LEGISLATIVE COUNCIL

Tuesday 22 July 1997

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

ASSENT TO BILLS

His Excellency the Governor, by message, intimated his assent to the following Bills:

ASER (Restructure).
Bank Merger (National/BNZ).
Bank Mergers (South Australia).
Electoral (Computer Vote Counting) Amendment.
Road Traffic (U-Turns at Traffic Lights) Amendment.
Stamp Duties (Rates of Duty) Amendment.
Statutes Amendment (Community Titles) Amendment.

RETAIL SHOP LEASES AMENDMENT BILL

The following recommendation of the conference was reported to the Council:

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

LIQUOR LICENSING BILL

The following recommendation of the conference was reported to the Council:

That the House of Assembly do not further insist on its amendments Nos 2 and 3.

QUESTIONS ON NOTICE

The PRESIDENT: I direct that the written answers to the following questions on notice, as detailed in the schedule that I now table, be distributed and printed in *Hansard:* Nos 179, 190, 194, 195, 228, 231, 237 and 241.

JETTIES

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

1. Will the State Government provide financial support to councils for repairs to jetties following storms or fires under the draft proposal in which State Government has agreed to upgrade jetties in return for councils taking over their future care and control?

2. If not, will councils be left to carry the full responsibilities for repairs?

3. When will a decision be made by the Government on this issue?

4. Will a decision be made by the Government before the next State election?

The Hon. DIANA LAIDLAW: The Government is considering a package of proposals associated with the transfer of further recreational jetties to local Councils, including an appropriate mechanism to indemnify Councils in the event of extraordinary damage and repair work to the jetty—which would reasonably be regarded as beyond normal day to day maintenance issues. The Government aims to resolve this issue as soon as possible.

SCHOOL SPEED SIGNS

190. **The Hon. T.G. CAMERON:** How many motorists have been fined and how many have been issued with demerit points for speeding through the new school speed zone signs from their installation until the end of February 1997?

The Hon. R.I. LUCAS: Statistics relating to the number of expiation notices issued for exceeding the speed limit through the new school speed zones crossings since the inception of new signs to the end of February are as follows:

Total notices processed by SAPOL's Expiation Notice Branch—584

The demerit point scheme is administered by the Registrar of the Department for Transport. However, in each case where a notice is expiated for this offence, demerit points are incurred.

SPEED CAMERAS

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

1. How many speed camera photographs were sent to motorists caught speeding for the years—
   (a) 1993-94;
   (b) 1994-95;
   (c) 1995-96?

2. How many motorists caught by speed cameras and issued with expiation notices subsequently took their case to court for the years—
   (a) 1993-94;
   (b) 1994-95;
   (c) 1995-96?

3. How many of these cases were successful and how many were unsuccessful for the years—
   (a) 1993-94;
   (b) 1994-95;
   (c) 1995-96?

The Hon. R.I. LUCAS:

1.

Year	Notice
1993-94	179 759
1994-95	171 347
1995-96	135 211

2.

Year	Notices Taken to Court
1993-94	23052
1994-95	20424
1995-96	17086

3. Programs which would enable statistics to be extracted are still being developed by Statistical Services Branch, SAPOL.

HEALTH COMMISSION FUNDS

195. **The Hon. SANDRA KANCK:**

1. How much money for health has the South Australian Government received from the Federal Government for each of the past five years, in both actual and real figures?

2. How has Federal funding been packaged in terms of general-purpose payments and specific-purpose payments, and in what percentages for each of the past five years?

3. To what extend does the accusation apply in South Australia of the Federal Health Minister, Dr Wooldridge, that the States have reduced their expenditure on health by 30 cents for every dollar the Federal government has put in over the past five years?

4. How much funding has the South Australian Government put into the health budget for each of the past five years, in both actual and real figures, as well as the percentage increase or decrease?

The Hon. DIANA LAIDLAW:

1. and 4.

	Commonwealth			South Australia		
	Actual	In 1991/92 $ *	per cent Change	Actual	In 1991/92 $ *	per cent Change
	$ '000	$ '000	per cent	$ '000	$ '000	per cent
1991-92	392.4	392.4	-	788.1	788.1	-
1992-93	411.5	403.0	2.7	804.4	787.8	-

	Commonwealth			South Australia		
	Actual	In 1991/92 $ *	per cent Change	Actual	In 1991/92 $ *	per cent Change
	$ '000	$ '000	per cent	$ '000	$ '000	per cent
1993-94 See Note 1	534.8	513.5	27.4	742.5	713.0	-9.5
1994-95 See Note 2	591.2	550.8	7.2	706.5	658.2	-7.7
1995-96 See Note 3	671.6	603.5	9.6	695.0	624.5	-5.1
1996-97 (est.). See Note 4	679.8	593.2	-1.7	763.7	666.4	6.7

#The HACC program is funded 60:40 Commonwealth:State—funding is channelled through FACS. Total SAHC HACC receipts for

Note 1:—
- From July 1993 the renegotiated Medicare Agreement directed more hospital funding to the State through the Hospital Funding Grant. This was largely offset by reductions of approximately $40 million p.a. in General Purpose Financial Assistance Grants paid to South Australia.
- Responsibility for a number of Commonwealth disability programs was transferred to South Australia under the new CSDA, along with $35.1 million funding.

Note 2:—
- 1994-95 Commonwealth funding includes $20.4 million for the transfer of Commonwealth hospital services at RGH, Daw Park

Note 3:—
- 1995-96 Commonwealth funding includes a net increase of $43.4 million for the transfer of Commonwealth hospital services at RGH, Daw Park

  It also includes tied funding for these Commonwealth-initiated programs
  - $6 million for reforms in mental health
  - $10.2 million for dental health
  - $4 million Ambulatory Care Reform Program

Note 4:—1996-97 Commonwealth funding includes
- $1 million for the transfer of Commonwealth hospital services at Woomera

2. Health-related Commonwealth Specific Purpose Payments are paid direct to the Health Commission. Commonwealth General Purpose Payments (or Financial Assistance Grants) are credited to the State's Consolidated Account, to which is also credited the State's own-source revenue. It is not possible to identify the origin of payments made to the Health Commission from the Consolidated Account.

The following table highlights total payments made by the Health Commission, major Commonwealth funding and the net cost to South Australia. The table also demonstrates the $48 million annual reduction in patient fees from 1992-93 due to reduced membership of private health insurance funds.

South Australian Health Commission Payments and Receipts

	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97 (est.)
	$'000	$'000	$'000	$'000	$'000	$'000
Total Payments	1 301.5	1 350.0	1 402.7	1 404.5	1 449.0	1 613.0
Commonwealth Specific Purpose Payments						
Hospital Funding Agreement	326.2	337.7	423.1	441.7	465.7	477.0
HACC Recoups #	20.9	24.2	21.4	22.4	22.9	30.2
C/wealth-State Disability Agreement	-	-	35.1	36.1	38.3	39.6
Pathology—IMVS	15.2	15.3	16.5	19.3	22.5	21.2
RGH Daw Park	-	-	-	20.4	63.8	63.2
Dental Health	-	-	-	6.0	10.2	4.9
Other	30.1	34.3	38.7	45.3	48.2	43.7
All Commonwealth	392.4	411.5	534.8	591.2	671.6	679.8
Patient Fees	124.7	146.0	109.0	104.8	99.0	97.7
Other Receipts	1.9	9.7	16.5	15.6	17.8	32.8
Change in SAHC Deposit Account	5.6	21.6	0.1	13.6	34.4	-39.0
State Payments#	788.1	804.4	742.5	706.5	695.0	763.7

#The HACC program is funded 60:40 Commonwealth:State with funding channelled through FACS. SAHC receipts for each year have been allocated 60:40 Commonwealth:SA.

South Australian Health Commission Total Funds

	Common-wealth $'000	South Australia $'000	Fees & Others $'000	Total Funds $'000
1991-92	392.4	787.5	121	1301.5
1992-93	411.5	804.4	134.1	1350.0
1993-94	534.8	742.5	125.4	1402.7
1994-95	591.2	706.5	106.8	1404.5
1995-96	671.6	695.0	82.4	1449.0
1996-97 (est)	679.8	763.7	169.5	1613.0

The general comments attributed to Dr Wooldridge that States have reduced expenditure on health by 30 cents for every dollar the Federal Government has put into the health budget do not recognise the extent to which the increase in Commonwealth funding is attributable to:-
- the transfer to the States of functions previously performed by the Commonwealth;
- tied funding for Commonwealth-initiated programs; or
- offset by reductions in Financial Assistance Grants.

In 1996-97, Commonwealth funding to South Australia included:

Commonwealth programs transferred to South Australia	$'000
Commonwealth-State Disability Agreement	39.6
Repatriation General Hospital, Daw Park	63.2
Dental Health	4.9
Woomera Hospital	1.0
Tied funding for Commonwealth-initiated programs	43.7
Reduction in Financial Assistance Grants	40.0

Once these changed conditions are allowed for, Commonwealth health funding to South Australia has effectively risen from $392.4 million in 1991-92 to $487.4 million in 1996-97. When the

reduction in Patient Fees ($48 million) and the effect of inflation ($57.3 million—14.6 per cent of $392.4 million in 1991-92) are taken into account it can be seen that South Australia is marginally ($10.3 million) worse off.

At the end of 1993, when this Government came to power, South Australia's spending had already been reduced by 9.5 per cent. In 1994-95 and 1995-96 the State's debt reduction strategy led to reduced State health expenditure of 7.7 per cent and 5.1 per cent respectively.

Through significant productivity gains over several years, it has been possible to achieve budgetary savings whilst maintaining services. The South Australian hospital system has led the nation in providing efficient health services. The 1997 Report on Government Service Provision confirms that SA hospitals provide more health services more efficiently.

This is supported by the first National Report on Health Sector Performance Indicators, which shows that South Australia

- has a higher rate of separations (both inpatients and same-day patients) per 1 000 population. This high rate is largely attributable to the high proportion of South Australia's population in the oldest age groups;
- has the second shortest clearance time for elective surgery waiting lists in comparison with other jurisdictions;
- has the lowest level of recurrent costs for public acute hospitals per Casemix adjusted separation;
- provides more hospital beds per 1000 population than anywhere else in Australia.

In summary, the general comments attributed to Dr Wooldridge need to be seen against the contextual background outlined above. Due regard must be given to the productivity benefits the State, not the Commonwealth, has achieved in South Australia. Moreover, the 6.7 per cent increase in State expenditure on health in South Australia in 1996-97 must be taken into account.

4. See answer to 1.

BUS ROUTES

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

1. How many changes have been made to Serco, TransAdelaide and Hills Transit bus route schedules during the last year?

2. What were the routes?

The Hon. DIANA LAIDLAW:

1. The answer to this question would depend upon the definition of a 'change', as the bus operators are constantly making minor variations to schedules to ensure that the best possible service is being provided. Each year, for example, many hundreds of minor changes are made to school runs due to the need to accommodate altered school start and finish times etc. One 'change' could include an alteration to one bus trip on a timetable, or a change to a whole timetable, consisting of hundreds of bus trips.

In terms of significant changes, the following metropolitan routes' schedules were altered significantly during the year. The total number of major route/schedule changes is also indicated—

TransAdelaide (39 'changes')

TL1, TL8, 99B, 190, 191, 192, 195, 196, 197, 198, 203, 210, 214, 216, 218, 231, 233, 241, 243, 246, 247, 248, 275, 276, 277, 278, 286, 287, 296/7, 701, 702, 720, 723/733, 727/737, 728/729, 738/739, 745, 747, 741.

Serco (18 'changes')

Bullet A, Bullet B, 182, 204, 207/209, 224, 227/8, 235/7, 272, 273, 280, 281, 282, 291/2, 360, 361, 450, 451.

Hills Transit (4 'changes')

163, 166, 193, 194.

RAIL, SUBURBAN LINES

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

1. To what extent are suburban railway lines operated by TransAdelaide currently subject to speed restrictions due to problems with track welding?

2. (a) Is TransAdelaide on schedule with its track maintenance work; and

(b) If not, why not?

The Hon. DIANA LAIDLAW:

1. TransAdelaide track which is under speed restriction in 1997 (for all reasons) is as follows—

	Km under Restriction	Percentage of Total Track
January	5.89	2.7
February	11.82	5.3
March	6.85	3.1
April	7.25	3.3
May	7.61	3.4
June	8.31	3.8

Of this total, speed restrictions due to track welding account for a very small proportion. When track welding is carried out, a speed restriction of 25 km/h is only applied for the time taken to complete the weld—which over a short length of track (generally less than 100 metres) takes approximately one hour.

During the month of February, the period of high temperatures (in excess of 35 degrees for 10 consecutive days) required additional speed restrictions.

2. Yes. The schedule is prepared by TransAdelaide following an inspection of tracks by the following methods—

- walking and train riding inspections by experienced track workers;
- operation of a Track Recording Vehicle that measures and reports on a number of parameters such as gauge, twist, alignment etc.; and
- ultrasound testing of rails.

Maintenance work identified from these inspections is then collated on a prioritised basis.

DIESEL FUEL REBATE SCHEME

237. **The Hon. PAUL HOLLOWAY:**

1. What impact would a decision by the Federal Government to cap spending on the Diesel Fuel Rebate Scheme, in breach of a specific coalition election commitment and an agreement negotiated with the mining industry last year, have on the mining industry in South Australia?

2. What action has the Olsen Government taken to raise this issue with the Commonwealth?

The Hon. R.I. LUCAS: The Federal Government's proposal to place a cap of $812 million on diesel fuel rebate outlays to mining companies has been greeted with considerable concern by the industry. According to the industry, any decision to limit the rebate goes against an understanding it believed it had reached with the Government in return for its acceptance of more stringent eligibility rules for gaining the rebate.

The proposal has resulted from the Federal Government's Budget deliberations and a final decision has yet to be made following discussions which are still in progress.

The State Government shares the concerns of industry because such a decision will raise taxes on business inputs, adversely affecting the competitiveness of the Australian mining industry and its ability to expand and create further employment opportunities.

