, with one week's notice, it has been informed about this restructure but, more importantly, that it has occurred with no consultation, as I understand it, whatsoever. There is now deep concern that the agenda might be much greater and that there may eventually be a goal of closure of that school.

An honourable member interjecting:

The Hon. M.J. ELLIOTT: Well, that's the speculation and, since they have not been consulted so far, it is not unreasonable for them to start to speculate.

An honourable member interjecting:

The PRESIDENT: Order!

The Hon. M.J. ELLIOTT: It also highlights another issue which I have raised in this place on a number of occasions, namely, that it is becoming increasingly difficult in country areas to get staff to take certain positions. My questions to the Minister are:

1. If it is in fact the case that the community has not been consulted, will the Minister apologise to that community?

2. Will the Minister consult with the local community about the decision and, if necessary, alter that decision?

3. What is the Minister doing to address the increasing staffing difficulties in country areas?

The Hon. R.I. LUCAS: I will need to have the claims made by the honourable member investigated.

An honourable member interjecting:

The Hon. R.I. LUCAS: That is fair enough. I have learnt, to my cost, to accept the accuracy of the claims made in this Chamber by the honourable member—

The Hon. M.J. Elliott: Well, 99 per cent is not bad.

The Hon. K.T. Griffin: Wrong!

The Hon. R.I. LUCAS: 99 per cent wrong, yes. I have learnt, to my cost, to accept automatically the claims made in this Chamber by the honourable member. So, I will seek a report from officers in the department in relation to this issue and then bring back a reply to the Parliament, if that is warranted.

In relation to the third part of the question, which was the more general question that has been addressed on a number of previous occasions about the difficulty in attracting experienced country teachers and people prepared to undertake promotion positions, it does remains a problem. We are in the middle of negotiations or discussions with the Australian Education Union at the moment to try to renegotiate the whole issue of incentives to attract people from the city to the country for both teaching and leadership positions.

There are also some negotiations, which I hope are nearing their completion after many years of trying, in looking at a reclassification of promotional positions within the department. How that might affect the Point Pearce situation I cannot comment at the moment. I would need to get advice, but certainly some discussion is going on in relation to some of the difficulties experienced in relation to promotion positions within the department. Both of those are currently at the stage of negotiation with the Australian Education Union with an intention for their introduction at the start of next year.

TEACHERS, GRADUATE

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Minister for Education a question about teachers.

Leave granted.

The Hon. A.J. REDFORD: Last Tuesday the Hon. Michael Elliott made some startling claims that teaching graduates have missed out on getting permanent jobs with the Education Department simply because their surnames began with a letter at the end of the alphabet. Indeed, you might note that my name is close to the end of the alphabet, as is my children's surname, and I am a little concerned about these startling allegations. My question is: has the Minister investigated these claims and will he provide—

The Hon. M.J. Elliott interjecting:

The Hon. A.J. REDFORD: Why don't you listen? You get your facts wrong all the time because you don't listen. Has the Minister investigated these claims, and will he provide the Council with any information on this topic?

The Hon. R.I. LUCAS: It is most fortuitous that the Hon. Mr Redford asked his question after the question by the Hon. Mr Elliott that made another series of claims and his interjection that he was 99 per cent something. I think he was implying that he was 99 per cent right, but by way of further interjection the Attorney-General made it quite clear that he was 99 per cent wrong. The Leader of the Australian Democrats made those startling claims on Tuesday. I must admit that they surprised me. I indicated that I would like to take advice on the matter and bring back a reply as soon as I could. Of course, before I had the opportunity to get back to the honourable member with some advice as to whether his claims were right or wrong, he went to the media.

An honourable member interjecting:

The Hon. R.I. LUCAS: He wanted to get his name in the paper quickly—he did not want the answer. He issued a stunning press release under the heading 'So you want to be a teacher? Change your name to Aardvark!'. It states:

> The Australian Democrats have revealed how some teaching graduates missed out on permanent teaching jobs. . .

The Hon. T.G. Cameron interjecting:

The Hon. R.I. LUCAS: Yes. The Australian Democrats have not claimed but have revealed. It states:

> The Australian Democrats have revealed how some teaching graduates missed out on permanent teaching jobs with the Education Department last year simply because their surnames began with a letter at the end of the alphabet. State Democrats Leader Mike Elliott told State Parliament today—

it should have said 'a stunned State Parliament'—

> that some students who were dux of their class in technology studies at university missed out on permanent job offers because the Education department hadn't completed all assessments in time for them to be considered for the posts.

There is then a long exposition about the end of the alphabet and the start of the alphabet. It concludes:

> The process not only discriminates between people on the basis of their name but it also means that the best people don't always get the jobs on offer. This disadvantages schools as well as individuals.

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: Yes. It states finally:

> 'In the meantime, I advise students to change their name by deed poll to Aaron Aardvark,' Mr Elliott says.

Very good! He must have a new press secretary. This is a stunning press release.

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: Yes. I was flabbergasted, stunned and floored by this press release. I did not know where to turn. I was flooded with media inquiries from all over the State regarding its accuracy: that is, whether teacher or teacher graduates should change their name to Aaron Aardvark.

The Hon. T.G. Cameron: How did you get out of this one?

The Hon. R.I. LUCAS: The Hon. Mr Cameron gives me the perfect lead-in. I thank him for his assistance. I thought that I had better at least check the accuracy of the Hon. Mr Elliott's claims and not just accept that they were true. So, I sought advice from the department about the Aardvarks of this world. The advice from the department was something like the following:

> The consideration of applicants for employment with the department has no alphabetical link at all.

I am told that in certain circumstances when groups of teachers, for example, have an equal match for a vacancy, an equal rating in subject areas, and an equal district preference, the way of determining which applicant is successful is by the random use of the last digit of their payroll identity number. This step is used particularly to avoid the possibility of ranking people alphabetically and therefore disadvantaging those people whose family name begins with letters at the end of the alphabet.

The Hon. T.G. Cameron: Does that mean Angus Redford can apply?

The Hon. R.I. LUCAS: Yes, the Redfords of this world can apply.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: The Redfords can match the Camerons and do not have to change their name to Aardvark to get a job with the Education Department. I know that it was unfair of me to call the Hon. Mr Elliott 'Mr Miserable' on Tuesday—I apologise, I am very sorry for having called him 'Mr Miserable' on Tuesday—but the Hon. Mr Elliott, as I have said before—

The Hon. Anne Levy interjecting:

The Hon. R.I. LUCAS: I withdraw and apologise for calling him 'Mr Miserable'.

An honourable member interjecting:

The Hon. R.I. LUCAS: It is not unparliamentary? It was accurate, was it?

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: But the Hon. Mr Elliott is so desperate to run down our Government school system in some way and to portray it in the worst possible light that he will seize on any claim. It might come from a teacher friend, a university graduate, the milkman going past the front door, or someone he runs into in the street, if anyone says anything negative or destructive about the Government school system Mr Elliott will come into the Council with a question, and before he gets an answer he will issue a press release attacking our Government school system and trying to run it down in some way. I can only urge the Hon. Mr Elliott to do one of two things: he can seek information before he asks his questions in the Council or he can ask his questions in the Council and at least wait for an answer.

An honourable member interjecting:

The Hon. R.I. LUCAS: Two days, if need be. If it is urgent, if he has to get his press release out, he can wait

for 24 or 48 hours and at least give us a chance. That will save him the embarrassment of being 99 per cent wrong regarding these issues. What the Hon. Mr Elliott did by way of his question was to cast a slur on the professional competence of the officers of the personnel section of the department.

The Hon. A.J. Redford: And their integrity.

The Hon. R.I. LUCAS: And their integrity, and their confidence as well. To suggest that the people within the personnel section of the department would engage in this sort of behaviour without giving them the chance to make some sort of a response before he went public on the issue is reprehensible. The Hon. Mr Elliott ought to apologise in this Chamber to the Director of Personnel, the personnel officers and the placement officers. I will defend the public servants and the personnel section of my department because they have done a first class job in the difficult process of placing teachers and people in promotion positions throughout the department. We do not always get it 100 per cent right. We acknowledge that, on occasions, mistakes are made. However, those officers are competent, they have integrity, they work hard, and they do not deserve to have their character slurred by the Hon. Mr Elliott.

The Hon. M.J. ELLIOTT: I ask a supplementary question.

Members interjecting:

The PRESIDENT: Order!

The Hon. M.J. ELLIOTT: Will the Minister confirm whether or not the interview process had been completed before job offers commenced to be made?

The Hon. R.I. LUCAS: I have already confirmed that press claims that teacher applicants were placed on the basis of alphabetical order are 100 per cent wrong. That is the Hon. Mr Elliott's claim. I tell him not to backslide now. He went out to the media with his Aaron Aardvarks. The question that was raised was that alphabetical order was the determining factor in choosing teacher applicants. According to the advice that I have received from the department, that is 100 per cent wrong. Let the honourable member have the integrity and honesty to stand up in this Chamber and apologise to the personnel staff of my department who are hardworking public servants. The honourable member comes in here and with the protection of coward's castle attacks their integrity and now refuses to apologise to those hardworking public servants. He is a disgrace!