A report entitled 'Diesel Fuel Rebate Scheme Report' dated 26 July 1996, was prepared by the State Government to examine the impacts of the abolition of the diesel fuel rebate scheme upon South Australia, particularly with reference to the mining sector. The report recommended that the Federal Government should look elsewhere for mechanisms to reduce the budget deficit and that a letter from the Premier be sent to the Prime Minister urging his reconsideration of the potential impact of reduction or removal of the rebate.

At that time, it was recognised that while the impacts on the mining industry in South Australia would be less severe than in several other States they were nevertheless significant. For example, removal of the rebate would increase the unit cost of coal as fuel to the Augusta Power Station by in excess of 4 per cent, following increased operating costs on the Leigh Creek operating budget.

Significant impacts would also occur to BHP's South Australian iron-ore mining operations in the Middleback Ranges and WMC's Olympic Dam operations, to Normandy's Australia wide gold mining activities and to activities on the South Australian opal fields.

2. Following this latest move by the Federal Government, the issue has again been under scrutiny and further action by the South Australian Government on behalf of the local mining industry will depend on what decision if any, is finally made by the Commonwealth.

BELAIR RAIL LINE

241. **The Hon. T.G. CAMERON:** How much would it cost to standardise the broad gauge track for the Belair rail line?

The Hon. DIANA LAIDLAW: This is a complex project which

would require extensive investigation and analysis to provide an accurate costing.

An indicative cost would be—

- Track/civil works, $15 million
- Rollingstock conversion, $8 million
- Signalling, $3 million,

making a total of $26 million.

PAPERS TABLED

The following papers were laid on the table:

By the Hon. K.T. Griffin, for the Minister for Education and Children's Services (Hon. R.I. Lucas)—

Bookmakers Licensing Board—Report 1995-1966
Department for Employment, Training and Further Education—Report, 1996
South Australian Constitutional Advisory Council—Second and Final Report—December 1996
Regulations under the following Acts—
Electricity Act 1996—Corrigendum
Taxation Administration Act 1996—Disclosure of Information
South Australian Commissioner of Police—Statistical Review for 1995-96 Financial Year—Erratum

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

Evidence Act 1929—Report of the Attorney-General relating to Suppression Orders for the year ended 30 June 1997
Royal Commission into Aboriginal Deaths in Custody—1995 Implementation Report, South Australian Government—July 1997
Regulations under the following Acts—
Cremation Act 1891—Identification of Body
Local Government Act 1934—Local Government Superannuation Board
Rules of Court—Supreme Court—Supreme Court Act 1935—Percentage Rate

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

Commissioner of Charitable Funds—Report and Statement of Accounts, 1995-96
Royal Adelaide Hospital—Notice of Amendment to By-laws.

QUESTION TIME

ANDERSON INQUIRY

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

Leave granted.

The Hon. CAROLYN PICKLES: Mr President—

The Hon. L.H. Davis: That's not in the education portfolio.

The Hon. CAROLYN PICKLES: The Minister is not here now, and he will not be here tomorrow, either. The Government has refused to release a report prepared by Mr Tim Anderson QC into the conflict of interest in which the member for MacKillop was involved when he was Minister for Primary Industries. The edited findings released by the Government do, however, suggest that the Minister delayed approval of his department's proposal to purchase certain land until a related proposal was considered and the Minister or his associates stood to benefit from that related proposal.

On page 19 of the edited findings, the Anderson report refers to a telephone conversation that the Minister had with a real estate agent for the land in question. The finding is:

Mr Baker advised Mr Watson that the departmental offer would not be accepted unless his proposal was part of the deal.

These facts should be borne in mind while members consider section 251 of the Criminal Law Consolidation Act, which provides:

A public officer [which is defined to include an MP], who improperly
(a) exercises power or influence that the public officer has by virtue of his or public office; or
(b) refuses or fails to discharge or perform an official duty or function; or
(c) uses information that the public officer has gained by virtue of his or her public office,
with the intention of securing a benefit for himself or herself or another person, is guilty of an offence.

My question is: will the Attorney-General explain how there could possibly not be a *prima facie* case for the prosecution of the member for MacKillop?

The Hon. K.T. GRIFFIN: I do not intend to explain that. The advice from the DPP was made public last week, I think it was. The DPP is an independent statutory officer who cannot be directed by me unless it is on the basis of a public notification of a direction. Both my predecessor and I have not given directions either in relation to a specific matter or in relation to any matter of a general nature, except that my predecessor (Hon. Mr Sumner) gave directions in relation to matters of policy and they were properly published and are on the public record. The DPP has made his assessment and that is all that I need to say about the issue. The DPP has the responsibility now, as Parliament legislated to give the DPP responsibility for taking criminal action against citizens, and he has looked at the Anderson report and, in the context of that and the Anti-Corruption Branch inquiries, he has indicated that there is no evidence of any criminal action.

FISHERIES COMPLIANCE UNIT

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Primary Industries, a question about the W.J. Ohehir report entitled 'Stress Impact Study: A Mirror Image'.

Leave granted.

The Hon. R.R. ROBERTS: On 2 July, I asked a number of questions of the Attorney-General, representing the Minister for Primary Industries, on the release of the above report, or should I say its non-release. The Opposition has now had the opportunity to read the report and, quite frankly, is shocked at the content and scope of the report—

The Hon. K.T. Griffin interjecting:

The Hon. R.R. ROBERTS: I am shocked.

An honourable member interjecting:

The Hon. R.R. ROBERTS: It is a statement: I am shocked. For the majority of members—

An honourable member interjecting:

The Hon. R.R. ROBERTS: Mr President, I do not like this—who would not know what this report was about or what it contained, I will briefly detail what the report set out to achieve. The report is a study of the management style of the Fisheries Compliance Unit within PISA. Given the decrease in compliance officers and the pervading culture of that section of PISA, some of the contents of the report are quite understandable, whilst others are a shock and without a shadow of a doubt require immediate action by the Government. The report says:

The role of fisheries compliance officers in South Australia, as is the case throughout the world, is one of responsibility. This responsibility lies in enforcing fisheries related legislation, providing public education and ecology maintenance, ensuring all activities

associated with their work are suitably recorded and protecting our water based resources for future generations.

However, the summary of this unit after a three month investigation has revealed that all is not well. The writer states:

> . . . the very fact that this is the second stress related study associated with this unit in five years indicates there is a belief from management that real problems exist.

In the writer's summary of the unit he says:

> The current fisheries compliance unit appears to have a philosophy which has placed too much emphasis on enforcement at the expense of a public relations and educational approach.

He continues:

> There are limited policies associated with key areas such as selection, induction, training, transfers and management styles. This has resulted in a work force substantially lacking the necessary level required to effectively execute all duties of the position in a team environment.

As members are hearing, this is a damning report that has been kept within the department and not released publicly. Our concern is that there are very clearly real problems within the compliance section, from low staff morale, high stress levels, and top heavy management intent on maintaining their own positions at the expense of the effectiveness of the unit. Clearly, management recognises the problem but is intent on still keeping this report secret and not waking up to what appears obvious to Mr Ohehir. When considering the culture of the unit the writer of the report states:

> From an objective perspective, the reality is the compliance unit suffers from role ambiguity, lack of discipline, inappropriate management practices, unsuitability by some officers for positions, mistrust, paranoia, racism, double standards, top heavy management and inappropriate selection processes. Furthermore, there is no consistent and suitable induction program, while nepotism, lack of performance appraisals and grievance procedures are contributing to low morale.

My questions to the Minister are:

1. Given the content of this report and its length (81 pages), has the Minister made a formal response and instigated a review of the current management structure and selection process of the Fisheries Compliance Unit within PISA?

2. Has the Minister considered implementing any or all of the 20 recommendations that stem from the report?

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

WATER QUALITY

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister representing the Minister for Health a question about poor water quality.

Leave granted.

The Hon. T.G. ROBERTS: In the always to be read, carried and remembered *Southern Times* Messenger, the lead article on the front page is headlined 'United Water fails six-day acid test'. It has a photograph of a dunce's cap standing a little bit behind a water spout that—

The Hon. T.G. Cameron: Who's wearing it? Olsen?

The Hon. T.G. ROBERTS: No, it is a footpath at the moment. He may be under it, but it is on the footpath. It shows a water spout, indicating that there is some flushing of water pipes in that area and that the water is going straight into the gutter. The article states:

> United Water was still flushing water from the Myponga pipeline last Friday, six days after acidic tap water caused a Willunga woman to vomit. The acidic water, blamed on an operational fault at the Myponga treatment plant, had affected residents in a number of areas including Sellicks, Aldinga and Moana. United Water's Southern Regional Manager, Brian Saunders, said the flushing program ensured that all the acidic water had been cleared from the system. Several thousand kilolitres (several million litres) of water have been flushed from the pipeline to rid it of about 2 000 litres of lower-than-normal pH level water. The water was accidentally introduced into the pipeline through storage tanks at the Myponga plant.

Some residents exposed themselves to this water: some people consumed it; some were very ill with vomiting and nausea; and the article records some of the experiences these people had. Associated with the dangers of drinking the water, a Willunga resident reported that part of California Road had been washed away by the flushing, making it very dangerous to drive on. The process of correcting the fault has brought about some difficulties in the area that the residents have to put up with.

It is quite clear from the article and from the reports of residents that the water is not of a quality that they could put up with for very long. They say that since the treatment process the water has turned brown and turbid and they cannot even wash in it. My questions to the Minister are:

1. What health monitoring has occurred in relation to residents in the affected areas who ingested the water?

2. What short or long-term effects will this water quality have on the average householder who has ingested this affected water?

3. Will the Government rule out any companies involved in the supply of water in the metropolitan or country areas from providing water bottle services?

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

TAXIS

In reply to **Hon. T.G. CAMERON** (11 February).

The Hon. DIANA LAIDLAW: I refer to the honourable member's question relating to a number of issues associated with the accreditation of centralised booking services under the Passenger Transport Act. At the time I was unable to comment because the matter was *sub judice*. However, the matter has now been settled and I provide the following information to the issues raised.

Under the legislation service standards determined by the Passenger Transport Board (PTB) are required to be widely published and reasonably made available to interested persons. The standards have been printed and are available upon request. Further, they have been provided to the industry through the accredited CBS operators and to the Taxi Industry Advisory Panel (18/2/97) which has representatives from all areas of the taxi industry (SA Taxi Association, CBS operators, operator/owners and drivers) and community (service user) representatives. I understand that the honourable member has also requested and received a copy of the service standards from the PTB. As part of the program to publish the information an advertisement was printed in the *Advertiser* on Saturday 22 February 1997 and Wednesday 26 February 1997 detailing the service standards for the accredited CBS operators.

CBS operator accreditation is only required for taxi service bookings or any other passenger service of a prescribed class (Section 29). There has not been any other prescribed class of passenger service under the legislation for the purposes of CBS operator accreditation. Further, in line with Section 45 (2) of the Act and the definitions for taxi and taxi service in the Passenger Transport (General) Regulations, only taxi CBS services operating in the metropolitan area are required to have CBS accreditation.

Small passenger vehicles (SPV) or blue plate services, have a code of practice (Schedule 6) to comply with as accredited operators of a passenger transport service but this has no link to the requirement for CBS operator accreditation. SPV operations are different in many ways to taxis. The range of services covered by SPV includes 4WD tours, weddings and special occasions, motorcycle,

pre-booked point to point services and non metropolitan taxi operations.

The 1997 Adelaide Yellow Pages lists a number of services under the title of Taxi Cabs. Several are operators of taxi services outside the metropolitan area and as such are not required to have CBS operator accreditation. The remaining operators are either accredited taxi operators advertising their services under their own name, cab related service providers (e.g., Cab Express) or are in fact the six accredited CBS operators or a related business name. It is clear from the phone numbers and operating addresses, that many of the names listed in the Yellow Pages are related to a common CBS operator.

TELEPHONE TOWERS

In reply to **Hon. T.G. ROBERTS** (3 June).

The Hon. DIANA LAIDLAW: The Minister for the Environment and Natural Resources has provided the following information after receiving advice from the Health Commission.

The State Government is willing to assist local government and the community by providing information and advice on the issues of health effects from communications towers, power lines and associated facilities. The Public and Environmental Health Service of the Health Commission has provided such advice and will continue to do so on request from local government, community groups and individuals. The Government considers this role to be preferable to its direct involvement in negotiations between proponents and local government.

NATIONAL PARKS

In reply to **Hon. T.G. ROBERTS** (4 June).

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

The Government has committed an additional $30 million for park management over the next five years.

The Parks Agenda is the major environmental initiative for the 1997-98 budget, with a $2.5 million commitment to this year's program increasing to $5.5 million in 1999-2000.

Specific initiatives for 1997-98 are:

- upgrade visitor access and facilities at Waterfall Gully;
- upgrade visitor facilities Dalhousie Springs;
- integrated management strategy for Mt Lofty parks;
- stage 1 Flinders Chase development program;
- upgrade Kelly Hill caves entrance;
- stage 1 upgrade Morialta visitor facilities;
- upgrade Cleland Wildlife Park water reticulation system;
- additional 5 ranger trainee positions;
- increase Friends of National Parks support programs;
- staff training and development;
- increase in employment program funding; and
- implementation of a promotion and marketing strategy for community involvement and commitment to parks and wildlife.

With the exception of visitor infrastructure in the Coorong ($35 000), funds have not been allocated for specific projects in the parks identified by the honourable member in his question, however, the ability to better manage these and other parks will be enhanced by the commitment to increased funding for Ranger positions, increasing support for Friends Groups and a commitment to promoting best practice standards in park management.

These initiatives will be funded whilst maintaining an ongoing commitment to the State biological survey and protection programs for reserves, such as the very successful 'Operation Bounceback' (an integrated pest management program) in the Flinders Ranges and Venus Bay Parks.

FREEDOM OF INFORMATION

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Industrial Affairs and Minister for Information and Contract Services, a question about freedom of information.

Leave granted.

The Hon. M.J. ELLIOTT: In debate in this place I have raised concerns on a number of occasions about freedom of information and the difficulties that I and others have encountered in trying to get information—

The Hon. Anne Levy interjecting:

The Hon. M.J. ELLIOTT: Absolutely; it seems to be a quite common occurrence. Only yesterday I received a copy of correspondence from a constituent about a freedom of information application that the person had lodged with the WorkCover Corporation. In response to the FOI application, WorkCover has written the constituent a letter which states that:

> Due to an increased demand for this service and limited resources, there currently exists a backlog of applications and we were unable to meet the 45 day determination period.

In my experience there appears to be an increasing number of FOI denials which, at the end of the day, must be enforced. In April this year I sought a review of an FOI determination in relation to the wine centre proposal. In response to my application the State Ombudsman stated in his letter to me that:

> Due to the lack of resources to deal with the increasing number of applications for review by this office, I am now compelled to revise the 'Conditions of Review'.

The Ombudsman has been forced to change conditions which apply to the review of all determinations, which can only be to the detriment of people seeking disclosure of information that should be publicly available. My questions to the Attorney are:

1. Can the Minister detail the number of freedom of information applications which have been received by Government departments and agencies since 1990 on an annual basis?

2. Is the present Government refusing larger numbers of FOI applications now than in previous years?

3. Have resources to cater for the administration of FOI requests diminished, both within departments and within the Office of the State Ombudsman?

4. Is the problem the result of a combination of decreased resources and increased numbers of FOI requests or FOI request refusals?

5. What are the ramifications for departments which fail to meet their legislative requirements in relation to FOI requests?

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

COMPUTER DISK, THEFT

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a ministerial statement made by the Minister for Employment, Training and Further Education (Hon. Dorothy Kotz) in another place this day in relation to theft of property.

Leave granted.

WORKCOVER

In reply to **Hon. M.J. ELLIOTT** (4 June).

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

1. The legal costs for the 1996-97 year, to 31 May 1997, are running at 48 per cent greater than the external actuary's estimate, ie $13.23 million against $8.92 million.

The WorkCover Corporations' internal actuary prediction was that there would be a higher legal payment outcome due to the introduction of the new dispute resolution process and the clearing of the backlog from the Review Panel which was part of the new Tribunal's strategy. Legal costs, however, are running at 26 per cent greater than the internal actuary's assessment, ie $13.23 million against $10.46 million.

2. There is anecdotal evidence of some basic case management activity having been carried out by the legal providers. There is no evidence, however, of legal costs being hidden by the 999 code which is used for medical and rehabilitation related expenditure.

3. WorkCover Corporation has identified and is addressing the issue with the claims agents at both a general and specific level.

The Corporation expects to see a stabilisation in legal costs over 1997 to reflect the decline in referrals evident since June 1996, recognising that there is a time lag between the referral and the finalisation of the matter by the law firm.

MASSAGE PARLOURS

In reply to **Hon. BERNICE PFITZNER** (9 July).

The Hon K.T. GRIFFIN:

1. It may be. In South Australia, the essence of prostitution is 'the offering of the body for hire for the gratification or satisfaction of sexual appetites'. Whether or not any given case fits that description is a question of fact and must be made from case to case.

2. Yes, The case was *Begley v SA Police* (SACCA, Judgment No 5851, 24 October 1996) on appeal from the decision of Lander J reported in (1995) 78 A Crim R 417. In that case, the issue was whether or not 'Thai massage' was an act or prostitution. In delivering judgment, Doyle CJ (with whom Bollen and Nyland JJ agreed) said:

'In the present case one has the combination of the masseuse being present in person (as distinct from represented in a film), engaging in physical contact with the client (in contrast to a striptease), that physical contact being a significant part of the whole process, and through that physical contact and the manner in which it is performed providing sexual gratification to the customer. It is the combination of these features which satisfies me that the nude Thai massage as described in evidence was an act of prostitution'.

This decision is consistent with other authority. For example, in *R v Newcombe and Barns* (1996) 1 QdR 323, the Queensland Court of Criminal Appeal held that an act involving bodily contact between a nude female and her nude male client not involving sexual intercourse was a 'sexual act' within the meaning of the Queensland *Criminal Code*, whether or not it was indecent, and was therefore capable of amounting to an act of prostitution. The services in question in that case were variously described as a 'body slide', 'sensual male massage', 'body on body massage' and 'intimate massage'.

Some courts have gone further. In *R v Tremblay and five others* (1991) 68 CCC (3d) 439, the Quebec Court of Appeal held that dancing in the nude for the benefit of a customer with no physical contact between the dancer and the client was capable of amounting to an act of prostitution.

3. See the answers to 1 and 2 above.

SPEED CAMERAS

In reply to **Hon. T.G. CAMERON** (12 February).

The Hon. R.I. LUCAS: The Minister for Police has provided the following information.

Section 20 (2) of the Road Traffic Act relating to speed limits on a portion of a road on which works are in progress, applies 24 hours a day while the signs are in place. The prosecution does not have to prove that work was in progress at the time of the offence.

The 60 kilometre per hour speed zone was correctly signposted. The speed camera was operating from 6.46 am to 1.15 pm on Sunday 23 June 1996 and a total of 377 expiation notices were subsequently issued.

Advice received from the Department of Transport, Projects Section, indicate that work was carried out on the section of Salisbury Highway/Port Wakefield Road/South Road Extension from October 1994 to 23 June 1996. During this time a 60 kilometre per hour limit was imposed on all approaches to the bridge in the interests of safety to both the public and the construction worksite staff. The 60 kilometre per hour signs were removed at about 3 p.m. that day, just prior to the opening of the bridge.

In hindsight, the withdrawal of Ms Korreng's expiation notice was an incorrect decision. Police do not intend to withdraw any further expiation notices in relation to this matter.

LAND, HAPPY VALLEY

In reply to **Hon. T.G. ROBERTS** (5 March).

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

1. When the Happy Valley Reservoir was constructed in 1896 a cut-off drain was built around the eastern and southern boundaries to intercept the run-off from the adjoining rural lands and as a consequence minimise the risk of pollution to the water stored in the reservoir.

With changes in land use from rural to urban living during the 1960s and 1970s, additional land was purchased to the east and south of the reservoir to provide for protection against pollution of the stored water from the movement of sub-surface drainage. Following purchase, investigations were undertaken by a hydrogeologist to determine groundwater flows around the reservoir. These investigations showed that the land to the east drains towards the reservoir, while land south of Chandlers Hill Road drains away from the reservoir and to the south west. As a result of the investigations, SA Water has recommended that this southern parcel of land be sold as it does not provide any additional protection against pollution. The funds are to be used to upgrade the existing cut-off drain to provide for an increased protection from stormwater run-off from the urban areas to the east.

2. A copy of the geologist report has been provided to the Happy Valley Environment Protection Group and a senior manager from SA Water has attended several meetings of the group.

The geologist report will form part of the documentation applying for rezoning of the land south of Chandlers Hill Road. This documentation will be forwarded to the Minister for Housing and Urban Development later this month for presentation to the Development Assessment Policy Committee who will make rezoning recommendations following a period of public consultation. A copy of the PAR will be forwarded to the City of Happy Valley for their specific comments as that body is the authorised planning authority for the area.

CEDUNA PIPELINE

In reply to **Hon. R.R. ROBERTS** (18 March).

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

1. In 1995, the Aboriginal and Torres Strait Islander Commission (ATSIC) approached the State Government indicating that it intended upgrading the water pipeline from Ceduna to Koonibba Aboriginal Community. ATSIC invited the Government to be part of a broader scheme which would serve Denial Bay, Koonibba and farms in the area. ATSIC indicated it would contribute $2.5 million towards such a project.

In November 1995, the then Premier announced that an agreement to proceed with detailed planning for a water pipeline west of Ceduna had been reached between the State Government, ATSIC and representatives of the West Coast community.

The State Government consulted widely with all parties including ATSIC, the District Council of Ceduna, the Water West of Ceduna Committee and local representatives of the South Australian Farmers' Federation.

A basic water supply scheme to serve Denial Bay, Koonibba and farms, was estimated to cost $4.5 million. The State Government decided to provide $2 million of state funds as a once off grant toward the total capital cost, subject to a number of conditions which included:

- the $2 million state contribution being made to the District Council of Ceduna via a Deed of Grant;
- Council establishing a Controlling Authority under Part XIII of the Local Government Act to own, operate and maintain the water supply scheme;
- SA Water supplying bulk water to the Controlling Authority at Ceduna at the prevailing statewide price;
- and design and construction being managed by the Controlling Authority or other agreed party with no direct State Government role.

The Deed was executed on 16 August 1996 and the pipeline is currently being constructed.

The Ceduna Koonibba Water Authority has been established by the District Council of Ceduna under Section 199 of the Local Government Act. The Authority is responsible for administration and controlling the costs of the scheme. This includes spending the State Government and ATSIC grants and future operating and administration costs.

SA Water has no role other than selling water to the Authority, as it does to its other customers.

2. I understand that the Authority is currently considering various pricing mechanisms.

3. Provision of water supply to areas west of Ceduna involves long lengths of pipeline to serve relatively few customers. It has been obvious for many years and to successive governments that any such scheme, if constructed, would be grossly uneconomic and require a heavy cross subsidy.

What the Government has been able to achieve, with its west of Ceduna capital contribution, is a workable solution that will provide water supply to people, some of whom are without it, while limiting the amount of general subsidy the community of South Australia has to find.

The Ceduna Koonibba Water Authority has been given $2 milion by the State Government. It is now up to the Authority to fix prices which cover its ongoing commitments, which include purchasing its water from SA Water at the prevailing statewide price.

The operation of the new Authority has nothing to do with SA Water, hence its prices do not have to match those of SA Water.

It should be noted that the Government has provided subsidised water carting to Denial Bay residents and the farmers in the area for some years. Both groups contribute to carting costs an amount equivalent to twice the Statewide water price. Depending on the prices struck by the Authority, they might get their water for less per kilolitre than they do now.

SPEED CAMERAS

In reply to **Hon. T.G. CAMERON** (19 March).

The Hon. R.I. LUCAS: The Minister for Police has provided me with the following information.

1. Legislation allows for a motorist, detected by a speed camera, to either elect to view the photographic image on a monitor by contacting the Expiation Notice Branch or to request a copy of the photographic evidence by written request to the Branch.

2. As motorists already have the opportunity to request a copy of the photographic evidence or to view the image on a monitor, this option is not considered necessary.

3. Exact statistics are not maintained, but it is estimated that less than 10 per cent of motorists detected by a speed camera request copies of photographic evidence.

TELECOMMUNICATIONS CABLES

In reply to **Hon. M.J. ELLIOTT** (19 March).

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

1. Nippon Hume Pipe Corporation has developed robot technology which is capable of laying telecommunications cables in pipes of certain materials and sizes. Although the technology has not been tried commercially, over 200km of cable have been laid through sewers in Tokyo with the cables being fixed to the inner top surface of the mains by means of 'J' bolts. However this cabling has been installed solely to connect treatment plants of the Tokyo Metropolitan Government's Bureau of Sewerage, as current regulations will require legislative change before it can be commercially applied.

Australian Water Technologies, Sydney Water's trading arm, has signed a Memorandum of Understanding with the Nippon Hume Pipe Corporation, and is undertaking an analysis of the technical, operational, and commercial aspects of the technology and its effect on the Sydney sewerage system, in order to determine the level of application, if any, which should be undertaken.

In a media release, Sydney Water has indicated this technology is not seen as an immediate or total solution to the overhead cable problem, but it may provide a part of the answer.

Numerous differences exist between the sewerage systems in Tokyo, Sydney and Adelaide and the problems associated with each of these systems. Assessment of this technology will be undertaken, as all new appropriate technology is assessed, to determine its compatibility with Adelaide's requirements and conditions. The conducting of a trial will be dependent on the results of this assessment.

Issues which require addressing include, but are not limited to:

- Damage to piping resulting from the method of attaching the cables to the inside ceiling of the pipes;
- The range of materials used in South Australia, including PVC material which comprises almost 50 per cent of SA Water's sewers. This technology has not as yet been trailed on this material;
- Review of current maintenance techniques, including tree root removal and rodding practices;
- Possibility of groundwater intrusion resulting from the piercing of the pipe walls.

2. Extracting waste water from public sewers and providing appropriate treatment to produce treated reclaimed water, is commonly referred to as "sewer mining". There is currently broad community and Government support for the concept of recycling and waste minimisation, and sewer mining is viewed as one means of reducing the demand on existing water resources and reducing the adverse environmental impacts of waste water treatment and disposal.

SA Water has adopted a policy of granting approval to third parties to withdraw waste water from Corporation sewers for irrigation or other purposes. Treatment is provided by the third party to EPA and Health Commission standards for the reuse of the reclaimed water. Each proposal submitted to SA Water is examined in detail and individual schemes are approved if there is no increase in costs or liabilities to SA Water.

To date, there has been only one scheme submitted to SA Water for approval. In November 1996, approval was granted to the Flagstaff Hill Golf and Country Club to withdraw waste water from a Corporation sewer for irrigation purposes, with treatment provided by the Golf Club to EPA and Health Commission standards. A small treatment plant has been installed by a local South Australian company, Water Purification Systems Engineering Pty Ltd. The treated reclaimed water is used by the golf club to supplement the supply of irrigation water collected from natural run-off and dwindling groundwater supplies and to reduce their demand for expensive mains water.

There is considerable interest in this scheme by the Happy Valley Council and other parties who are considering sewer mining for other areas. However, this project is in the early stages of operation and the treatment system installed by WPS Engineering is still being evaluated for its technical and economic viability.

PRISONER, PASSPORTS

In reply to **Hon. SANDRA KANCK** (28 May).

The Hon. R.I. LUCAS: The Minister for Correctional Services, has provided the following information.

There is no policy regarding the non-issue of passports to prisoners on day release from prison.

The only occasion, of which the Minister for Correctional Services is aware, that an offender could be required to surrender his/her passport is when the Court may consider there is a risk that the offender may try to escape overseas during any period of Bail. In these instances, they are generally required to surrender their passports to the Courts.

In the case of Mr James Lee-Alexander, the Department for Correctional Services was not aware that he had a passport. Mr Lee-Alexander's prison property records have been thoroughly checked and there is no evidence whatsoever that he had a passport in his possession at any of the Institutions in which he has been imprisoned in this State.

The honourable member should also be aware that passports for some countries can effectively be obtained through the mail and it would be impossible for officers to prevent prisoners, wanting to obtain a passport, from doing so. Prisoners not eligible for day leave would, of course, require the assistance of a third person within the community to do so.