BICYCLES, EMERGENCY LANES

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Transport a question about the new Franklin Street bicycle lane.

Leave granted.

The Hon. T.G. CAMERON: The Adelaide City Council, in conjunction with the State Department of Transport, recently trialled a new bicycle line in Franklin Street in the city. Signs stating 'Form one lane' were recently erected at the corner of Morphett and Franklin Streets and West Terrace and Franklin Street. The 1.5 metre wide painted bicycle lane starts 200 metres from West Terrace on both sides of Franklin Street up to Morphett Street. On the northern side the lane veers from its path 100 metres from Morphett Street and runs near the curb. There is no continuing lane to King William Street. I am informed that the signs are creating traffic mayhem during peak periods as confused motorists attempt to merge to just one lane on a busy street. Motorists have called the new lane 'ridiculous' and 'dangerous'. My questions to the Minister are:

1. What consultation process did the Department of Transport undertake before it approved the Franklin Street bicycle lane; for example, were local traders consulted over the proposed bicycle lane?

2. In the interests of public safety will the Minister now direct the Department of Transport to investigate the suitability and safety of the placement of the Franklin Street bicycle lane?

The Hon. DIANA LAIDLAW: The honourable member does not seem to understand that in the Adelaide City Council area the Adelaide City Council alone owns, operates and maintains the roads, which includes bicycle paths. The Department of Transport has no responsibility in that area at all. That has been a long-standing practice and the shadow Minister would certainly be aware of that, had he taken even the most basic interest in the transport portfolio. Therefore, I will not ask the Department of Transport to do any of the things the honourable member has asked because neither of the questions is relevant.

I indicate, however, that the Adelaide City Council staff and councillors approved a strategic bicycle plan which has been a document of some long standing and which is widely available. The council receives funds to help with the implementation of that plan from the State bicycle fund through the Department of Transport. Our role is simply to complement the work already undertaken by the Adelaide City Council and councils generally across the metropolitan and country areas, and to supplement their investment in bicycle lanes.

The difficulties that appear to have arisen in terms of the Franklin Street bicycle lane are interesting because other examples of exactly the same bicycle lane, combined with angle parking, have existed in the city for some time, for example, in Hutt Street. Colley Terrace in Glenelg has had the same system operating for some time, as has Semaphore Road down at Largs Bay. So, it is not new in that sense, but the difficulty has arisen because no lanes were marked on Franklin Street in the past and cars have not been disciplined to drive on any particular part of the road system. With the new bike lanes are new vehicle lanes, with one lane only for traffic travelling east and west along Franklin Street. It is possibly that fact that has confused some motorists in dealing with the relationship between the new lanes for the motorists and the new lanes for cyclists.

Therefore, on advice from the Adelaide City Council that I received last week, a campaign is to be undertaken to inform motorists about the new arrangements and an inspection is to be undertaken by the Adelaide City Council to ascertain whether more work is needed to improve the relationship between cyclists and motorists in this area.

As with other angle parking, rather than parallel parking, and bike lanes, this new installation in Franklin Street is being reviewed. When I receive that review through Bike South I will forward it to the honourable member, considering his interest in this matter.

SOUTH AUSTRALIAN DEVELOPMENT COUNCIL

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services, representing the Premier and Minister for Development, a question about the South Australian Development Council.

Leave granted.

The Hon. R.D. LAWSON: The report of the South Australian Development Council was recently published and in it, under the heading, 'Strategic Initiatives' a number of innovative programs were described. One is the South Australian Business Vision 2010. Mention is made of the fact that that vision initiative was officially launched by His Excellency the Governor in October last year.

The purpose of this vision is to establish a collaborative partnership between business, community, Government and other sectors of the economy to improve the State's performance. It was initially established by the South Australian Chamber of Commerce and Industry and recently joined by some other vision groups such as the South Australian Advertising Federation, the SA Great campaign and others. The report also mentions the strategic plan for the South Australian wine industry, which was commenced in 1996 as the Government's response to the national wine industry's strategic plan, Wine 2025, released at the Wine Australia Convention last year. This strategic plan of some significance was recently handed to the Government for consideration.

Thirdly, the report refers to an information technology initiative proposed by the council under which Australia Post will provide an electronic business licensing service for South Australia and the setting up of a consortium to explore possibilities for the development of Adelaide as the major location of certain international electronic commerce services. My questions to the Minister are:

1. Will the Minister advise the Parliament when the Business Vision 2010 initiative is likely to be promulgated?

2. When will the wine strategy also be promulgated?

3. Has any, and, if so, what, progress been made in relation to the Australia Post proposal for an electronic business licensing system?

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

TEACHERS, GRADUATE

The Hon. M.J. ELLIOTT: I seek leave to make a personal explanation.

Leave granted.

The Hon. M.J. ELLIOTT: During Question Time, during a free kick dorothy dixer, the Minister misrepresented the position I took on Tuesday in relation to questions asked. During Question Time on Tuesday—in order to show that I was not attacking officers—I said that:

> The process of rating students takes some considerable time and effort. However, it is concerning that there is little time between dates of lodgement of applications and when the department starts to make permanent offers of employment.

I then asked two questions, as follows:

> 1. Will the Minister confirm that not all teaching graduates were assessed before permanent positions were offered in time for the 1997 school year?
>
> 2. What action will the Minister take to ensure that the process can be streamlined so the situation does not occur again at the end of the year?

Clearly, the question I asked related to how much time was given to the officers to carry out a particular process.

Members interjecting:

The PRESIDENT: Order!

The Hon. M.J. ELLIOTT: It is quite plain that at no stage did I infer that the officers of the department were or were not doing a good job. The questions and any comments I made related purely to the fact that—

Members interjecting:

The PRESIDENT: Order, the Hon. Angus Redford!

The Hon. A.J. Redford: He is misleading the Parliament.

The PRESIDENT: Order! I warn the Hon. Angus Redford.

The Hon. M.J. ELLIOTT: Any comment I made in asking the question or publicly in no way reflected upon officers of the department.

BUDGET PAPERS

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I lay on the table the following papers: Budget speech, Financial Statement, Estimates of Receipts and Payments and the Capital Works Program for 1997-98.

FRIENDLY SOCIETIES (SOUTH AUSTRALIA) BILL

Adjourned debate on second reading.

(Continued from 27 May. Page 1387.)

The Hon. K.T. GRIFFIN (Attorney-General): I thank the honourable Leader of the Opposition for her support of this Bill. It is of great significance for South Australian friendly societies and their members. As I indicated in my second reading report, the legislation will facilitate South Australia's participation in a State and Territory scheme for the uniform prudential supervision of friendly societies under uniform legislation. It will also facilitate our local societies in respect of their operations interstate. I do have some amendments on file, but they are largely matters of a technical nature and certainly do not go to the substance of the Bill.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3.

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

> Page 2, line 1—Leave out 'Friendly Societies Act' and insert 'Friendly Societies (Victoria) Act'.

This amendment provides for the Friendly Societies of Victoria Act 1996 to be referred to as the Friendly Societies (Victoria) Act rather than as the Friendly Societies Act. This is a technical amendment consistent with the application of laws legislation of other jurisdictions.

The Hon. CAROLYN PICKLES: We support the amendment.

Amendment carried; clause as amended passed.

Clause 4 passed.

Clause 5.

The Hon. K.T. GRIFFIN: For the same reason as referred to in relation to the clause 3 amendment, I move:

> Page 3, line 5—Leave out 'Friendly Societies Act' and insert 'Friendly Societies (Victoria) Act'.

Amendment carried; clause as amended passed.

Clause 6.

The Hon. K.T. GRIFFIN: For the same reason as the amendments to clauses 3 and 5, I move:

Page 3, line 10—Leave out 'Friendly Societies Act' and insert 'Friendly Societies (Victoria) Act'.

Amendment carried; clause as amended passed.

Clauses 7 to 10 passed.

Clause 11.

The CHAIRMAN: I point out to the Committee that clause 11, being a money clause, is in erased type. Standing Order 298 provides that no questions shall be put in Committee upon any such clause. The message transmitting the Bill to the House of Assembly is required to indicate that this clause is deemed necessary to the Bill.

Clauses 12 to 15 passed.

Clause 16.

The Hon. K.T. GRIFFIN: For the same reason as referred to in relation to the amendments to clauses 3, 5 and 6, I move:

Page 7, line 19—Leave out 'Friendly Societies Act' and insert 'Friendly Societies (Victoria) Act'.

Amendment carried; clause as amended passed.

Schedule.

The Hon. K.T. GRIFFIN: I suggest that we deal with the two amendments. I move:

Page 8—

After line 4—Insert the following clause:

Consequential Amendments—Financial Institutions (Application of Laws) Act 1992

1A. The Financial Institutions (Application of Laws) Act 1992 is amended—

(a) by inserting after the definition of 'Financial Institutions Code' in section 7(1) the following definition:

'Friendly Societies Code' means the Friendly Societies (South Australia) Code;;

(b) by inserting after the definition of 'Corporations Law' in section 10(1) the following definition:

'Friendly Societies Code' means the Friendly Societies (South Australia) Code;.

Line 5—After 'Amendments' insert '—South Australian Office of Financial Supervision Act 1992'.

The first set of amendments after line 4 are amendments to the Financial Institutions (Application of Laws) Act 1992 which follow from the introduction into the Queensland Parliament of amendments to the Financial Institutions (Queensland) Act 1992 to bring friendly societies within the financial institutions scheme. The amendment at paragraph (a) ensures that, for the purposes of the AFIC (South Australia) Code and the AFIC (South Australia) Regulations, the Friendly Societies Code means the Friendly Societies (South Australia) Code. The amendment at paragraph (b) ensures that, for the purposes of the Financial Institutions (South Australia) Code and the Financial Institutions (South Australia) Regulations, the Friendly Societies Code means the Friendly Societies (South Australia) Code.

In respect of the amendment after line 5, it is an amendment of a technical drafting nature to indicate that, following the insertion of the amendments to the Financial Institutions (Application of Laws) Act 1992, subsequent amendments are to the South Australian Office of Financial Supervision Act 1992.

The Hon. CAROLYN PICKLES: We support the amendments.

Amendments carried; schedule as amended passed.

Long title.

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

Page 1, line 7—After 'to' second occurring, insert 'the Financial Institutions (Application of Laws) Act 1992 and'.

It is required in order to enable us to record that the Financial Institutions (Application of Laws) Act 1992 is also to be amended. As I have already indicated, this follows from the introduction into the Queensland Parliament of amendments to the Financial Institutions (Queensland) Act 1992 to bring friendly societies within the financial institutions scheme. Under the financial institutions scheme, AFIC will have the responsibility in the matters of the naming of friendly societies and for the setting of standards for friendly societies.

The Hon. CAROLYN PICKLES: We support the amendment.

Amendment carried; long title as amended passed.

Bill read a third time and passed.

EQUAL OPPORTUNITY (SEXUAL HARASSMENT) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 5 December. Page 773.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): I continue the remarks that I made in December last year on this legislation. Members would be aware that I introduced a private member's Bill on the same subject which has passed this Chamber and is awaiting attention in the House of Assembly. It is understandable perhaps that the Government did not wish to have a series of complicated amendments to the Bill that I introduced. There are some complications, particularly arising from a difference of opinion between myself and the Attorney about how far Parliamentary privilege might go and how far it should go to throw a cloak over the unsavoury kind of activities which this legislation is meant to guard against.

The Attorney and I have had a number of productive discussions in the spirit of cooperation with a view to facilitating the passage of this Bill through Parliament. There is certainly some common ground between us, and the starting point is a condemnation, I believe, by us both of some of the behaviour of a sexual nature which has occurred in this place and by MPs in other places in the past and also, as far as I am aware, in the not so recent past. Secondly, after consultation with the Chief Justice my position is that sexual harassment claims against judges should be excluded if they arise out of the exercise of judicial duties in court, and that position is also reflected in the Attorney's Bill.

One of the difficult areas in this legislation concerns the potential investigation of sexual harassment allegations against MPs in cases where parliamentary privilege might be involved. I am well aware of the parliamentary traditions giving some special protection to members of Parliament to ensure that they can carry out their duties and speak in the Chamber freely without fear, favour or restriction. The starting point for the Opposition is the total prohibition of sexual harassment in this building and in electorate offices. With that goes a commitment for a transparent process for the resolution of any sexual harassment complaints with justice not only being done but being seen to be done.

I am genuinely concerned that justice will not be seen to be done if MPs are to investigate and sit in judgment on their colleagues. I do not believe the public will accept that. Even in this Chamber members should not be allowed to act with impunity. The history of parliamentary privilege discloses examples of ordinary laws of the land applying to MPs even in the parliamentary chamber. So long as the most important aspects of the parliamentary privilege protection are retained,

namely, the right to attend Parliament and speak freely in debates, I do not see why the normal laws should not apply to the behaviour of members should they behave less than honourably. Perhaps the Attorney can put on the record his reasons for preferring sexual harassment allegations against MPs being dealt with by the presiding officer of the Chamber.

As far as parliamentary privilege is concerned, it is difficult to argue that it would apply if the allegation is that an MP sexually forced himself—or herself for that matter—on his secretary in a hotel out of town while away on parliamentary business. Let us deal with the most difficult case concerning parliamentary privilege—where it is alleged that an MP has fondled another MP in the Chamber where our parliamentary proceedings are conducted. I should say that I am not aware of this having ever occurred but am just raising a hypothetical point. If that happened to me in this Chamber or anywhere else, the offender would probably meet with a rapid and quite violent response, but the subject of the unwanted touching may not be in a position to react in that way. It might be more difficult for the Chamber staff, for example.

I cannot see what would be wrong with the Equal Opportunity Commissioner investigating complaints of that nature. In the end why should it be treated differently to sexual harassment that might happen in any other work place, so long as the investigations and conciliation process do not interfere with the right of MPs to attend Parliament and take part in the questions and debates. I would be interested to hear the Attorney put on the record his views on that matter.

Relatively more straightforward are clauses 5 and 6 of the Attorney's Bill which the Opposition will be supporting. Clause 5 limits the ability of the Equal Opportunity Commissioner to undertake a general inquiry into sexual harassment matters in Parliament House as opposed to pursuing justice for an individual who has made specific allegations. Clause 6 limits the power of the Commissioner to investigate to the extent that the documents and books and so on used in the course of parliamentary proceedings must be safeguarded from seizure. Quite obviously a provision like this is necessary so that Parliament can continue to function without being subjected to any interference by the Equal Opportunity Commissioner from time to time, no matter how well intentioned the investigation might be.

I believe that I differ in my views in two important respects to that of the Attorney. First, I am adamant that coverage of section 87 of the Equal Opportunity Act should be extended to include complaints by MPs against other MPs and by local government members against other local government members. To extend coverage in this way so as to deter sexual harassment would be in accord with the recommendation of the Joint Committee on Women in Parliament. I will speak further on this when dealing with the amendments in Committee.

Secondly, as I pointed out in December, the objects of this Bill will be in great danger of being frustrated if politicians are left to judge other politicians on this issue of sexual harassment. Therefore, as a matter of principle, with absolutely no reflection on the President and Speaker of the present Parliament, I say that we must have an objective investigation of sexual harassment allegations by someone experienced in such investigations. The only course is, therefore, for the Equal Opportunity Commissioner to be the person to whom sexually harassing MPs should be reported.

As a compromise, I will introduce an amendment which would make it compulsory for the Equal Opportunity Commissioner to seek advice from the Speaker or President (as the case may be) in order to assess whether parliamentary privilege would cover the behaviour which is the subject of the allegations. No doubt in these circumstances the Equal Opportunity Commissioner will have the benefit of Crown Law advice if there is any doubt about the matter. Certainly, if it is considered that parliamentary privilege does cover the situation, the allegations would need to be referred back to the Speaker or President.

If the Equal Opportunity Commissioner considers that parliamentary privilege is not so broad as to prevent the particular allegations being dealt with, the sexual harassment investigation and conciliation processes will proceed in a normal way. In the amendment which I propose there is an additional safeguard in that an MP who is the subject of sexual harassment allegations and who believes that parliamentary privilege should apply can, as a matter of common law, go to the Supreme Court to have the issue determined.

My goal in all this is to remove any risk of Party political considerations influencing the assessment of sexual harassment allegations. Although the record of impartiality of our Speaker and President is there for all to see, the fact is that our version of the Westminster system permits the Presiding Officers to retain their Party affiliations to the full and to debate and vote with their colleagues in the Party room. I believe that may then leave them open to some kind of political persuasion by their colleagues.

We have been waiting for the Bill to be completed and dealt with for a long time. Certainly, it was so long ago that I forget when I introduced my Bill, but this is an extraordinarily sensitive area. I would like to thank the Attorney for giving me the opportunity on a couple of occasions to meet with him and his officers.

I believe that we are trying to resolve this issue so that we do not have any further situations because, to my knowledge in the past, staff members have not been treated fairly when they made complaints about sexual harassment and other issues of harassment. The fact is that members of Parliament have a very privileged position in society, but that does not absolve us from the responsibility of our position, and we should set a standard in this place. Certainly, we should not be above the other laws of the land. In saying that, I recognise the issue of parliamentary privilege, and I recognise that that is a difficult and sensitive area for us to deal with. I believe that I have made a genuine attempt to deal with that issue, and I will be interested to deal with it in more detail in the Committee stages.

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

LIQUOR LICENSING BILL

Adjourned debate on second reading.

(Continued from 27 May. Page 1386.)

The Hon. R.D. LAWSON: I support the second reading of the measure. Our licensing laws are really a minefield of contradictions and historical anomalies. In these days of open competition and market economics, it does seem to me rather difficult to justify restrictive legislation in relation to the sale of alcoholic beverages. I should say that there is an obvious public interest in minimising the harm which liquor can cause and there is also obviously a public interest to attain the social objective of limiting the consumption liquor by minors. It

seems to me there is also a public interest in the sale of liquor because it is a source of revenue, and considerable revenue, to the State in circumstances where the revenue base of the State is not markedly increasing.