The cost of implementing and administering any proposal which would remove and withhold passports from prisoners, would be enormous. To the knowledge of the Minister for Correctional Services' officers, there is not one recorded incident in this State where a prisoner, allowed day leave, has escaped overseas using a passport.

MULTICULTURAL AND ETHNIC AFFAIRS OFFICE

In reply to the **Hon. P. NOCELLA** (4 June).

The Hon. R.I. LUCAS: The Minister for Multicultural and Ethnic Affairs has provided the following information.

1. Never.
2. Such activities have never been authorised within the Office of Multicultural and International Affairs.
3. No-one. None.
4. No-one.
5. None.
6. Yes.

7. Coordinating Italian Committee (CIC), COM IT ES (Council for Italians Abroad), Associazione Nazionale Famiglie Degli Emigrati Inc (ANFE) and Federazione Italiana Lavoratori Emigrati E Famiglie Inc (FILEF).

8. No.

DRUG AND ALCOHOL PROGRAMS

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister for the Status of Women, representing the Minister for Health, a question about funding of drug and alcohol programs.

Leave granted.

The Hon. BERNICE PFITZNER: In an article in a medical magazine dated 18 August 1996, a report by the Alcohol and Drugs Council of Australia showed that Federal, State and Territory Governments collect a total of $6.37 billion per year in alcohol and tobacco taxes but spend only $164.5 million in addressing the problems of abuse of alcohol and tobacco. I seek leave to insert in *Hansard* a document of a purely statistical nature which shows Government revenue from alcohol and tobacco taxes and the amount used to fund drug programs.

Leave granted.

Government	Total Revenue $ million	Per Capita Revenue $ million	Total Expenditure $ million	Per Capita Expenditure $ million
Northern Territory	45	262.95	10.47	61.18
Western Australia	313	183.86	12.325	7.24
Australian Capital Territory	46	152.95	3.456	11.49
South Australia	227	154.45	10.638	7.24
New South Wales	919	151.80	46	7.60
Queensland	524	163.92	14.578	4.56
Victoria	586	130.88	24.814	5.54
Tasmania	93	196.88	3.316	7.02
Federal	3 617	202.70	38.923	2.18

The Hon. BERNICE PFITZNER: The table shows that the Federal Government collects $3 617 million but spends only $39 million, that is, $2.18 per head on drug programs. This amount is minuscule compared with the billions that we collect in taxes. I further note that the Northern Territory has the highest per capita expenditure on drug and alcohol programs at $61.18, and its total revenue is $45 million with a total expenditure of $10.7 million. Queensland is the worst State as far as Government expenditure on drug programs is concerned, with a total revenue of $527 million and a total expenditure of $14.58 million, which amounts to $4.56 per capita.

South Australia is somewhere in the middle, which is still not good enough. The figures for South Australia are: total revenue of $227 million and total expenditure of $10.64 million, which amounts to $7.24 per capita. The CEO of the Alcohol and Drugs Council of Australia claims that drug misuse costs Australia at least $18.9 billion per year and 65 people die every day as a consequence of drug misuse. Because taxes on alcohol and tobacco are such big revenue earners for Governments, my questions are:

1. Will the Minister look to providing more funds from this revenue for health promotion units specifically directed at education, research and treatment programs with regard to alcohol and tobacco?

2. Will the Minister urge the Federal Government to do the same?

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

MOUNT BARKER TRANSPORT

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Transport questions concerning the inconsistent application of metropolitan and country boundaries by the Department of Transport with regard to Mount Barker and districts.

Leave granted.

The Hon. T.G. CAMERON: In recent days my office has once again received letters and telephone calls from Mount Barker residents who are concerned about the unfairness of the current public transport ticketing system for the Adelaide Hills and the registration costs for their motor vehicles. It appears that an inconsistent application of metropolitan and country boundaries by the Department of Transport is the major cause.

On the one hand the Department of Transport considers Mount Barker as country for the purpose of public transport, and therefore it is not eligible for Government subsidies. Weekly travel can cost as much as $50.70 compared to $17 for similar travel in the metropolitan area, or more than 200 per cent more—and this is despite Mount Barker being closer to Adelaide than either Seaford or Gawler, both of which are considered metropolitan.

On the other hand, the same department considers Mount Barker as metropolitan for the purpose of the registration of motor vehicles, resulting in residents' compulsory third party insurance premiums being 30 per cent more expensive than the rate for country areas (the country rate is $165 compared to the metropolitan rate of $214). Even the current Premier and member for Kavel, Mr Olsen, recognised the outright unfairness of the present system when, in a recent letter to the Minister, he stated:

> Many people have raised with me the dilemma the Hills has in being categorised either metropolitan or country, and there is a perception that Government applies whichever category will generate more revenue. The fact that bus fares for country users and vehicle registrations for metropolitan users combine to make the most expensive option for people living in the Hills is not lost on my constituents.

In other words, the people of Mount Barker and districts are being shafted both ways. This is a relatively simple matter: the Department of Transport or the Government views Mount Barker either as country or as metropolitan. Whilst this anomaly continues to exist, it is an unfair impost on the residents of the area who are subjected to the most expensive option by the same department. My questions are:

1. Minister, which is it to be—is Mount Barker metropolitan or country?

2. Do you agree with the Premier's statement that the present fare structures combine to make the most expensive option for the people living in the Hills and is therefore all about revenue raising and not about equity?

3. Will you order an inquiry before the next State election to settle this matter once and for all?

The Hon. DIANA LAIDLAW: There is a basic error in the honourable member's statement, and I think that must be corrected. The Passenger Transport Board is a statutory authority; it reports to me and has no relationship at all with the Department of Transport. The PTB is not a department as such and certainly the two matters are not addressed by the one department. I would like to correct the honourable member, for his benefit—

The Hon. A.J. Redford interjecting:

The Hon. DIANA LAIDLAW: One would have thought that the honourable member would know it, as he has been shadow Minister for Transport for some years. However, that basic issue has not yet dawned on the honourable member. There is an anomaly, and I have acknowledged that openly. There is nothing new in what the honourable member has suggested. The anomaly is historical. It existed well before the previous Government and is related to titles, land issues and a whole range of things. If it was such a horror, the former Government could have addressed it.

This issue has nothing to do with revenue raising, as the honourable member suggests. Nevertheless it exists and it is one which, in public transport terms, is historical because, as the honourable member would know but did not acknowledge, the services in Mount Barker district and further into surrounding areas have always been operated on a commercial basis. They are now operated by the one company, not two companies, and continue to operate beyond Aldgate on a commercial basis.

To change that anomaly would disadvantage the people of Mount Barker, or taxpayers, in one way or another. Certainly, the provision of subsidised fares to Mount Barker would involve major cost. I suspect that the honourable member is not suggesting that, in terms of registration, licensing and CTP, concessions not be made available. People write to me about many priorities and services related to public transport and, on occasions, even the honourable member has written to me asking for reinstatement of services that the Labor Party cut in 1992. The honourable member asks me to reinstate services that the Labor Party cut. I agree: I would like to do that. However, we cannot do that and then incur a large expense to also meet the needs of Mount Barker residents who have always operated and paid for services on a commercial basis. My priority in this regard is to improve and provide new services in many areas, as well as to provide better information at bus stops and a range of other requests from people rather than, at this stage, addressing the issue of Mount Barker.

One must be very aware, too, that in introducing a subsidised fare—and that is essentially what the honourable member is requesting—for all passengers from Mount Barker it would be difficult, in an operational sense, too, because of the surrounding areas that are equally deemed to be outside the metropolitan area and, in administrative terms, that would be quite a test in the future. I know that there is an anomaly and the PTB knows that there is an anomaly but, at this time, it is a financial issue.

BRIDGESTONE EDWARDSTOWN PLANT

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Attorney-General a question about the Crown Solicitor's office and a report from the EPA.

Leave granted.

The Hon. P. HOLLOWAY: It was reported in last week's *Guardian Messenger* that another chemical spill had occurred at Bridgestone Australia, Edwardstown, this time linked to tanks which replaced those involved in a major leak that was reported last October. The *Guardian* article stated:

> This is the sixth spill from Bridgestone to contaminate land or groundwater, with the company admitting to four spills at Edwardstown and one at Melrose Park.

The article points out that the tanks involved in the latest spill replaced those that were involved in a major chemical spill revealed by Bridgestone last October in which about 15 000 litres of methyl ethyl ketone (MEK) seeped into the Edwardstown watertable. The article further states:

> It is nine months since Bridgestone revealed the leak, but any decision on prosecuting the company is still months away. The EPA only last month wrapped up its lengthy investigations and sent a detailed report to the Crown Solicitor's office for appraisal. The Crown Solicitor's office is yet to examine the report, and a senior lawyer could not say when a legal assessment would be sent back to the EPA.

This long delay in deciding whether or not to prosecute Bridgestone contrasts with the situation that occurred when a chemical spillage took place five years ago in the next street from Bridgestone at a metal plating factory at a time when I was the local member. In that case, the company was faced with heavy costs that were applied as a result of the spill. My questions to the Attorney are:

1. What legal issues is the Crown Solicitor's office considering in relation to the EPA report?

2. Will the Attorney take steps to ensure that priority is given to consideration of this report?

3. How long is the assessment by the Crown Solicitor's office expected to take, and when will the Government finally decide whether or not to prosecute Bridgestone?

The Hon. K.T. GRIFFIN: It is not really a matter for the Government to decide whether or not to prosecute. That, I presume, is the responsibility of the Environment Protection Authority. Members opposite would be the first to criticise if the Government intervened in decisions about, 'Yes, there should,' or, 'No, there should not be a prosecution.'

The Hon. P. Holloway interjecting:

The Hon. K.T. GRIFFIN: I do not have any of the detail about the issue raised by the honourable member. I will certainly refer it to the Crown Solicitor, who would be acting on the instructions of the Environment Protection Authority. If it is possible to answer any of the questions, I will ensure that the honourable member receives those answers.

FEDERATION FUND

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Attorney-General, representing the Leader of the Government in this Council, a question about the Federation Fund.

Leave granted.

The Hon. ANNE LEVY: I am sure all members are aware that the Prime Minister has announced a Federation Fund of $1 billion to celebrate the centenary of Federation of this country in the year 2001. No information has been given as to what proportion of the $1 billion might come to any

State; whether part of it will be used for major projects, such as the Alice Springs-Darwin railway; or whether it will be used for celebratory functions and smaller projects around the country. As a result, South Australia can expect to receive a share of this $1 billion: on a *per capita* basis it should expect to receive approximately $90 million.

I understand that consideration has been given to setting up a South Australian committee to consider possible projects and community involvement in Federation celebrations. I refer to the Bicentenary Committee, which was set up in 1982 to plan the bicentenary of the State in 1986, and the Women's Suffrage Committee, which was set up in, I think, 1991 to plan the celebrations for the suffrage centenary in 1994. Those committees consisted of a very wide range of people, including public servants, community representatives and representatives of political Parties.

In the case of the centenary of women's suffrage, the committee invited representatives from the Liberal Party, the Labor Party and the Democrats, all of whom contributed a great deal to the committee's work. My questions to the Attorney are—

The Hon. A.J. Redford interjecting:

The Hon. ANNE LEVY: I said that I directed my questions to the Attorney representing the Leader. I am sorry that the Hon. Mr Radford was not listening when I stated that fact.

The Hon. A.J. Redford: I have been here four years; see whether you can get my name right.

Members interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: My questions to the Attorney are:

1. Is a committee being set up by the Government to consider celebrations for the centenary of Federation?

2. Has a committee been set up already, or is consideration being given to the establishment of such a committee?

3. Will the Government ensure that any such committee is bipartisan in nature and includes representation from all political Parties in this State, as occurred with previously established committees to consider important events such as the centenary of Federation.

The Hon. K.T. GRIFFIN: This matter is within the responsibility of the Premier. Whilst I know a bit of the background to it, it would be appropriate that I refer the questions to the Premier and bring back a reply.

COURTS, SUPPRESSION ORDERS

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Attorney-General a question about suppression orders.

Leave granted.

The Hon. R.D. LAWSON: In the report tabled in this place today by the Attorney-General, under section 71 of the Evidence Act certain information is provided for the benefit of members on suppression orders. Section 69a of the Evidence Act provides:

(1) Where a court is satisfied that a suppression order should be made—

(a) to prevent prejudice to the proper administration of justice; or

(b) to prevent undue hardship—

(i) to an alleged victim of crime; or

(ii) to a witness or potential witness in civil or criminal proceedings who is not a party to those proceedings,

the court may, subject to this section, make such an order.

Section 71 of that Act requires the Attorney to table a report on the operation of that section. The summary of reasons appended to the report tabled today includes the following details of suppression orders: 56 per cent were made in the interests of justice; about 2.5 per cent to prevent possible prejudicial effect on the defendant's trial; about the same—2.5 per cent—to prevent undue hardship to the defendant; 14 per cent for the protection of or to prevent undue hardship to witnesses, plaintiffs and others named in the proceedings; 9 per cent to prevent undue hardship to victims; 13.9 per cent to prevent publication; and 2.5 per cent to protect confidentiality of information.

Section 69a of the Evidence Act originally came into the law in 1984, but in 1989 it was substantially amended. The original criterion included 'to prevent undue hardship to any person' but in 1989 that was replaced with 'to prevent undue hardship to a victim of crime or to a witness or potential witness'. The obvious intent of that amendment was to limit the circumstances in which the court might grant a suppression order. The report tabled today shows that the number of suppression orders granted in the last year under review has increased only by a small number.

My questions to the Attorney relate to the reasons given in the report for the making of suppression orders. Bearing in mind that the primary ground is to prevent prejudice to the proper administration of justice, the figure of 2.5 per cent of the orders were made to prevent undue hardship to the defendant which, as the current section is drafted, would not appear to be an appropriate reason; 14 per cent of the orders were made simply to prevent publication; and the vast bulk in statistics given are simply in the interests of the administration of justice. Bearing in mind that the obvious purpose of providing this report is to inform members of Parliament about the manner in which this suppression scheme operates, does the Attorney agree that the summary of reasons is too broad in relation to the administration of justice? Does he agree that a reason such as merely to prevent publication (14 per cent) is inadequate? Likewise, would a category to prevent undue hardship to the defendant not appear to be consistent with the Act? Is the Attorney able to provide any information on this matter and, if not, is he prepared to make inquiries to ascertain whether more detailed statistics ought be provided for the presentation of this report?