I had serious doubts about the efficacy, long term, of maintaining this elaborate legislative scheme and the bureaucracy which follows it. I query the real public benefit of such legislation in the long term. However, every other jurisdiction in Australia and elsewhere maintains regimes of this kind. There is an undoubted need for minimisation of harm in relation to the sale and consumption of liquor and, if we are to keep this regime, as I think we must in the short term at least, this Act is clearly ripe for review and the Attorney is to be congratulated for bringing forward the review and also commissioning the report of Anderson QC on which some of the provisions of the Bill are based.

Mr Anderson himself, in his report which came out in 1996, did raise the question of total deregulation of the industry. He came down against such deregulation. He mentioned that there are many anti-competitive facets of the Act as it then existed and still exists and will exist under this legislation. He goes on to note that the major restriction which, on the face of it, offends the national competition policy, arises in relation to the requirement to establishment need.

In the existing legislation, which is maintained in this legislation, there is an obligation on any proponent of a new licensed premises in relation to, for example, a hotel to establish that there is a demonstrable public need for the opening of new premises. Few other businesses in our community are required to establish to the satisfaction of either a Government authority or a court an economic need for the establishment of a business.

Ordinarily, we take the view that if someone wants to set up a business it is for them to satisfy themselves that there is a need; otherwise, when they set up their business, they will not prosper. The mechanisms of Government are not ordinarily established to prevent people establishing a business unless they can show such a need.

The conditions relating to the requirement to establish need have in the licensing laws been reducing over the years and principally by amendments in 1985. We have got to a stage where there is not a great requirement except in relation to hotels and bottle shops. The requirement, for example, to provide need for the establishment of a restaurant was dispensed with in 1985.

Mr Anderson was of the view that the proof of need should still be required for hotels and bottle shops. He believed that there was some truth in the proposition that total deregulation could literally result in a bottle shop or hotel on every street corner. He thought that would be inconsistent with the minimisation of harm principles. Frankly, that is overstating the case. Unless there was some demand for liquor shops in the community, there would not be one on every street corner, just as there is not a delicatessen, let alone a hotel, on every street corner.

Mr Anderson concluded at paragraph 3.4.3 of his report that 'very marginally' he was of the view that need should still be required to be proved for hotels and bottle shops in the short term. He considered that it should be the subject of a very thorough review in three or four years time. He went on to say:

> By then there should be information available from interstate experience which will show whether there has been any increase in liquor abuse as a result of allowing sales of liquor in supermarkets.

It seems that for the time being we have deferred the ultimate philosophical question of the need for regulation of this industry. One difficulty about regulating the liquor industry is that we are dealing with a great variety of businesses—some very small, some quite substantial. On the one hand, hotels range from small operations in country towns which almost provide a social service to a town, struggling to make ends meet and providing a base which people in the surrounding countryside can visit from time to time, to on the other hand hotels in the metropolitan area which are very substantial businesses—and many of them are now appended to gaming parlours. The hotel or liquor side of the business is now but a subsidiary, but still an important subsidiary, of the business. Of course, there are restaurants across the whole gamut of prices which range from well established international-class restaurants to small ethnic restaurants.

On one hand we have small vineyards with cellar door facilities, while on the other hand we have multi-million dollar national mail order operators. We have bottle shops, some of them privately owned, some substantial, some small, some which are part of chains and some which are free standing. Also, we have the whole range of clubs, sporting and social, across city and country. So, there are a great variety of businesses, and it is difficult to draw the strands together, because the needs and requirements of these businesses vary across the spectrum.

In my view the current Bill satisfactorily answers many of the conflicting calls upon regulators. The first section upon which I would wish to pass some comment is the new clause 3 of the Bill dealing with the objects of the Act. So far as I am aware this is the first occasion in which the objects of this Act have been set out. I am not really enamoured of these legislative statements. They are often in the nature of motherhood or aspirational statements and do not provide much meat to legislation. However, the objects of this Act are linked into some of its provisions. In particular, these objects are linked into clause 53 of the Bill which requires the licensing authority, be it the Commissioner or the Licensing Court, to have regard to the objects of the Act. That clause provides that an application is not to be granted unless the licensing authority is satisfied that the grant is consistent with the objects. Those objects are:

> (a) to encourage responsible attitudes towards the promotion, sale, supply, consumption and use of liquor. . .
>
> (b) to further the interests of the liquor industry with which it is closely associated—such as tourism and the hospitality industry. . .
>
> (c) to ensure that the liquor industry develops in a way which is consistent with the needs and aspirations of the community; and
>
> (d) to ensure as far as practicable that the sale and supply of liquor contributes to, and does not detract from, the amenity of community life; and
>
> (e) to encourage a competitive market for the supply of liquor.

The last requirement is reasonably important, because in the past when one reads the decisions of the Licensing Court and of the Supreme Court when hearing appeals from the Licensing Court in licensing matters one sees that the competitive market for the supply of liquor has not featured as a terribly important criterion. One would almost think that the Act as it previously existed and was administered was administered for the benefit of the liquor industry rather than the benefit of the community and that the development of a competitive market was not high on the list of priorities of those administering the legislation.

The objects of this Bill do not include any statement such as the protection of existing licensees, and that is notable, because there is a widespread perception that the legislation has been used to protect existing licensees and, more particularly, to provide a barrier to entry of competitors. Hotels, especially, through their association, have been active objectors to the granting of other licensed premises over many years.

A cynic would say, and cynics have said to me, that it is curious that the objects of this Bill, as stated in the Bill, do not mention the raising of revenue for the State, because, as I mentioned earlier, one would be naive to suggest that this legislation does not have important revenue consequences. However, I am grateful to see that these objects are not, as it were, left in the air as a general motherhood statement at the beginning of the Bill which will be used occasionally in rhetorical speeches but in no real practical sense. That has been overcome by linking the objects into clause 53.

The licensing authority in this Bill means either the court, where a matter is to be decided by the court, or in relation to any other matter, the Commissioner. It is fair to say that the powers of the Liquor and Gaming Commissioner have been extensively increased under this Bill. One might ask why there should be a licensing court at all. In theory it is difficult to justify a specialised judicial tribunal. Few other industries that one can think of have specialised courts to supervise the licensing and disciplining of those industries.

However, the liquor industry has had a licensing court for many years and, speaking personally, if the alternative to having as the ultimate administrator and authority in this legislation is a court or a bureaucrat, I would prefer the court. I happen to think that courts have a degree of independence in the way in which they are conducted. They have well recognised legal obligations to act judicially, to rely upon evidence which can be tested, and to permit parties to present cases to them and hear them in a relatively impartial way. I intend no criticism of the present or any other Commissioner in making that statement of preference. That is a general view.

Once again, I am not criticising the current Commissioner, but the bureaucracy frequently becomes a part of the industry that it is regulating. Over the years there is opportunity for favouritism, for capricious action, and for other unsatisfactory elements to enter into a bureaucracy which is not subject to the discipline of open proceedings, arguments and judgments such as a court procedure. I will be interested to see how the new regime in which the powers of the court are circumscribed will operate, because it seems to me that the powers of the court are severely circumscribed by the provisions of this Bill.

It appears that the Licensing and Gaming Commissioner will be the authority for most matters other than those that are contested. Even in relation to contested matters, the Commissioner will have a role to play in seeking to resolve by mediation and conciliation any differences between the proponents of an application and those who are opposing it. The cases which will be referred to the court will be substantially fewer than is now the case. I am the first to admit that many of the what would appear to be rather trivial applications presently would appear, from the cause list, to clog the business of the court.

There are only a few other provisions to which I wish to refer specifically. One is clause 30 of the Bill, which deals with certain cases where no licence is required for the sale of liquor. These are cases such as liquor sold for medicinal, religious or educational purposes; sales in Parliament House; in hospitals; where liquor is won as a prize in a game of skill or chance. It has always struck me as being anomalous that, if one had a collection of ports or a couple of bottles of Grange Hermitage in the cellar, one could not advertise it simply and sell it through the classified advertisements or by putting up a notice in the local shop that one had liquor for sale, just a couple of bottles. One could not clear out one's cellar by means of a garage sale, because to do so is contravening the Licensing Act. The section provides for exemptions by way of regulation and I believe—and I ask the Attorney to correct me if I am wrong on this—that businesses such as Send A Basket and other florist type arrangements which include in them a bottle of champagne, or whatever, are exempt under the current exemptions and will continue to be exempt under regulations to be introduced under this new Bill.

Clause 34, dealing with restaurant licences, now introduces a novel concept into our licensing law, where a person seated at a table in a restaurant will be entitled to consume liquor on any day except Good Friday and Christmas Day and there would be no requirement in these circumstances for a meal to be served. It is curious that the criterion for permitting such a person to consume liquor is that they be 'seated at a table'. It seems to me that 'seated at a table' will be another one of these legal fictions in the licensing jurisdiction. We had the old one of *bona fide* traveller years ago, which is now long forgotten. Then we had the concept of a *bona fide* meal—one could only receive service if one was consuming a *bona fide* meal. I believe there was the concept of a substantial meal. But now we have this notion that you will be entitled to consume at certain restaurants if you are seated at a table. What is it about being seated at a table at a particular premises that makes it desirable or permissible that one be permitted to consume alcohol? That seems to me to be rather a bizarre provision.