The Hon. K.T. GRIFFIN: I will have to take some advice on that. Essentially, the information is collated from reports that are received from the magistracy. I am not sure whether it is out of proportion to earlier years, but I will have some inquiries made and, if possible, bring back a reply.

CENTRE FOR LANGUAGES

The Hon. P. NOCELLA: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Employment, Training and Further Education, a question about the Centre for Languages.

Leave granted.

The Hon. P. NOCELLA: The Centre for Languages was established some 18 months ago with the task of overseeing and promoting the teaching of languages at tertiary level. However, funding for the centre to carry out its basic institutional functions—

Members interjecting:

The PRESIDENT: Order! Too many conversations are taking place in the Chamber.

The Hon. P. NOCELLA: —was still being searched earlier this year. In her response to my question, the Minister for Employment, Training and Further Education said that the university was only then completing its profile negotiation with the Commonwealth and finalising its program plans for 1997 and beyond. Therefore, it was too early to answer in detail the questions I asked. She concluded:

> A copy of the report from the chair for the Centre for Languages will be provided to the honourable member when it is received.

Has the report been completed and, if so, could it be provided in order to understand how the funding sources have been identified so that the Centre for Languages can discharge its institutional function?

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

TRAVELLER'S CHEQUES

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Tourism, a question about traveller's cheques.

Leave granted.

The Hon. A.J. REDFORD: On the weekend, I returned from overseas with a number of unused traveller's cheques in Australian dollars. Not having had a steak, I thought I would endeavour to procure a steak from a local hotel. Armed with these traveller's cheques, I sought a premises which would, in exchange for payment by traveller's cheque, provide me with a steak, something I had missed whilst I was out of the country. I went to four premises, and only the fourth hotel—and I am talking within a kilometre of the city square—would accept a traveller's cheque. It concerns me that our overseas tourists might have the same difficulties—and perhaps not have the same persistence—in seeking to have their traveller's cheques honoured. I would hope that they do not have that same difficulty. In the light of that, my questions to the Minister are:

1. What can the Government do to encourage our hotels and other venues to take traveller's cheques?

2. Will the Minister make inquiries of the Tourism Commission to see whether the policy of not accepting traveller's cheques is widespread and has an adverse effect on the impression our overseas visitors might have in relation to this State?

The Hon. K.T. GRIFFIN: That is more a question within the tourism portfolio and I will be happy to refer it to the Minister for Tourism. I do not think as Attorney-General or Minister for Consumer Affairs I can encourage or otherwise. I will certainly refer it to the Minister and bring back a reply. I just wonder whether the honourable member also produced his passport at the time he presented his traveller's cheque. I do not know what happens in respect of traveller's cheques in Adelaide: I know what happens interstate and overseas. What we will seek to do is to get a reply and bring it back.

GRAIN DISEASES

The Hon. T. CROTHERS: I seek leave to make a precied statement prior to directing some questions to the Attorney-General, representing the Minister for Primary Industries, about fire blight and black sigatoka.

Leave granted.

The Hon. L.H. Davis interjecting:

The Hon. T. CROTHERS: Here we are, one of the supporters of the rural community, with a very serious question, and the Hon. Legh Davis can do nothing but interject in a puerile way. In or about August 1996 I directed a question to the Minister for Primary Industries on the subject of fire blight and again in my address in reply contribution given in or about September of 1996 I made more than casual reference to a number of horticultural and grain growing diseases. Particularly did I refer to the speed and spread worldwide at an alarming rate of these crop and plant diseases for which for many of them there is no curative treatment. One of these diseases was black sigatoka which is a disease of the banana palm and which has already done devastating damage to nations of Central America which almost solely rely on the growing of bananas as their only means of export earnings.

This, of course, will have almost no effect on South Australia, but when you couple black sigatoka with fire blight that should let members of this House more fully understand just how vulnerable our land based industries are to these plant diseases. Members may also remember my contribution to the meat industry inspectorate debate in this House where I resolutely opposed any reduction in staffing levels of meat inspectorate numbers. Sadly, that Bill was carried and the Garibaldi affair, coupled with other contaminated meats and complaints in sandwich shops throughout the nation, stand in mute testimony to the numerical reduction of meat inspectorate staffing levels.

The reasons I have been consistent in my opposition to the reduction is as follows: first, the global economy and therefore more free trade between nations; secondly, Australia has always had as one of its strongest export cards, particularly in the food area, that it is relatively plant disease free (this view is one put forward by many learned people in this field); and, thirdly, the fear that enhanced trade between nations will increase cost competitiveness and therefore may lead to economic espionage by the deliberate introduction of plant diseases into Australia from which we are currently free. There is indeed a very strong school of thought that such was the case in respect of fire blight. Bearing these matters in mind, I direct the following questions to the Minister:

1. What steps has the Minister taken to tighten up quarantine inspectorate measures at South Australia's borders?

2. At the meetings of both State and Federal Primary Industries Ministers what additional steps are being taken to ensure that points of entry into Australia, both at our ports and airports, and inspection provisions which come under Federal authorities are strengthened so as to ensure the most rigorous quarantine and inspection provisions of particularly those agricultural, horticultural and other farm products which are for export from Australia and also to ensure the safety of food products for domestic consumption?

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

NON-METROPOLITAN RAILWAYS (TRANSFER) BILL

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

That it be an instruction to the Committee of the whole that it have power to consider a new clause concerning an amendment to the Wrongs Act 1936.

Motion carried.

CHILDREN'S SERVICES (CHILD CARE) AMENDMENT BILL

The Hon. K.T. Griffin, for the **Hon. R.I. LUCAS** (Minister for Education and Children's Services) obtained leave and introduced a Bill for an Act to amend the Children's Services Act 1985. Read a first time.

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

That this Bill be now read a second time.

The purpose of this Bill is to—

- allow a family day care careprovider to have up to seven children in care at any one time (including those of the careprovider), provided that not more than four have not yet commenced their first year of schooling;
- permit one additional child to be in care under exceptional circumstances;
- provide transitional arrangements to prevent any existing careprovider being disadvantaged in relation to children now in the person's care;
- amend the definition of a 'child care centre' to be compatible with the above;
- extend the licensed period of operation for a child care centre from 12 months to two years.

In June 1995 the relevant Ministers involved in the Council of Community Services and Income Security Ministers' Conference approved Family Day Care National Standards and agreed that these were to be implemented in 1997.

The agreed national standards differ from those applying in this State with respect to the number of children able to be cared for at the one time in a carer's home.

To implement the national standards a change is required to the *Children's Services Act*.

At present in South Australia a careprovider can care for *'not more than three children under the age of six years'*. The practice has been for a maximum of seven children to be cared for at any one time and this has included school aged children up to 12 years of age as well as the carer's own children. This limit was negotiated with the Careproviders of South Australia and has been in effect for many years.

The national standard states '*a carer must not provide at any one time for more than seven children, four of whom have not started school*'—this includes the caregiver's own children.

The phrase 'started school' refers to the commencement of 'formal' schooling and excludes children attending any form of preschool.

A change to the existing State legislation to meet the provisions of the national standards for family day care will also require an amendment to the definition of a child care centre because the definitions which identify these two forms of care are interlinked.

An additional minor amendment to ease the administrative burden on both centre operators and government resources is proposed to extend the current licensed period for a child care centre from 12 months to two years.

Extensive community consultation has been undertaken within the context of developing and implementing the national standards for family day care and long day care child care centres. All peak bodies participated, as did many individual carers, centre operators and users of services.

In early 1994 meetings were held in both metropolitan and country areas to gauge careprovider comment. In mid-1995 the Executive Director, Children's Services, wrote to individual careproviders and parents, advising of significant changes. Careproviders who were members of the Careproviders of South Australia (COSA) were also invited to forward comments to the National Secretariat of the Council of Community Services and Income Security Ministers. COSA was supportive of the proposal to increase the numbers of preschool-age children in care.

Many family day care providers will be able to increase their income if the proposed change, to increase from three to four the number of children not yet attending school, is approved.

Transitional arrangements to protect the current arrangements for a minority of carers are proposed—to allow the youngest possible child of a carer to commence school. South Australia proposed this transitional requirement to ensure that South Australian care givers are not in any way disadvantaged by the introduction of national standards.

There is no particular implication for long day child care centre operators with the changing definitions. However, centre licensees have been seeking an extension to the current licence period of twelve months and will support this measure. This measure will reduce the administrative requirements and subsequent assessment processes linked to the reissuing of licences. It should be noted that centres will still be subject to regular random visits to ensure that licensees are adhering to the Child Care Centre Regulations. This move has been strongly supported and lobbied for by the Child Care Industry Reference Group.

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

Leave granted.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 3—Interpretation

This clause substitutes a new definition of 'child care centre' and amends the definition of 'family day care agency' to make those definitions consistent with the proposed amendments to section 33. The clause also inserts a definition of 'young child' (which is defined as a child under the age of 6 years who has not yet commenced attending school) for the purposes of the child care centre and family day care provisions.

Clause 4: Amendment of s. 25—Business of child care not to be carried on without licence

This clause amends section 25 of the principal Act to make the child care centre licence period two years. A minor amendment is also made to subsection (6) to match up the language of that subsection with one of the proposed amendments to section 33.

Clause 5: Amendment of s. 33—Application for approval of family day care

This clause amends section 33 of the principal Act as follows:

- Paragraph *(a)* of subsection (1) is replaced, so that a family day care provider may care for not more than 4 young children. Reference to 'relatives' of the child is also removed so that what is relevant is whether the child is being cared for away from his or her guardians.
- New subsection (2a) provides that a family day care approval is conditional on the care provider not having the care of more than 4 young children or a total of more than 7 children.

- New subsection (2b) allows the Director to exempt people from the conditions in subsection (2a) in certain circumstances. An exemption may, for example, be granted if all children to be cared for are of the same family. Alternatively, if there are special circumstances, a family day care provider may be able to care for one extra child without losing their approval. In addition, to assist family day care providers who currently comply with section 33 but who would not comply under the proposed amendments, the Director is empowered to issue an exemption to a person who, immediately before the commencement of the amendments, had the care of more than 4 young children or more than 7 children in total.
- New subsection (2c) provides for conditions to be imposed on exemptions issued under the section.
- Subsection (4), which currently provides that the limitation on numbers of children do not apply where the children are of the same family, is removed and replaced with a provision specifying that in this section, for the purposes of determining how many children a care provider has the care of, the care provider's own children and any other children residing in the family day care premises will be counted if those children are under the age of 13 years.

Clause 6: Amendment of s. 48—Restriction on child minding advertisements

This clause is consequential to the insertion of a definition of 'young child'.

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

SECOND-HAND VEHICLE DEALERS (COMPENSATION FUND) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 8 July. Page 1715.)

The Hon. K.T. GRIFFIN (Attorney-General): The Hon. Anne Levy has raised a number of issues regarding the proposed amendment to the Second-hand Vehicle Dealers Act 1995, and I will deal with them in turn. In relation to the Kearns claims, so far the Office of Consumer and Business Affairs has been advised of six claims against the Second-hand Vehicles Compensation Fund due to the default of the principal of Kearns Brothers Auctions. These claims have been lodged since the full court of the Supreme Court delivered its decision in *CCA v. Melrose*, in which it was held that an auctioneer is a dealer within the meaning of the Second-hand Vehicle Dealers Act 1995, even though he was not licensed as such.

One of those claims has already been heard and decided in the claimant's favour; the Magistrates Court authorised the payment of $15 631 from the fund. The other claims received so far total $53 546. All but one appear on the creditor listing of the liquidator. I understand that a law firm is preparing the documentation for up to 30 more claims. That documentation is expected to be filed and served within a couple of weeks.

In respect of the claims breakdown, the Office of Consumer and Business Affairs has reviewed the list of creditors supplied by the liquidator in order to gauge the maximum potential exposure of the fund. Total creditors amount to $740 292.40. The trade creditors, including dealers, amount to $76 437.91, and general auctions amount to $18 053.09, making a total of $94 491, with a maximum potential exposure of $645 801.40.

It would appear on a review of the creditor listing that there may be over 70 claims on the fund. This does not allow for other claims that may be lodged, of which there has been one already. Although the amount of the individual claims may differ from the amount of the proof of debt in some cases, it would appear that there are 50 claims under $10 000, 16 claims between $10 000 and $20 000 and five claims over $20 000. In relation to claims handling, I can indicate that, since the claims are heard and determined by the Magistrates Court, representatives of the Commissioner for Consumer Affairs attend each hearing to urge the court to exercise due process in its determination.

As administrator of the fund, the Commissioner's role is that of *amicus curiae*. The Office of Consumer and Business Affairs has in place some well defined procedures for handling claims on the fund due to the default of the principal of Kearns Brothers Auctions. Each claim is reviewed to ensure that: the claimant is a creditor of the company in liquidation; the claimant is not a second-hand vehicle dealer (by checking the Business and Occupational Services Branch Occupational Licensing Register and checking with Motor Vehicles Registration to see if the claimant has sold four or more cars within a 12 month period); the claimant has a valid unsatisfied claim against the dealer arising out of or in connection with the transaction.

I turn now to the issue of the Bob Moran claims. An administrator has been appointed over the affairs of Northern Car Distributors Pty Limited and James Scott Used Cars Pty Limited, trading as Bob Moran Cars at Medindie. The former held a licence that was surrendered on 1 November 1996; the latter holds a current secondhand vehicle dealers licence. The administer of the companies has advised the Commissioner for Consumer Affairs that approximately 105 cars have been sold in the past three months. A worst case scenario could be that each one of these vehicles requires warranty repairs as accorded by the legislation but, since the companies are not performing, those repairs could represent a claim on the fund.

There is also the scenario that work due to be performed under the extended contractual warranties may have to be compensated. There is no way of estimating the potential exposure of the fund at present, although I can indicate that, since this briefing note was written, the extended warranty issues have been actually taken over by two other dealer groups, so those extended warranty claims will be met.