The Hon. P. Holloway interjecting:

The Hon. R.D. LAWSON: The Hon. Paul Holloway interjects that no doubt being seated at a table will have certain advantages if one consumes a good deal. It has been pointed out to me by a very experienced legal practitioner in the licensing area that this will lead to anomalies. For instance, some of the older hotels in the city are situated opposite a restaurant. The restaurant will now be able to compete quite easily with the hotel. The customer will be able either to go to the bar of the hotel or simply to walk into the restaurant, sit down and be served a drink. The hotel would have had to provide other facilities for the use of the public, such as a drive-in liquor outlet, but it will be disadvantaged.

This legal practitioner has pointed out to me cases of country towns where there is a hotel with a pizza bar with a restaurant licence situated across the road. At present, those two businesses co-exist well because they serve separate markets, but under this proposal the pizza bar will be able to operate as a mini-hotel. It will not have take-away liquor, but people will be able to have a drink, as it were, bar style. That is likely to have unsatisfactory repercussions from the point of view of the hotel.

Restaurants are one part of the licensed premises sector that has done more than any other to civilise the liquor industry and to bring it into the twentieth century to serve the needs of tourists and the local community. I will view with interest in the future the development of this extension of the notion of the restaurant licence.

I now refer to section 58 of the Act which preserves the requirement to establish need in relation to hotel licences and retail liquor merchants' licences. In relation to hotels, the Act will now provide:

> An applicant for a hotel licence must satisfy the licensing authority [the court or the commissioner] that the licensed premises already existing in the locality in which the premises or proposed premises. . . are. . . to be situated do not adequately cater for the public demand for liquor for consumption on and off licensed premises and the licence is necessary to satisfy that demand.

Personally, I deplore the continuance of this requirement. It is an extremely difficult test to satisfy to show that the existing needs of the community are not adequately catered for. As any person who has practised in the Licensing Court will affirm, it is easy to cross-examine and make look foolish any member of the community who says that the existing facilities do not adequately cater for public demand. It is an extremely difficult hurdle to overcome.

In relation to retail liquor merchants' licences, the criterion is as follows: the applicant must satisfy the authority that the licensed premises already existing in the locality do not adequately cater for the public demand for liquor for consumption off licensed premises. The criteria laid down under the new provision are different from those under section 63 of the existing Act. It is difficult to see why different words have been used in relation to what is essentially the same object, that is, of making it difficult for new entrants into the market.

In relation to retail liquor merchants' licences, it is worth reflecting upon section 38 of the existing Act. This Act has been interpreted by the courts to prevent supermarkets from operating as licensed bottle shops. The section provides that a retail liquor merchant's licence shall not be granted in respect of premises unless they are 'physically separate from premises used for other commercial premises'. Under the existing legislation, the supermarkets are prevented from operating as bottle shops. However, many members will know that some of the major chains have liquor stores located outside the door of supermarkets. For example, the very successful liquor store in the Central Market Arcade in Adelaide is alongside a supermarket that is owned by the same group.

It seems to me that that provision is not replicated in the Bill. Is that by design and is it envisaged that supermarkets will be eligible to now apply for retail storekeepers' licences. More particularly, is it envisaged that not only will there be new applications for retail liquor merchants' licences for supermarket premises but that existing licences will be removed into supermarkets?

A number of other provisions of the Bill give rise to question and perhaps I will pursue those in Committee.

In conclusion, I support the second reading. This is one step further to the ultimate deregulation of the liquor industry. I also make mention of the conditions of responsible use of liquor which have not previously been articulated in legislation: it is useful that they be included. One has every right, I suspect, to be somewhat sceptical of provisions of this kind, but there is at least a statement of responsible principles, which is to be commended. I support the second reading.

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

PARTNERSHIP (LIMITED PARTNERSHIPS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 27 May. Page 1387.)

The Hon. R.D. LAWSON: I support the second reading. Limited partnerships have become reasonably popular in Australia in recent years. They are of quite ancient origin. One author says that they have their origins in the medieval commendas, which were something of a cross between formal partnerships and mere loan arrangements. Under these commendas one of the so-called partners, usually a noble who could not be directly involved in trade without damaging his name or reputation, provided the finance for a commercial undertaking in exchange for a share in the profits, but on the understanding that he would take no active part in the venture nor be liable for any of its losses beyond the amount of his initial investment.

Of course, it has been a fundamental principle of the law of partnerships since the nineteenth century that every member of a partnership was liable to his last shilling for all the debts of the partnership. It was that factor that made limited companies so attractive as a vehicle for business investment, and one of the reasons why the United Kingdom and the common law countries advanced during the industrial revolution was the invention of the limited company. Of course, one of the greatest areas of complaint one hears from small businessmen is traders hiding behind the corporate structure to allow their promoters to escape liability in the event of a business venture not prospering. And of course we must recognise that, in legislating for limited partnerships, we may to some extent be extending the vehicles by which those who seek to avoid their liabilities can conduct business. But, as the Attorney noted in his second reading explanation, limited partnerships do provide a relatively simple and inexpensive commercial vehicle for attracting risk or venture capital.

Mention was made in that speech of the significant tax advantages that limited partnerships had until 1992-93, when the income from limited partnerships was treated on a less favourable basis and a particular tax advantage was lost. There do, however, remain significant tax advantages for limited partnership vehicles. In particular, moneys contributed to limited partnerships can in certain circumstances attract tax deductions in a way that is not possible with the use of a limited company. It is stated in the second reading explanation that a committee comprising chartered accountants and certified practising accountants indicated that South Australia was suffering economically through failing to enact limited partnership legislation.

Frankly, I would be inclined to doubt the extent to which this State has suffered by reason of its not having limited partnership legislation, because in my experience, although they may have been used interstate to some degree, they are not yet a popular form of commercial vehicle, excepting for tax driven schemes. Notwithstanding that, they do encourage entrepreneurial schemes and do provide a vehicle for economic activity.

I have studied the provisions of the Bill and in some respects it is a better version than that which has applied in Queensland for some time. For many years that State has had limited partnerships and until recently they were not a popular mechanism. However, the model adopted in the new proposed amendment to the Partnership Act is sensible. It

requires documents to designate clearly that the business venture is a limited partnership and that will give notice to those dealing with the partnership of the fact that they are dealing with an entity for which their recourse may be limited. I support the second reading.

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

STATUTES AMENDMENT (COMMUNITY TITLES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 27 May. Page 1387.)

The Hon. R.D. LAWSON: I support the second reading of this measure as I supported the enactment of the Community Titles Act itself. I was gratified to read that the Community Titles Act proclaimed on 4 November last year had attracted some 26 applications for a variety of community title developments. As the Attorney noted in his second reading explanation, these applications covered a wide range of developments. This measure is designed to overcome a difficulty arising in the transitional provisions of the legislation, which is explained in the Attorney's second reading explanation and which I do not propose to go over. It is never possible to envisage all the circumstances that will affect the way in which transitional provisions operate and I certainly support this measure.

My only questions to the Attorney in relation to the Bill relate to the fact that the new proposal is that the Registrar-General may only deposit a strata title under section 41(1) of the Community Titles Act if proceedings for the deposit of the plan were commenced before the day fixed by proclamation for that purpose. What day is envisaged will be fixed, because this provision has the capacity to have some retrospective operation and I want to be assured that there is no potential for retrospective operation that will adversely affect the interests of anyone who is in the process of registering either a community title or a strata plan. Another question arising from the same matter relates to how many applications he estimates will be affected by the current provisions or, more directly, have been caught by the anomaly that makes this amendment necessary. I support the second reading.

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

STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO) BILL

Adjourned debate on second reading.

(Continued from 20 March. Page 1298.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The Opposition supports the second reading. Within the Attorney-General's portfolio, it is understandable that loopholes and difficulties are exposed as particular issues are raised by litigants or members of the judiciary. This Bill contains a mixture of provisions which, generally speaking, promote the purposes of the Acts which are to be amended by the Bill. I note that the Attorney has placed on the record today a number of amendments he has discussed with me privately, and the Opposition has no problem with them. I support the second reading.

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

LONG SERVICE LEAVE (MISCELLANEOUS) AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

This measure continues the South Australian Government's industrial relations reform agenda which was commenced in 1994 with the passage of the *Industrial and Employee Relations Act*.

This Bill proposes to permit (by written agreement of employer and employee) the cashing out of accrued long service leave entitlements and provides more flexible arrangements for the taking of leave.

It introduces further choice into workplaces in South Australia within the overriding principle of flexibility with fairness achieved through a framework of minimum standards and employee protection.

The *Long Service Leave Act 1987* provides the legislative basis for long service entitlements in South Australia. The Act has broad coverage to workers in South Australia as it has application where no inconsistent Federal legislation, award or agreement applies. Except in certain specific industry sectors federal regulation of long service leave entitlements has, to date, been minimal. In the South Australian construction industry the *Construction Industry Long Service Leave Act 1987* applies.

The *Long Service Leave Act 1987* has not been amended since 1992.