The Commissioner for Consumer Affairs will vigorously contest claims on the fund if the person or company committing the default continues to trade or is in receivership or administration. If the person or company proceeds to file for bankruptcy or is placed in liquidation, it is assumed that there is no reasonable prospect of recovery apart from the fund. At present all queries about the performance of warranty repairs are being referred to the administrator.

In relation to the Treloar claims, it would appear that the business and its goodwill have in fact been transferred to another vehicle dealer and that the company in question is under administration only. As outlined earlier, the Office of Consumer and Business Affairs will contest claims where the dealer is not a bankrupt or placed in liquidation. Payments will be referred to the new owner of the business or to the administrator.

There was a proposal from the Royal Automobile Association. In response to that I indicate that the Second-hand Vehicle Dealers Act 1995 has always contemplated that sales by auction constitute a unique subset of transactions and should be treated accordingly. The Act, in effect, presumes that an auction is a special type of private sale, where the vendor engages an agent to sell the vehicle to the highest bidder. It is a situation where the principle of *caveat emptor* is strictly applied, thus auctioneers who sell on behalf of others are not required to be licensed nor are they presumed to provide an implied warranty on vehicles they sell. I thank

members for their indications of support for the second reading of this Bill.

Bill read a second time.

In Committee.

Clause 1 passed.

New clause 1A.

The Hon. ANNE LEVY: I move:

Page 1, after line 13—Insert new clause as follows:

Commencement.

1A. This Act will be taken to have come into operation on 30 November 1995.

This provides that the Bill will be taken to have been in existence from the time that the second-hand motor vehicles legislation was originally passed by this Parliament. The effect of this will mean that the current money in the fund will not be liable for the claims made in the Kearns case. I do this on two bases. First, this was what the Parliament intended in 1995. There was no-one in this Chamber who ever suggested that sales by auctioneers were covered by the Second-hand Motor Vehicles Fund. It was not the intention of this Parliament, and no-one suggested it in their speeches. I am quite sure that not a single member of this Parliament thought that the Act we were passing would, in fact, make possible claims against the Second-hand Motor Vehicles Fund through default of auctioneers. So, this amendment will restore what was the intention of Parliament in 1995.

Secondly, I move this amendment on the grounds of equity. As has been indicated, the fund currently stands at about $1.4 million. From the figures which the Attorney read out so rapidly, the possible claims in the Kearns case may come to about $650 000, though there may be others to come forward which are as yet not known about. Potentially, the fund could be almost halved through applications resulting from the Kearns case. So, half the funds would be considerably depleted in fixing the claims in the Kearns case, and yet Kearns, like all other auctioneers, have never contributed one cent towards this fund. The fund is made of contributions by licensed second-hand motor vehicle traders, of which there are quite a number in Adelaide, and they have contributed all the money in this fund so that, in the case of default or not meeting the warranty on the part of one of the licensed second-hand dealers, the consumer has an avenue of recourse and can be recompensed.

This is a fund which is paid for by the industry to cover any defaults by the same industry. It seems to me grossly unfair that the claimants against Kearns should have access to the fund when Kearns never contributed one cent to the fund. Parliament was very clear: when we passed this Bill we did not expect auctioneers to be involved either in contributing to the fund or in any claimants against them having recourse to the fund; that was not its object. As I say, the amendment that I move is to put in place what I am sure every member of this Parliament expected we were passing on 30 November 1995.

The Hon. SANDRA KANCK: I indicate that the Democrats will be supporting this amendment. It does bring some retrospectivity to this Bill. I do not have a particular beef either way about retrospectivity. I know some people feel that if something is retrospective you should not do it, but I think it needs to be considered on its merits. The merits in this case are fairly clear. The licensed second-hand vehicle dealers do contribute to this fund; the auctioneers do not contribute to this fund. The Attorney-General has repeated in his summing-up speech at the end of the second reading the fact that auctions are a 'buyer beware' situation, and therefore no-one has any moral right to access this money.

In fact, when I was given a briefing on this Bill by departmental officers they indicated to me that our legislation in 1995 took the words out holus-bolus from the previous 1982 or 1983 Act. They had been there for so long that no-one ever assumed that there was any problem with them, and that was why they were incorporated in that form in the 1995 legislation. It has taken a considerable number of years for someone to get smart enough to try to test it in this way. One person has—and has been successful—but I do not see that that is a good enough reason now to open it up to any of the others who might have fallen victim as a consequence of this particular business falling over. As I say, it is a moral issue to me. There never was an expectation that people who bought cars under auction could access this fund, and because that expectation was never ever there I am quite comfortable in supporting a retrospective amendment.

The Hon. K.T. GRIFFIN: The Government does not support the amendment. It does surprise me that both the Hon. Anne Levy and the Hon. Sandra Kanck are not prepared to give proper weight to the general principle that Parliament does not legislate retrospectively to take away people's rights. Of course, that issue does not arise where rights are being granted retrospectively, but it is a general principle that, whilst Parliaments do legislate to take away people's rights retrospectivity, that is resisted. This is one of those occasions where there has been a test case in the courts. It is correct to say that no-one expected that auctioneers' customers would benefit in this way, but they do. The courts have now established that there is a right, right up to the Full Court of the Supreme Court of South Australia. In those circumstances the Government feels bound by the decision which has been taken. The Government is prepared to ensure that it does not happen again but feels very uncomfortable about taking away the rights of up to 70 people whom the courts have now established do have rights.

When I introduced the Bill I said that it was somewhat surprising that the 1983 provisions had not been tested in some 14 years because the issue had not arisen. Well, it has now arisen and we have to face up to it. The Hon. Anne Levy's amendment seeks to ensure that, notwithstanding that Mr Melrose has had a success in the court, we now will have to sue him to recover the money if this clause passes. It may be that if moneys being paid out to at least six other claimants, or perhaps more—I do not have the most recent update on that—we will have to take action to recover those moneys which have been legitimately paid on the basis of the Full Court decision.

I would have thought that it was a moral question, and there are issues of principle. I must say that I am surprised that the Hon. Sandra Kanck does not have a principled view in relation to the issue of retrospectivity where it takes away these sorts of rights. We can always say that no-one in Parliament believed that this would occur and that we have done that on occasions, but, when something has been in legislation since 1983, and after the event of a successful claim being made, it is very difficult for us to change the law to rule it out as though it never happened. That is the difficulty I see with this amendment.

There is no doubt that licensed motor vehicle dealers have paid into the fund, and we have indicated that we do not expect that as a result of the Kearns matter any additional claim will be made on second-hand vehicle dealers by way of contribution. In fact, that has been categorically ruled out.

We have indicated that we will seek to change the legislation for the future.

In terms of auctioneers, some are licensed motor vehicle dealers, so they already get the benefit of the fund.

The Hon. Anne Levy: They are paying in.

The Hon. K.T. GRIFFIN: Yes, they pay in $350 per yard, which is a pretty small price to pay for compromising a principle. It has already been acknowledged that Kearns was not a licensed vehicle dealer, but there are other licensed vehicle dealers who are auctioneers and whose customers get protection from the fund.

The Government opposes the amendment. I wonder why it has not been backdated to 1983, which is the date that the first provision came into operation. However, that would cause problems for a whole range of people. November 1995 might be convenient in the sense that it is the current legislation, but it destroys the argument of principle if this provision in almost identical terms has been in place since 1983 and it is being made retrospective for only part of that long period. The Government opposes the amendment, and we will see what happens to it as it goes through the parliamentary process.

The Hon. ANNE LEVY: I do not wish to prolong the argument, but I feel that there are a couple of points which the Attorney-General raised and to which I should respond. As far as I am aware, no cases comparable to Kearns arose between 1983 and 1995, so that whether it was made retrospective to 1983 or 1995 would make no difference. If the Attorney would rather make it 1983, I would be happy to accept that as an amendment. The practical effect of making such a change would be zero because there were no such cases.

A further reason for making it 1995 is that the composition of this Parliament has not changed since then. We are exactly the same people now as we were on 30 November 1995 who enacted the new legislation, and not one of us on either side of the Chamber intended that customers of auctioneers could make claims against the Second-hand Vehicle Dealers Compensation Fund. We are exactly the same people: not one of us thought that was desirable. So, to make it retrospective to 1995 is consistent with what this Parliament and this body of people in Parliament intended at that time.

New clause inserted.

Clause 2.

The Hon. ANNE LEVY: I move:

Page 2, lines 2 and 3—Leave out subparagraph (iii).

This is consequential on the amendment that has just been carried.

Amendment carried; clause as amended passed.

Title passed.

Bill read a third time and passed.

APPROPRIATION BILL

Adjourned debate on second reading.

(Continued from 8 July. Page 1736.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The Opposition supports the second reading. This is a pre-election budget and represents the high point of the Premier's concern for the quality of education in our schools, the delivery of decent health care, support for the disabled, frail and aged, and care for our environment. Viewed in this way, the people of South Australia will be left asking, 'Is this the best they can do?' The people of South Australia will not be deceived by an advertising campaign that is clearly designed to boost the Government's flagging popularity. What has been described by the Premier as informing the public about the budget is nothing more than pre-election propaganda and we know we will be treated to plenty more of it.

It must have been a difficult budget for the Premier to prepare. His natural inclination would be to deliver a budget tougher and drier than Dean Brown ever did, so it is ironic in that sense that John Olsen's first budget puts back some of the annual expenditure into education, health and job creation that was stripped away through Dean Brown's three budgets. But even these increases are cynical deception, for this budget goes nowhere near restoring the previous three budget cuts to education and health. In spite of the hype, it has delivered yet another real cut to health. The recurrent education budget has increased from $942.4 million to $1 020.1 million. That is an increase of $77.7 million. Of this, a substantial portion will go to meet the well-deserved pay increase for teachers. This year's budget brings recurrent expenditure into line with the annual expenditure of the last Labor budget in 1993-94. But the hallmark of the Liberal Government's approach to education funding is a cumulative cut of $137 million over its past three budgets. That $137 million represents hundreds of sacked school services officers, approximately 40 closed schools and delays in many significant capital works projects.

Members will recall the Minister's announcement in 1995 that $40 million a year will be cut from education over time. That was one promise the Minister actually kept. On the capital side, I acknowledge that additional funds have been programmed, but once again I point out how projects are being recycled. This year the budget papers include two new categories of projects to commence in June 1997 and projects carried over in an attempt to disguise those projects which have never been commenced. Some of these capital works projects are like phantoms: they keep hanging around but never seem to materialise.

I turn to the topic of funding for health care, which, in many respects, is an even more sorry story than the education funding scenarios. In 1996 the Health Minister told the Estimates Committee that the Government had cut $61 million from health and that this would be increased by another $10 million in 1996-97. This year, the total health recurrent budget has increased from $1.505 billion to $1.540 billion. Allowing for the Government's inflation forecast of 2.25 per cent, the increase, in real terms, is just $3 million. This goes nowhere towards making the cumulative cut of $209 million that has been made to the health sector over the past three Liberal budgets.

Obviously the feature of the health budget from the Government's point of view was meant to be the $60 million that was announced for upgrading the Royal Adelaide Hospital. The truth of the matter is that there is only $5.76 million in this year's budget for that project—and that is the third allocation of funding for a project which was announced in 1995-96. Initially that project was set to be a $125 million upgrade, but we find that only $4.5 million was spent in 1995-96 and $6.4 million was spent in 1996-97. The Government's lack of commitment to the Royal Adelaide Hospital upgrade suggests that it will seek private developers to fund the building of a private hospital on the Royal Adelaide Hospital site in conjunction with any further upgrade.

Like the education capital program, the phenomenon of slippage means that numerous projects have been and will

continue to be re-announced. For example, the Marion Community Health Centre upgrade, which has been the subject of Liberal promises since before it got into government, was previously budgeted for July 1996, but expenditure on this project is listed for June 1997.

Work on the Daw Park Repatriation Hospital was supposed to start in November 1996 but that is now scheduled for November 1997. Work on the Medical and Veterinary Science Laboratory, which was due to start in July 1996, now has a start date of September 1997. The Modbury Hospital rationalisation which was due to commence in September 1995 now has been rescheduled to begin in August 1997. It appears that the private hospital to be built next to Modbury by Healthscope now will be established by handing over public space in the existing building.

Again, in the crucial area of funding for our health services, we see budget hoaxes and chicanery. Like a new sheriff in town, Premier Olsen has tried to talk, talk and talk the economy into something better than it is. To some extent the Premier can be excused for talking positively about the State's future, but when it comes to promising jobs this budget exposes the Government's blatant hypocrisy on this issue.

The May figures for the *Yellow Pages*' Small Business Index were fascinating for the high levels of confidence amongst South Australia's small business proprietors. Confidence levels remain high despite poor sales, zero inclination to take on extra staff and no commitment to invest in capital and the expansion of their businesses. In other words, our small business people are doing an excellent job of remaining cheerful, but one can only wonder for how long this can go on in spite of a difficult economic climate made even harsher by the policies of this Government. It seems that the only difference between Sisyphus and a small business proprietor is that Sisyphus never expected the boulder to go over the top of the hill.

Unfortunately, this budget is only scratching the surface of the unemployment problem. The sum of $145 million, which is said to be specifically for employment initiatives, is part of the claimed extra $200 million in Government capital works. This type of double counting allows the Government to market its allocations of money twice over. Whether we count this allocation as being towards the reduction of unemployment or the implementation of capital works, the fact is that it is nowhere near enough to get this State moving again. It cannot possibly fulfil the Premier's publicly announced goal of reducing the State's unemployment level to the national average by 1998-99. The unemployment problem can only be solved by significant Government intervention, because big business particularly will never really be interested in reducing the pool of unemployed people that we have in this country at present.

It is an undisputable fact that a pool of unemployed people in any advanced economy creates downwards pressure on wages. This is a basic application of the law of supply and demand in the labour market. Reduced wages through enterprise bargaining agreements, and so on, do not result in additional people being employed—the result tends to be increased profit. And it is much less likely that the profits will stay in the South Australian economy than the saving and spending which would result from wages paid to residents of South Australia as workers.