In May 1996, in a statement on micro-economic reform, the Premier announced the State Government's intention to amend the *Long Service Leave Act 1987* to permit employers and employees to agree to cash out long service leave entitlements. This Bill gives effect to that policy initiative.

Since the 1992 amendments to the *Long Service Leave Act 1987* major changes to the South Australian and the Australian industrial relations systems have taken place. These changes have had the effect of substantially lessening the inflexibility of statutory and award controls over work places, and have enabled employers and employees to negotiate more freely to alter existing arrangements.

The *Long Service Leave Act 1987* has not kept pace with these recent policy changes and newly found workplace flexibilities in State and Federal industrial relations legislation.

Under the *Long Service Leave Act 1987* employees in South Australia are entitled to 13 weeks long service leave after 10 years of continuous service. After 7 years of continuous service an employee is entitled to a pro rata cash entitlement upon the termination of their employment (except in cases of serious and wilful misconduct or unlawful resignation).

The *Long Service Leave Act 1987* deals with three major issues:

(a) firstly, the eligibility to leave and the quantum of leave entitlement;

(b) secondly, rules relating to the taking of leave; and

(c) thirdly, rules relating to the relationship between statutory and award provisions relating to long service leave.

South Australia's long service leave standards are amongst the most favourable to employees of the Australian jurisdictions. This Bill does not propose to amend the *Long Service Leave Act 1987* in relation to eligibility to take leave nor the quantum of leave.

It is proposed, however, that the *Long Service Leave Act 1987* be amended in relation to the taking of leave and the rules relating to the relationship between statutory and award/agreement provisions relating to long service leave.

The current statutory provisions relating to the taking of long service leave do not permit an employer and an employee to agree that an entitlement to leave should be paid out in cash rather than taken as leave. Leave must be taken or paid out on termination of employment only. Nor do they permit an employee to accept employment with the employer during a period when the employee should be on leave. Any alternative practice or agreement is a breach of the *Long Service Leave Act 1987* and renders the parties liable to legal sanction and prosecution.

This Bill proposes that the *Long Service Leave Act 1987* be amended to allow an employer and an employee to mutually agree in writing to the cashing out of the whole or part of the long service leave entitlement, and (where this has been agreed) for the employment of the employee during this period not be an offence.

The right to mutually agree the cashing out of long service leave would have the following benefits:

(a) employees would be given a choice to receive a lump sum service related payment and maintain continuity of paid employment;

(b) employers would have the choice to retain the services of a long standing and experienced employee and, where agreed, avoid the cost of having to substitute an inexperienced or untrained employee to cover the worker's absence; and

(c) employers would have the choice to pay out long service leave entitlements at the rate of pay applying when the entitlement falls due, rather than have leave accrued and paid out at higher rates of pay.

The *Long Service Leave Act 1987* provides that the Industrial Relations Commission may determine that long service leave entitlements of a class of workers be determined by reference to an 'award' or 'industrial agreement' made under State industrial relations legislation, in which case the provisions of the *Long Service Leave Act 1987* cease to apply to that class of persons.

This provision is, however, restrictive (and rarely used) as it relates only to 'leave entitlements', would require a determination by the Industrial Relations Commission and does not recognise enterprise agreements made under the *Industrial and Employee Relations Act 1994*.

It is proposed that the *Long Service Leave Act 1987* be varied to enable statutory provisions regulating the taking of long service leave to be subject to variation by employers and employees through agreements between workers and employers and enterprise agreements made under the *Industrial and Employee Relations Act 1994*. The interests of employees in relation to any variation from statutory provisions would remain protected by the application of the no disadvantage provisions applicable to enterprise agreements in the *Industrial and Employee Relations Act 1994*.

The Bill also makes consequential amendments to the drafting and language of the *Long Service Leave Act 1987* consequential upon the passage of the *Industrial and Employee Relations Act 1994* and the Federal *Workplace Relations Act 1996*.

The Bill is a response to continuing calls by workers and employers for greater flexibility in the industrial relations system and lump sum payments of long service leave entitlements could be of considerable assistance to workers and their families, as well as the small business community.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The measure is to be brought into operation by proclamation.

Clause 3: Amendment of s. 3—Interpretation

The clause replaces the definition of 'agreement' with a definition that reflects the current forms of industrial agreements under the *Industrial and Employee Relations Act 1994* and the *Workplace Relations Act 1996* of the Commonwealth, that is, enterprise agreements under the State Act and certified agreements, enterprise flexibility agreements and Australian workplace agreements under the Commonwealth Act.

The clause makes further amendments to definitions consequential on the enactment of those Acts.

A new definition of 'individual agreement' is proposed under the clause—an agreement (other than an enterprise agreement) individually negotiated between an employer and a worker. This new term is principally required for the amendment proposed by clause 4.

Clause 4: Amendment of s. 5—Long service leave entitlement

Section 5 of the principal Act creates the entitlement to long service leave after 10 years service and payments in lieu of such leave on termination of employment or death after 7 years service.

The clause amends this section to introduce an entitlement after 10 years service to a payment in lieu of long service leave by agreement between an employer and a worker. The agreement must be an individual agreement (see the new definition in clause 3) made and recorded in writing and signed by the parties. Such an agreement may only be made after the entitlement to long service leave accrues, that is, after the completion of 10 years service or after each subsequent year of service.

Clause 5: Amendment of s. 6—Continuity of Service

This clause updates a reference to the Industrial Commission so that is accords with the body's new title—the Industrial Relations Commission.

Clause 6: Amendment of s. 7—Taking of leave

Subsections (1), (2) and (3) of section 7 provide for the taking of leave as soon as practicable after the entitlement accrues, for the leave to be taken in one continuous period and for not less than 60 days notice to be given by an employer as to the taking of leave.

Section 7 its current form goes on to allow an employer and worker to agree on the deferral of long service leave, the taking of leave in separate periods of not less than 2 weeks, the granting and taking of leave on less than 60 days notice by the employer and the taking of leave in anticipation of the entitlement accruing to the worker.

The clause amends the section so that these matters may be dealt with by an enterprise agreement as well as by an individual agreement. The clause removes the requirement for leave to be taken in minimum periods of 2 weeks. Under the clause, an individual agreement as to any of these matters would prevail over an inconsistent provision of an enterprise agreement.

Clause 7: Amendment of s. 8—Payment in respect of long service leave

Section 8(2) of the principal Act requires payment of wages during a period of long service leave to be made—

(a) in advance; or

(b) on the ordinary pay day; or

(c) in some other way agreed between the employer and the worker.

The clause adds a new provision that would allow an enterprise agreement to govern the manner of such payment but subject to any individual agreement between an employer and a worker.

The clause also deals with the quantum of a payment by agreement in lieu of long service leave. This is to be calculated at the worker's ordinary weekly rate of pay (see section 3(2) of the principal Act) but is not to include any amount to represent the value of accommodation provided by the employer. If a worker's wage rates vary during what would have been the leave period after a payment in lieu, a further payment is to be made to reflect that variation.

Clause 8: Insertion of s. 8A

8A. Approval of enterprise agreements dealing with taking of leave, etc.

The proposed new section varies the test to be applied by the Industrial Relations Commission in approving enterprise agreements under the *Industrial and Employees Relations Act 1994* (Chapter 3 Part 2) where the agreements deal with the taking of long service leave or the payment of wages for a period of long service leave as contemplated by the amendments proposed by clauses 6 and 7 of the Bill.

In the case of such an agreement, the Commission must, under the new section, apply the test set out in section 79(1)*(e)*(iii) of that Act as to whether the remuneration and conditions of employment under the agreement (considered as a whole) are not inferior to the remuneration and conditions of employment (considered as a whole) under a current applicable award as if the rules in the *Long Service Leave Act* as to the taking of leave and payment of wages during leave (section 7(1), (2) and (3), section 8(2)*(a)* and *(b)*) were contained in the award.

Clause 9: Amendment of s. 9—Exemptions

This clause updates the title of the Industrial Commission where references appear in section 9.

Clause 10: Amendment of s. 10—Records

Section 10 of the principal Act contains requirements as to the keeping of records and the provision of information to workers in relation to long service leave.

The clause amends the section so that records will be kept as to payments by agreement in lieu of long service leave.

The clause creates a requirement (with a maximum penalty of $1 000 attaching) under which an employer must—

- cause an agreement as to a payment in lieu of leave to be recorded in writing and signed by both parties
- give a copy of the written agreement to the worker
- keep the written agreement for the period for which other leave records are required to be kept.

An employer who makes a payment by agreement in lieu of long service leave must also give the worker a statement setting out the period of leave in lieu of which the payment is made and the number of days (if any) that will remain due to the worker after the payment is made.

Clause 11: Amendment of s. 12—Inspector may direct employer to grant leave or pay amount due

Clause 12: Amendment of s. 13—Failure to grant leave

Clause 13: Amendment of s. 16—Act not to apply to certain workers

These clauses each make consequential amendments updating references to the Industrial Court or otherwise reflecting the enactment of the *Industrial and Employees Relations Act* or the *Workplace Relations Act*.

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

TOBACCO PRODUCTS REGULATION (MISCELLANEOUS) AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

This Bill makes highly technical amendments to the *Tobacco Products Regulation Act 1997* to ensure that licensed tobacco merchants do not inadvertently find themselves in technical breach of their licence conditions.