The bottom line is that this Government is not seriously committed to reducing unemployment because it would not be in the interests of the Government's big business friends to do so. The Liberal Government's record on capital works programs over the last four budgets has been appalling. The fact that the Liberal Government is all talk and no action is confirmed by the figure for underspending in relation to budgeted capital works over the last four years. Actually, it is about $575 million which the Government said it would spend but did not.

There was more chicanery with the announcement that $200 million would go towards capital works this year. In fact, that is the amount that the Government underspent in the financial year just finished. In other words, all it has done is claim that it will spend in the coming year what it meant to spend last year. As I said, we cannot rely on big business to help in a significant way to solve the unemployment problem.

Most of the Government's planned additional capital works spending is reliant upon input from the private sector. But that is a mistaken assumption. In 1995-96 the Government budgeted for $60 million of private funds to be invested in private infrastructure, but only $7 million was contributed.

In 1996-97, the Government budgeted for $150 million in private funds to go towards public infrastructure projects, but only half that amount was in fact contributed. We can see that, despite the Premier's attempts to talk and talk the economy up, he and the Liberal Government have failed dismally, and all of South Australia will suffer for it. We can also look at this unemployment problem in terms of jobs growth. The fact is that South Australian jobs growth has been less than half the national jobs growth during the period in which the Brown-Olsen team has been in Government. The figures revealed recently confirm this sorry story.

South Australia actually experienced negative growth in the last quarter. The economy actually shrank by 1.6 per cent on seasonally adjusted figures. When the *Advertiser* starts criticising the Premier for failing to deliver jobs and economic growth, you know things are really bad. The Liberals began by promising 20 000 additional jobs each year—3½ years later they are nearly 50 000 jobs short of that target, not least because of their razor-gang approach to the Public Service. We have lost over 12 000 public servants due to the Liberal Government's policies—not a matter of increased efficiency but simply reducing services and pushing out our most experienced and talented public servants.

Having failed the 20 000 jobs per annum jobs target, the Premier fumbled for a new, impressive sounding target that will give the impression that should be the illusion of determined action. In mid May he announced that his target would be to reduce unemployment to the national average over the next two years. This was already an admission of failure, but two weeks later in his own budget Premier Olsen ran away from his unemployment target. His own budget papers show South Australia under-performing compared to Australia out to the turn of the century. Our employed work force is expected to grow at only three-quarters the rate of employment nationally.

Further, we are predicted to grow at rates far below the 4 per cent level nominated by Prime Minister Howard as necessary to reduce unemployment and at levels below the national growth rate. So much for our having an unemployment rate no higher than Australia in two years—even Dean Brown's commitments lasted longer than this.

Finally, let me stress the irony of this Liberal Government's having a record of failure and ineptitude as economic managers. The irony arises because about the only thing the Liberal Government has going for it is a claim to better economic management. It is a claim not borne out by reality

but it has nonetheless been the linchpin of its marketing to the South Australian people for a long, long time. The tragedy of this budget, and the three preceding Liberal budgets, is that the phoney marketing and deceptive double counting has probably not prevented the Liberal Government's conning the South Australian public into another term of Government. If this Government is re-elected it will not be because of its economic record; it will not be because of its cuts to our health care system; it will not be because of its attacks on our public school system; it will not be because of this State's unemployment rate of nearly 10 per cent; and it will not be because it has failed to act on youth unemployment: it will merely be because it has vastly more resources at hand to fight the coming election and to make mugs of the South Australian people yet again.

The Hon. CAROLINE SCHAEFER secured the adjournment of the debate.

LONG SERVICE LEAVE (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 10 July. Page 1793.)

The Hon. DIANA LAIDLAW (Minister for Transport): Mr Acting President, I draw your attention to the state of the Council.

A quorum having been formed:

The Hon. R.R. ROBERTS: I oppose this Bill, which was recently introduced into the Parliament by the Minister for Industrial Affairs (Hon. Dean Brown). This Bill was introduced as a response from a Government which is staggering from crisis to crisis and which is desperately trying to create an image that it is doing something for small business. This Bill is one ploy the Government has introduced to try to create that impression. This Bill was introduced not as a result of a screaming demand from industry, the trade union movement or, in particular, the employees: it was introduced by the new Minister for Industrial Affairs—who failed in the Tonkin Government to attract not only the support of even his own Party but also the support of unions and employers generally—simply to change the arrangements for long service leave.

Members in this place would remember that, prior to the Federal and State elections, the Liberal Governments, or Oppositions as they were, gave undertakings to small business, and particularly the workers and their representatives, that a number of safety net provisions would be enshrined in legislation that would protect the rights of workers. Those rights included long service leave, four weeks' annual leave, sick leave and a range of other matters. The Government would claim that it has not breached that undertaking by saying, essentially, that long service leave ought to be able to be cashed out. It also claims that a number of employees think that it is a good idea to cash out long service leave and not take the leave.

I submit that there is no refuge for the Government in that argument. If one surveyed workers and asked them whether they thought it was a good idea to cash out their long service leave at base rates or whether they preferred to take the leave and be paid at their annual leave rates or at the rate of their shift roster earnings, one would find that many workers, particularly shift workers, would find it attractive to opt, essentially, for a 33 per cent loading. If workers were told to take long service leave at their base rate—that is, essentially, a 33 per cent decrease in their income over that period of long service leave—many would find the change in income over a 13-week period to be a large and almost crippling impost on their financial viability. Therefore, they will ask, 'Can I take part of it and take the cash?' That is an argument not of whether cashing out is a good thing but of convenience, because industrial commissions have deemed that many workers are not getting paid appropriate minimum standards regarding annual leave. The Bill tinkers around the edges of long service leave. It ought to be rejected simply because it addresses not the whole question of long service leave but only one question.

The Bill also deals with the conditions of leave—the taking and timing of leave—and the method of payment being put into enterprise bargaining agreements. The Opposition will oppose that also, because that allows other people—many of whom will never qualify for long service leave, I might add—to trade away the conditions that long serving employees have accrued over a period of time. I was interested to hear the Hon. Mike Elliott in his contribution indicate that he was not supportive of that happening. I do not intend to dwell a great deal on that. I will be looking closely at that matter when we come to Committee, because I am aware that the Hon. Mike Elliott has supported the second reading of this Bill.

There ought to be a comprehensive review of long service leave—not some *ad hoc*, tinkering around the edges arrangement. There are some good reasons for having a close look at long service leave, given the reorganisation of work, the changing nature of work and the fact that many employees are now casualised in one sense or another. The other thing that often goes unconsidered is the work intensification that has taken place. Many establishments have reorganised their work force and the way they do business, and there has been a great shedding of labour in industry over the past four or five years. For example, 10 employees used to perform certain functions but, because of the economic rationalist theories being traipsed around where management would say, 'We have to cut 15 per cent of the labour,' jobs have become more intensified and there are now fewer employees to cover more tasks. To compound that problem, in many heavy industries, where hard manual labour takes place, those employees have moved to 12 hour shifts. There has been a whole new arrangement in the way work is performed and the conditions under which work is performed.

Instead of this Bill we should look at long service leave and all its vagaries, and take into account, in the changing nature of work, that some employees will work for 30 years in a range of jobs, but will never qualify for long service leave, because they will not be there for 10 years. We could look at the proposition whether there ought to be portability of long service leave as there is in the construction industry. A few years ago, everybody said we could not have long service leave in the construction industry because of the nature of the industry—people move from job to job and employer to employer. The fallacy of that has been proved quite conclusively. There is a proper long service leave arrangement for people working in the construction industry. This is not a matter we can consider in this Council in the dying stages of this Parliament; it is something that requires a proper review. However, this is not what is being proposed. We are saying, 'Let's just look at the cashing out arrange-

ments and do something about that because somebody—in this case, the Minister—thinks it is a good idea.'

This not a high cost burden for employers. It represents 1.6 per cent of labour costs. We are not talking about millions of dollars. These things of themselves will not save small business or provide one extra job. In fact, work opportunities will be reduced by the fact that we have arrangements proposed by the Minister. A range of other things ought to be considered in a far-reaching review. It is the Opposition's view that the best thing we can do with this Bill is reject it. However, I am again mindful of the contribution by the Hon. Mr Elliott, when he said that he was prepared to listen to argument as to why we ought not to cash out long service leave. However, his first indication was that he would consider that to be something about which he would be prepared to have further discussions. I am disappointed with that, but I indicate that when we go into Committee we will move amendments regarding the time of taking of leave, because there are some glaring inconsistencies contained in that. We will listen to any arrangements. As we go through Committee, we may move some further amendments.

In my second reading speech, I intend to detail some of the objections to the Bill as it is drafted. Principally, the Labor Party objects to the cashing-out of long service leave entitlements, as I have explained. The Opposition argues that long service leave was introduced to give recognition for long and faithful service, and it was intended to recognise the need for a period of R and R, and for personal renewal. The principle of long service leave was not about money but about time away from the work force for personal renewal, rest and recuperation, and to return to the job reinvigorated.

We are also looking at another Bill, the Industrial and Employee Relations (Harmonisation) Bill. It is clear what the Liberal Government thinks about long service leave federally. It thinks it is about time off. It has just introduced new arrangements in the Department of Social Security such that, if an employee becomes redundant through no fault of his own or leaves and receives a pay-out which includes long service leave, annual leave or any other payments for leave entitlements, those moneys have to be cut out not at the weekly rate at which the employee may have earned them but at the Job Search allowance rate. Clearly, the Federal Liberal Party says that long service leave is about time off. We have a glaring inconsistency, on which I will comment later when we talk about the other Bill.

This Bill proposes to permit, by written agreement of the employer and the employee, the cashing out of accrued long service entitlements according to the Minister, and it is designed to provide more flexible arrangements for the taking of the leave. As members are probably aware, the Long Service Leave Act 1987 provides the principal legislative basis for long service leave entitlements in South Australia. It is an entitlement to a benefit from long service leave that can be achieved in two ways: after not fewer than 10 years' service, in which case the benefit is made available through the provision of paid leave or, secondly, after the completion of not fewer than 7 years' service, in which case, should employment be terminated then payment in lieu of leave is made on a *pro rata* basis. Members would be aware that long service leave entitlements do differ, given that the Long Service Leave Act 1987 applies to those workers covered by State awards. However, since the introduction of long service leave, it has improved in both length and quality, including its extension to some otherwise non-qualifiers by the provision of portability of accumulation as between various employers in the same industry, and the classic example is, as I said, the construction industry.

The Labor Party has long supported the provision of long service leave, believing that it reduces labour turnover, rewards long and faithful service and it enables an employee halfway through their working life to recover spent energies and return to work renewed, refreshed and invigorated.

Given that the Minister's second reading speech contained no comment on the history of long service leave, it is worth briefly going over a little history to see how long service leave developed in Australia, and in particular, in South Australia. I refer members to my source, which is an extract from the *Law Book Company Limited, New South Wales 1983*, pages 1-8, chapter 1, under the heading 'The History and Purpose of Long Service Leave'. The book states:

> Long service leave, as an expected condition of employment is unique to Australia. In its present form, it is the product of legislation and arbitral decisions, spread over many years and jurisdictions. It is surprising, in view of its economic cost, that so little attention has been given to either the reasons for its development or to the extent of its social benefit.

There has been a lot less scrutiny of the social benefit, which, I believe, not only to be of enormous benefit to the employees but gives job opportunities to the people replacing them. A number of examples are provided, but when we go back to the antecedents of today's long service legislation we see that section 30 of the South Australian Civil Service Act in 1862 provided:

> The Governor may grant to an officer in the Civil Service of at least 10 years continuous service, not exceeding 12 months leave of absence on half salary or, at his option six months leave of absence on full salary or if of 20 years continuous service 12 months leave of absence on full salary, and in cases of illness or other pressing necessity such extended leave in such terms as he may think fit.

I believe that the provisions being espoused by the Minister do not exceed those that were available to members of the Civil Service in 1862.

A similar entitlement was made available to the whole public sector in Victoria in 1883, with New South Wales following the trend in 1884. Federation in 1901 led to the establishment of the Federal Public Service and a Commonwealth Parliament, which in 1910 enacted legislation providing long service leave to its employees. Slowly, long service leave entitlements were spread beyond public sector employees, and a measure of the impact of long service leave was the fact that long service leave legislation was enacted in New South Wales in 1951, Queensland in 1952, Victoria in 1953, Tasmania in 1956 and South Australia in 1957. Western Australia did not come on line until 1958. Even though Federal awards had the inclusion of long service leave for some time, the Federal Commission did not arbitrate its first long service leave claim until 1964.

Members would no doubt notice from the above dates that South Australia did not have any State legislation covering long service leave until 1957. The history behind that piece of legislation is quite interesting in itself but, without going into too much detail, it was in 1972 under the Dunstan Government that we succeeded in getting the entitlements that we now enjoy in South Australia. Basically the legislation has remained unchanged since that day. Changes were made in 1987 and periodical amendments have updated the Bill, but fundamental matters have stayed in place, one of which is that the employee shall take long service leave. The employee is not to be paid out, not to be chased up. Long service leave was an entitlement that workers needed. These

have been the fundamental tenets behind long service leave and, in particular, the no cashing out provision.

I will briefly outline what the proposed change is under this Bill and the matters that we consider important and to which we object. The Bill proposes to allow (by agreement between the worker and the employer) the partial or total cashing out of long service leave entitlements. One of our objections relates to the actual taking of long service leave when it falls due. Currently, the employer has the ability to control when leave is taken. At the moment, when an employee accrues long service leave and wants to take it, the Act states, in effect, 'as soon as practicable after it falls due'.

In reality, if it does not suit the employer, they do not get their long service leave at the time they want it. If the Minister is fair dinkum about flexibility and being even-handed between employer and employee, one option is for the employee to have the right to give 60 days notice to his or her employer and say, 'That is the date on which I want to take my long service leave and that is when I will take it.' The onus would then be on the employer to say, 'If I cannot afford your absence, I will take you to the Industrial Relations Commission and seek an order that you cannot take long service leave at that time because I need you for the following reasons.' That would reverse the onus and would be quite a good move because it is very easy for employers now simply to say to employees, 'Do not take your long service leave now: it is not convenient for me,' but the employee may want to go on an overseas trip. A number of workers are from two income families and they try to tie up a particular time so they can take time off together.