The Government has made no secret of its desire to encourage tobacco consumers to quit smoking altogether or, failing that outcome, at the very least to switch to lower tar content products. Members will recall that the *Tobacco Products Regulation Act 1997* puts in place structures that clearly consolidate and strengthen the licensing, health and other regulatory aspects associated with dealing in tobacco products and also regulates the use of tobacco products in certain defined places.

As part of strengthening the licensing requirements a provision was included that will require restricted class A licensees (essentially retailers) not to purchase tobacco products unless licence fees have already been paid on those products.

Monthly tobacco licence fees are calculated on the basis of receipts from the sales of tobacco products made by wholesalers during the calendar month that is two months before the current licence period.

On review, in this licensing system, it is considered too onerous a task for retailers to be satisfied that the licence fee has been paid on a particular product as, at the time of purchase by the retailer, the value of the particular sale by the wholesaler to the retailer would not be reflected in the licence fee of the wholesaler for another two months.

It is therefore proposed to remove this requirement and only require retailers to be satisfied that they are purchasing tobacco products from a licensed wholesaler.

Following submissions from industry it is also proposed to amend section 15(6) of the Act to provide certainty for licensed wholesalers that licence fees are not payable when tobacco products are sold for delivery and consumption outside South Australia.

These amendments are highly technical in nature and do not affect the practical operation of the Act either from a revenue or health perspective but will ensure that legitimate tobacco merchants can get on with their business without inadvertently breaching a condition of their licence.

I commend the Bill to the House.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides that the measure will come into operation immediately after the *Tobacco Products Regulation Act 1997* comes into operation.

Clause 3: Amendment of s. 12—Classes and terms of licences

This clause amends section 12 of the principal Act to remove the provision that limits holders of restricted class A tobacco merchants licences to dealing only in tobacco products *in respect of which a licence fee has been paid*.

Clause 4: Amendment of s. 15—Licence fees

This clause amends section 15 of the principal Act so that the value of tobacco products sold for delivery and consumption outside the State will be disregarded in assessing licence fees irrespective of whether or not *the Commissioner is satisfied* that they have been sold for delivery and consumption outside the State.

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

STATUTES AMENDMENT (WATER RESOURCES) BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

The *Water Resources Act 1997*, recently considered by Parliament requires a number of consequential amendments to be made to other relevant natural resources management legislation in order to be fully operational in the manner envisaged by the Government. In particular, consequential amendments will provide for better integration between the Water Resources Act and other associated legislation.

The need for better integration and co-ordination of efforts in natural resources management has been raised as a major issue for natural resource managers at all levels. The Water Resources Act is under pinned by the principles of ecologically sustainable development and integrated resource management, and is in itself an important step towards the resolution of the issue of integrated management. The amendments contained in the Bill now before the House will further facilitate effective integration by providing, wherever possible, a relatively seamless process for permit applications, which are designed to prevent duplication and conflict, and save time and resources, while ensuring that all relevant environmental issues are considered before issuing permits to undertake activities that may have an impact on a variety of natural resources.

Land use planning is one of the most significant determinants of water resources outcomes, and proposed amendments to the Development Act will facilitate the prevention of inconsistencies between development plans under the Development Act, and water plans under the Water Resources Act.

The Environment Protection Act will be amended to require the Environment Protection Authority to consult the relevant water resources manager before issuing an environmental authorisation, an environment protection order, or a clean up order, where that order or authorisation would allow an activity for which a permit under the Water Resources Act would otherwise be required. Certain applications (those relating to activities in water protection areas) will be referred to the Minister administering the Water Resources Act for formal consideration and advice on the grant or refusal, or grant with conditions, of the environmental authorisation.

The Environment Protection Act will also be amended by incorporating in it various provisions that have remained in the Water Resources Act 1990 since enactment of the Environment Protection Act, but which will no longer have a place under the new Water Resources Act, as they deal solely with water quality (pollution) issues. The provisions in question provide for the proclamation of water protection areas (areas which are identified as requiring special protection against water pollution), and will allow the Minister to enforce the prevention of water pollution in water protection areas.

Amendments will also clarify that the statutory defence for polluting one's own property does not apply to the pollution of water on or under property or a neighbouring property. (The amendment has been required only as clarification, as the law does not recognise 'ownership' of water by a land owner in any case, unless the water has been positively appropriated by the land owner). It would be clearly inappropriate for the statutory defence to apply to water, particularly groundwater, which moves long distances beneath the surface of the ground, potentially spreading a contamination far from its source.

The Local Government Act will be amended by removing the existing provisions relating to watercourse management. Councils' powers to control activities relating to watercourses are now found within the Water Resources Act 1997.

The Pastoral Land Management and Conservation Act will be amended to require the Pastoral Board to consult the relevant water resources manager before approving a property plan, or issuing a notice to undertake certain remedial work on a property, where the plan or order would authorise or require an activity that is one of those normally controlled under the Water Resources Act. The Pastoral Land Management and Conservation Act will also be amended by providing that rights of persons passing through pastoral property, or holding mining tenements to pastoral land, are subject to the Water Resources Act.

The Soil Conservation and Land Care Act will be amended to provide that functions of Soil Conservation Boards will include any functions delegated under the Water Resources Act. The Soil Conservation and Land Care Act will also be amended to provide that district plans must be, as far as practicable, consistent with water plans that apply in the district. Where voluntary and compulsory property plans include activities that would otherwise be covered under the Water Resources Act, then the relevant authority under the Water Resources Act must be consulted prior to approval of the plan. Consultation is likewise necessary for certain activities that may be required to be undertaken by the terms of a soil conservation order.

The South Eastern Water Conservation and Drainage Act will be amended to provide that the management plan of the South Eastern Water Conservation and Drainage Board will need to be amended to ensure consistency with the plan of a catchment water management Board if at any time there is a Board in relation to any part of the South Eastern Drainage Board's area. The Act will also be amended to require, in relation to the granting of a licence that would authorise an activity otherwise requiring a permit under the Water Resources Act, that the relevant water resources authority must be consulted before the licence is granted.

I commend this Bill to the House.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

Clause 3: Interpretation

These clauses are formal.

Clause 4: Amendment of s. 29—Certain amendments may be made without formal procedures

Clause 4 amends section 29 of the *Development Act 1993*. The amendment enables the Minister to amend a Development Plan "in accordance with" a plan, policy, standard, report (*e.g.* a report in a water plan under the *Water Resources Act 1997*) etc. instead of including the plan, policy, etc., in the Plan as section 29 presently provides. This will enable the Minister to tailor the amendment to the Plan.

Clauses 5 to 20 amend the *Environment Protection Act 1993*:

Clause 5: Amendment of s. 39—Notice and submissions in respect of applications for environmental authorisations

Under the *Water Resources Act 1997* a permit is not required for an activity that is the subject of an environmental authorisation. The purpose of the amendment to section 39 is to require the Authority under the *Environment Protection Act 1993* to invite submissions from the authority under the *Water Resources Act 1997* to whom an application for the permit would otherwise have had to be made before the Authority decides whether to grant or refuse the authorisation.

Clause 6: Amendment of s. 46—Notice and submissions in respect of proposed variations of conditions

Clause 6 makes a similar amendment in relation to the variation of conditions of an environmental authorisation.

Clause 7: Amendment of s. 47—Criteria for grant and conditions of environmental authorisations

Clause 7 makes a consequential amendment to section 47.

Clause 8: Substitution of s. 61

Clause 8 inserts definitions into section 61 in consequence of new sections 64A to 64D.

Clause 9: Insertion of s. 61A

Clause 9 provides for water protection areas following the repeal of the *Water Resources Act 1990*.

Clause 10: Substitution of s. 62

Clause 10 provides for the appointment of an authorised officer under the *Water Resources Act 1996* as an authorised officer under the *Environment Protection Act 1993*.

Clause 11: Amendment of s. 64—Certain matters to be referred to Water Resources Minister

Clause 11 amends section 64 to limit its operation to applications of the kind set out in new subsection (1a).

Clause 12: Insertion of ss. 64A to 64D

Clause 12 inserts new sections 64A to 64D. Sections 64A and 64B are sections 55 and 56 of the *Water Resources Act 1990*. Section 64C provides for delegation and section 64D provides that costs due to the Minister under section 64A or 64B are a charge on land.

Clause 13: Amendment of s. 84—Defence where alleged contravention of Part

Clause 13 amends section 84 so that it is not a defence where the property damaged is naturally occurring water.

Clause 14: Amendment of s. 93—Environment protection orders

Clause 15: Amendment of s. 99—Clean-up orders

These clauses require the Authority to invite submissions from the relevant authority under the *Water Resources Act 1997* in relation to proposed environment protection orders and clean-up orders.

Clause 16: Amendment of s. 118—Service

Clause 17: Amendment of s. 135—Recovery of technical costs associated with prosecutions

Clause 18: Amendment of s. 138—Enforcement of charge on land

Clause 19: Amendment of s. 139—Evidentiary provisions

These clauses make consequential amendments.

Clause 20: Amendment of schedule 2

Clause 20 inserts transitional provisions. New clause 6 of schedule 2 of the Environment Protection Act inserted by this clause will be used to transfer the substance of Part 4 Division 2 of the *Water Resources Regulations 1990* under the *Water Resources Act 1990* (dealing with control of waste on boats) to an environment protection policy under the principal Act. This clause is based on subclauses (6) and (7) of clause 5 of schedule 2 under which provisions under laws repealed by the *Environment Protection Act 1993* were "fast tracked" into environmental protection policies.

Clause 21: Repeal of Division 1 of Part 35

Clause 21 repeals Part 35 Division 1 of the *Local Government Act 1934*. That Division sets out provisions relating to watercourses that have been superseded by the *Water Resources Act 1997*.

Clause 22: Amendment of s. 41—Property plans

Clause 23: Amendment of s. 43—Notices to destock or take other action

Clause 24: Amendment of s. 59—Right to take water

These clauses make consequential amendments to the *Pastoral Land Management and Conservation Act 1989.* Clauses 22 and 23 require consultation with the relevant authority under the *Water Resources Act 1997*. Clause 24 makes section 59 subject to the *Water Resources Act 1997*.

Clause 25: Amendment of s. 29—Functions of boards

Clause 26: Amendment of s. 36—District plans

Clause 27: Amendment of s. 37—Voluntary property plans

Clause 28: Amendment of s. 38—Soil conservation orders

Clause 29: Amendment of s. 39—Provisions relating to compulsory property plans

Clauses 25 to 29 amend the *Soil Conservation and Land Care Act 1989*. The amendment to section 29 makes it clear that a soil board has functions delegated to it under another Act.

Clause 26 requires a district plan and three year program to be consistent with a relevant water plan under the *Water Resources Act 1997*.

Clauses 27, 28 and 29 require a board to consult the relevant authority under the *Water Resources Act 1997* in relation to voluntary and compulsory property plans and soil conservation orders.

Clause 30: Amendment of s. 18—Management plan

Clause 31: Amendment of s. 43—Grant of licences

Clauses 30 and 31 amend the *South Eastern Water Conservation and Drainage Act 1992*.

Clause 30 requires the Board to amend its management plan if necessary so that it is not inconsistent with any relevant catchment water management plan under the *Water Resources Act 1997*.

Clause 31 requires the relevant authority under the *South Eastern Water Conservation and Drainage Act 1992* to consult the relevant authority under the *Water Resources Act 1997* before granting or varying a licence.

Clause 32: Amendment of s. 16A—Regulations to which this Act applies

Clause 32 amends section 16A of the *Subordinate Legislation Act 1978*. Section 16A sets out the classes of regulations that are not subject to automatic expiry. The amendment includes in this category

regulations under the *Water Resources Act 1997* that declare a watercourse, lake or well to be a prescribed watercourse, lake or well or a part of the State to be a surface water prescribed area and regulations appointing a body to be a catchment water management board.

Clause 33: Amendment of Water Resources Act 1997

Clause 33 amends the transitional schedule of the *Water Resources Act 1997*. Paragraph *(a)* replaces subclause (1) of clause 2 of the schedule which provides for existing proclaimed watercourses, lakes and wells to be prescribed watercourses, lakes and wells under the new Act. The purpose of the amendment is to make it quite clear that proclaimed watercourses, lakes and wells under the *Water Resources Act 1976* travel across to the new Act as well as those under the 1990 Act. Wells under the 1976 Act are a particular problem. Under section 41 of that Act an area of the State is declared to be a Proclaimed Region (wells as such are not declared to be proclaimed wells) and subsequent provisions regulate the taking of water from wells within the region. In other words proclamations under section 41 do not actually declare wells to be proclaimed wells.

In order to remove any suggestion that proclamations proclaiming watercourses, lakes or wells going back to 1976 under previous legislation may be regulations for the purposes of the *Subordinate Legislation Act 1978*, paragraph *(a)* of subclause (1) explicitly states that this is not so. The purpose of these amendments is to remove any argument in relation to the transition of the existing proclaimed water resources to the new Act.

Paragraph *(b)* replaces subclause (2) of clause 2 of the schedule. The new subclause (2) replaces paragraph *(a)* and makes a consequential change to paragraph *(b)* of the previous subclause. The reason for replacing paragraph *(a)* is to better express the intention which is to enable proclamations under the previous Acts to be varied or revoked.

Paragraph *(c)* extends the transitional operation of Part 6 of the *Catchment Water Management Act 1995* for another year. Delays in passing and bringing the principal Act into operation mean that a levy imposed by councils under the principal Act for 1997-1998 would not be in time for inclusion in council rate notices. The additional administrative cost of sending out separate notices can be avoided if Part 6 of the *Catchment Water Management Act* continues to apply.

Paragraph *(d)* makes a consequential change.

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

ROAD TRAFFIC (U-TURNS AT TRAFFIC LIGHTS) AMENDMENT BILL

The Hon. DIANA LAIDLAW (Minister for Transport) obtained leave and introduced a Bill for an Act to amend the Road Traffic Act 1961. Read a first time.

The Hon. DIANA LAIDLAW: I move:

That this Bill be now read a second time.

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

Leave granted.

The purpose of this Bill is to make changes to the Road Traffic Act to allow vehicles within classes prescribed by the regulations to make U-turns at prescribed signalised intersections and junctions.

In relation to this legislation, it is intended initially to limit this initiative to buses making U-turns at the junction of King William Road and Victoria Drive, Adelaide. However, the wording is designed so that the same facility can be extended to other intersections and junctions, and other classes of vehicles, prescribed by the Regulations, should the need arise.

While buses have used Pennington Terrace, North Adelaide, since the 1950s, the numbers have increased in recent years from approximately 104 in 1991 to 400 per weekday currently. Much of the earlier increase was due to more buses from the southern suburbs being extended through the Central Business District from their old terminal points around Victoria Square, with about 60 per cent of the buses using Pennington Terrace doing so prior to the commencement of competitive tendering. It is important to note that there will always be a need for buses to turn around on the edges of the City no matter how our public transport system is organised.

The increase in bus traffic has generated concern from local residents, prompting an investigation of various alternatives to the turning loop.

In recent months, a number of alternative turning loops have been investigated by the City Council and the Passenger Transport Board, including the use of the southern car park at Adelaide Oval. The various alternatives examined have been rejected as either too costly or as unacceptable to adjacent landowners or users.

The City of Adelaide, the Passenger Transport Board and TransAdelaide now agree that the optimum solution is to allow buses to make a U-turn, using special signals, at the King William Road/Victoria Drive junction.

The proposed U-turn arrangement at the King William Road/Victoria Drive junction is currently illegal under the Road Traffic Act, section 71A. However, such an arrangement would be similar to the 'hook' right turns now made by buses from the left side of the road at a number of intersections, including King William Street/North Terrace and Rundle Road/Dequetteville Terrace.

Considering the 'Hook Turn' provisions in the Road Traffic Act and the cost of all other infrastructure options, it is considered appropriate by all parties that the Road Traffic Act be amended to provide for U-turning buses at signalised intersections and junctions.

Under the arrangements, northbound terminating buses would pull into a separate bus lane adjacent to the western kerb of King William Road. They would wait for a 'B' Light, which would be activated only when all other conflicting vehicular and pedestrian traffic was stopped by a red light, then would execute a U-turn to the eastern southbound carriageway.

The bus U-turn will not only benefit the residents of Pennington Terrace, but the public transport system in general. The buses that now turn around at Pennington Terrace all enter the City from the southern suburbs, and carry very few passengers north of the Festival Theatre. The U-turn will, therefore, reduce the amount of empty running that the buses must undertake.

Given the characteristics of buses, and their high passenger carrying capabilities, special arrangements for buses to have various forms of priority over traffic are becoming more prevalent all over the world. These proposed arrangements should be considered simply as another step in making public transport more efficient and effective.

Explanation of Clauses

The provisions of the Bill are as follows:

Clause 1: Short title

This clause is formal.

Clause 2: Amendment of s. 71—Right turns not at intersections or junctions and U-turns

Section 71 of the Act provides that a U-turn may be made from any convenient place on the road. However, it should be made clear that this is not the case if the U-turn is being made at an intersection or junction at which there are traffic lights.

Clause 3: Amendment of s. 71A—U-turns at traffic lights

It is proposed that it will be possible for the driver of a vehicle of a prescribed class to execute a U-turn at an intersection or junction at which there are traffic lights if authorised to do so under the regulations. The U-turn will be required to be executed in the manner prescribed by the regulations, and to be executed in accordance with any specific requirement prescribed by the regulations.

The purpose of this Bill is to make changes to the Road Traffic Act to allow vehicles within classes prescribed by the regulations to make U-turns at prescribed signalised intersections and junctions.

In relation to this legislation, it is intended initially to limit this initiative to buses making U-turns at the junction of King William Road and Victoria Drive, Adelaide. However, the wording is designed so that the same facility can be extended to other intersections and junctions, and other classes of vehicles, prescribed by the Regulations, should the need arise.

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

ADJOURNMENT

At 4.32 p.m. the Council adjourned until Tuesday 3 June at 2.15 p.m.