Another argument against the legislation is the devaluing of long service leave. The whole point of long service leave will be devalued over time, just as the annual leave loading has been devalued by being incorporated into salaries on an annual basis. Workers have had to give up something to which they were entitled as of right. As mentioned previously, the Minister has argued that this Bill will allow more flexibility. I would argue that this Bill does not allow for flexibility at all. We must realise that the work force has changed quite considerably, in that we work fewer full-time hours now and there is also a reduction in the work force entitlements for long service leave, due mainly to job restructuring and the shift from full-time to casual work.

This has decreased from 65 per cent in 1986 to 64.3 per cent in 1996. Of course, these changes have culminated in a work force that is less able to take advantage of long service leave entitlements. Coupled with this is the increase in job stress arising from aspects such as longer hours, work intensification, social pressures and job security. Given the above, it is possible to consider that the issue is not one of selling the entitlement but rather one of allowing the taking of the entitlement in a way which makes the achievement of the original aims more relevant to the current circumstances.

Included in such a possibility would be the opportunity to consider how the long service leave entitlement could be made 'family friendly' and reflective of a wider range of needs in the work force. By 'family friendly' I mean allowing workers to take part of their long service leave sooner, given that some employees will not be in a job for 10 years' service. If this Liberal Government really believed in flexibility, it would be committed to industrial change that is reflective of that ideal, not reactive policies such as cashing out of long service leave entitlements. This is why we object to this Bill as it is currently drafted.

On the basis of 'family friendly', which the Minister has mentioned in another place, I contend and suggest that any such review of provisions of long service leave ought to be done seriously and over time and receive submissions from both employers and employees. One of the things that we ought to be considering is a situation whereby an employee who is made redundant through no fault of their own and who has accrued long service leave over a number of years ought to be entitled to take the proportion of his long service leave that he has accrued.

The Hon. Diana Laidlaw: Or her.

The Hon. R.R. ROBERTS: Him or her. That would allow for some family friendliness, if you like, in that what we will see—and we are already seeing it—is that many employees will not stay in employment long enough to accrue either 10 years' service and be paid out, or indeed accrue seven years' service so that they can get pro rata. If this Government and this Minister are dinkum, they should consider a situation which says, if you have accrued some long service leave and you become redundant, we will look at a figure—it may be five years or three years. I do not think that it would be grossly unfair if it was after 12 months of service because people accrue long service leave on a monthly basis. They do not actually get their first 12 months until they have served out the full 12 months, although it is calculated on a monthly basis.

That is something for another place, I believe, in a proper review of the conditions under which long service leave has been accrued and is paid for. The basic tenet of my argument about long service leave is that it is about time off: that an employee has time off to reinvigorate himself without substantial financial loss. These moves are taking this matter away from time and making it money.

The other proposition that the Minister wants to put is that the negotiation about long service leave (how it is to be paid, when you can take it and how) ought to become a proposition covered by an enterprise bargaining agreement. That takes away one of the fundamental tenets that long service leave is an individual thing. That ought to be opposed, and the Opposition fundamentally opposes the cashing out of long service leave. I oppose the second reading of the Bill.

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

LOCAL GOVERNMENT (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 10 July. Page 1812.)

The Hon. R.D. LAWSON: I support the second reading of this measure and rise only to comment on a particular aspect of it. Three clauses of the Bill will remove the operation of subordinate legislation from aspects of local government. Clause 6 adds to section 34 of the existing Act a new subsection (5), which provides that the Subordinate Legislation Act does not apply to the constitutional rules of the association. Section 34 of the principal Act deals with the Local Government Association of South Australia and, so as far as I am aware, there is no reason why the Subordinate Legislation Act ought to apply to those rules. Clause 7 inserts a similar provision in section 34A of the Act. Section 34A deals with mutual liability schemes relating to workers' compensation and the like, and enables the Local Govern-

ment Association to conduct and manage the Local Government Association Mutual Liability Scheme as well as the Local Government Workers' Compensation Self-Insurance Scheme.

The section also enables the Local Government Association to establish, conduct and manage any other indemnity or self-insurance scheme that is in the interests of local government. The rules of such a scheme must be published in the *Gazette*, and those rules cannot be altered except after consultation with the Minister. The rules must comply with the requirements prescribed by the regulations. I have not examined the regulations to ascertain whether there are any requirements prescribed by regulations, and in the Minister's response I would be interested to know whether there are any such regulations. However, it seems to me that there is no reason why the requirements of the Subordinate Legislation Act should apply to local government indemnity schemes of the type mentioned in section 34A of the Act.

The third mention of the Subordinate Legislation Act appears in clause 14 of the Bill, dealing with section 200 authorities. Section 200 of the Local Government Act provides for controlling authorities established by two or more councils. The section provides that two or more councils may, with the approval of the Minister, establish a controlling authority to carry out any project on behalf of the councils or to perform any function or duty of the councils under this or any other Act. They are very wide powers. 'Project' is an expression that is very widely defined in the Local Government Act, and the ability to perform any function or duty of the councils under this or any other Act is, of course, a very broad power. I am not aware of many controlling authorities established under section 200 of the Act, and I ask the Minister in his response to indicate, if possible, the approximate number of such authorities and the areas in which they operate.

Members will be well aware of the Centenary Park Cemetery Authority, which is a section 200 controlling authority, the rules of which were published in the *Gazette* on 15 August 1996. There was quite some political controversy over that authority which, it seemed to many of us, was operating in a way that seemed to make it free from almost any control; certainly free from the control of its constituent councils (the Corporations of the City of Mitcham and the City of Unley). I will return to that in a moment.

Section 10 of the Subordinate Legislation Act provides that every regulation made under any Act, except where expressly so provided in such Act, must be laid before each House of Parliament within six sitting days of that House after it has been made. 'Regulation' is very widely defined in the Subordinate Legislation Act. It includes any regulation, rule or by-law made under an Act. The Legislative Review Committee, for as long as I have been its Presiding Member, has taken the view that a rule made under section 200 of the Local Government Act is caught within the definition of 'regulation' in the Subordinate Legislation Act and, therefore, is required by section 10 of that Act to be tabled in Parliament and to be open to disallowance.

Section 10A of the Subordinate Legislation Act provides that every regulation that is required to be laid before Parliament is to be referred to the Legislative Review Committee of the Parliament, which must inquire into and consider all regulations referred to it. As a member of the Legislative Review Committee, I do not seek to expand the jurisdiction of the committee nor do I seek to have it engage in any form of empire building. However, it seems to me that the principal importance of the Subordinate Legislation Act is that regulations made under any Act, save in exceptional circumstances, are laid before each House of Parliament and are open to disallowance by the Parliament. That is an important principle of our system of government. It is a principle that has been accepted for the past 50 years. However, it was not always so.

Admittedly, most Acts from the nineteenth century onward contained a provision which empowered the Governor in Council to make regulations, and most Acts also contained a provision that such regulations would be laid on the table of each House of Parliament and be open to disallowance.

Earlier this century, in about 1915, there was an amendment to the Acts Interpretation Act which made that a general principle in relation to all regulations. From that early amendment to the Acts Interpretation Act a very wide interpretation has always been given to regulation.

It is suggested that rules made under section 200 of the Local Government Act have not been previously subjected to reference to the Legislative Review Committee or to tabling in Parliament. I am not sure that that has been the case. In my time as Presiding Member of the Legislative Review Committee, we have received one or two rules made by controlling authorities. The committee has never recommended their disallowance, nor so far as I am aware has any member sought to disallow any such rule. So, it is with some regret that I see the introduction of this provision in clause 14, because rules made under section 200 of the Local Government Act relating to controlling authorities can have a very wide effect.

I mentioned earlier the Centennial Park Cemetery Authority, which conducts a very substantial cemetery—one of the major metropolitan cemeteries. It is a substantial business enterprise in itself and it generates substantial income. When it operated under the rules I previously mentioned it seemed to adopt a very high-handed attitude to inquiries by the Minister and its constituent councils about such important matters as the finances of the organisation.

The current Minister has been able to rectify some of the deficiencies in the rules and, as I mentioned, new rules have now been published. But when one sees, for example, the functions of the controlling authority, called the Centennial Park Cemetery Authority, we can see very wide-ranging powers to conduct a substantial business enterprise which is, after all, a public enterprise.

One sees all manner of financial controls, reporting responsibilities and matters such as the confidentiality of the operations of the organisation—all matters in which the public may have a significant interest. I am somewhat concerned that organisations of that kind might be established in the future without any opportunity for parliamentary scrutiny of the rules.

I think it is likely that controlling authorities will be more and more used. We have seen a number of amalgamations of local government authorities. Those larger authorities may well establish cooperative arrangements not only in traditional fields such as refuse removal but also perhaps in electricity distribution, which will be open to local government authorities with the deregulation of the electricity market. As members would know, the local government authorities in New South Wales have traditionally been engaged in the marketing of electricity.

One can see other areas of activity where councils are likely to get together and establish controlling authorities with

very wide-ranging powers. No doubt, those authorities will operate to the public good. However, there should be some parliamentary scrutiny of the rules and powers of such associations. I do not that believe that all controlling authorities should necessarily have their rules subject to the requirement of parliamentary scrutiny. However, there should be some mechanism for differentiating between those controlling authorities whose activities do not warrant parliamentary scrutiny and those that do.

I see that there have been put on file some suggested amendments both from the Attorney-General and the Hon. Paul Holloway. In this second reading contribution, I do not express a preference for either of those mechanisms. However, reading it briefly, it seems to me that that proposed by the Hon. Paul Holloway may provide a satisfactory differentiation between those controlling authorities which ought be included and those which ought not. During the Committee stages of the Bill I will be pleased to hear the Attorney's comments on some of the matters raised. I support the second reading.

The Hon. BERNICE PFITZNER: In speaking to this Bill I, like my parliamentary colleague the Hon. Mr Lawson, have difficulty with the non-application of the Subordinate Legislation Act in this Bill. In speaking to this Bill I am aware of the main proposals which, briefly, are:

1. To clarify the provision in the Local Government Act for the limitation of councils' general rates in the next two financial years and the interpretation of the term 'same land'. . . ;

2. To extend an amended form of the operation of the Local Government Boundary Reform Board and the current processes for the creation, abolition, amalgamation and alterations to the boundaries of councils for 12 months from their current expiry date on 30 September 1997;

3. To increase the penalties for littering and provide enhanced enforcement arrangements;

4. To introduce a number of necessary technical amendments concerning the application of the Subordinate Legislation Act 1978 to the rules of a controlling authority under the Local Government Act; and other amendments. . .

It is one of these so-called technical amendments with which I have concern, that is, the application of the Subordinate Legislation Act 1978 to specific rules provided for in this Bill.

As my colleague has identified, the rules so affected are as follows: clause 6, which amends section 34 of the Local Government Act, which in turn deals with the Local Government Association and its rules; clause 7, involving an amendment of section 34a of the Local Government Act, which concerns local government indemnity schemes; and clause 14, which deals with the rules of a controlling authority. It is with the provision in this clause that I have my greatest concern.

I do not see why the Subordinate Legislation Act does not apply, therefore allowing parliamentary review of these rules. It has been put to me that these rules are not of a legislative character and that usually these rules do not come under parliamentary review. It has also been argued that these rules do not affect the rights of individuals. I have some concern with these arguments, and I challenge them by noting that, in section 4 of the Subordinate Legislation Act, the definition of 'regulation' means any regulation, rule or by-law made under an Act. Therefore, it would have a legislative character.

I further note that controlling authorities are relatively new and powerful bodies. Under section 200 of the Local Government Act, a controlling authority is an authority established by two or more councils. I have worked with and been a member of a controlling authority, namely, the Eastern Metropolitan Regional Health Authority, which is an amalgamated authority of five or six councils and it deals with health matters. It is a very important controlling authority and, therefore, its rules are very important to us.

I turn now to the rules of a controlling authority under the Local Government Act (section 200(10)), as follows:

The rules of a controlling authority—

(a) must make provision for—
  (i) the membership of the controlling authority. . .
  (ii) the term of office of members of the controlling authority;
  (iii) the proceedings of the controlling authority;
  (iv) financial contributions to the controlling authority. . .
  (v) the manner in which property of the controlling authority is to be distributed in the event of it being wound up;
  (vi) the proportions in which the constituent councils are to be responsible for the liabilities of the controlling authority in the event of its insolvency; and
  (vii) any other prescribed matter; and

(b) may empower the controlling authority to make by-laws as if it were a council. . .

I feel that parliamentary scrutiny should be allowed in relation to these rules, which have a very strong legislative character. Although I support the second reading, if not satisfied with the Attorney's answer, I reserve my rights with respect to this measure. I have not had an opportunity to look at the amendments that have been put on file by the Attorney and by the Hon. Mr Holloway, and they may serve to address my concerns. In the meantime, as I said, I reserve my rights, and I am concerned that the Subordinate Legislation Act does not apply to the rules of a controlling authority. I support the second reading.

The Hon. J.F. STEFANI secured the adjournment of the debate.

ENFIELD GENERAL CEMETERY (ADMINISTRATION OF WEST TERRACE CEMETERY) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 8 July. Page 1739.)

The Hon. P. HOLLOWAY: The Opposition supports this Bill in principle, although I will indicate a number of concerns in relation to this general subject. The basic thrust of the Bill is to expand the operations of the Enfield Cemetery Trust, which currently controls the Enfield Cemetery and the Cheltenham Cemetery, to include the administration of the West Terrace Cemetery.

The West Terrace Cemetery is a very important part of this State's history because it contains the graves of many significant figures in the establishment of this State. Indeed, it would be fair to say that it is one of the best preserved historical cemeteries in this country. I am sure that most members would be aware of the tours that are regularly taken through that cemetery to look at the history of this State.

It is ironic that a Government which, in its very early days, introduced an Audit Commission which told us that we should be economically rational and that all units of Government should pay for themselves individually, has introduced a measure that provides for the cross-subsidisation of the costs of the West Terrace Cemetery by another body, that is, the successful Enfield Cemetery. As a result of the passage of this Bill, the substantial surplus which I understand has

been accumulated in the Enfield Cemetery will be employed to offset the losses which are currently incurred in maintaining the West Terrace Cemetery.

One of the interesting features of the operation of cemeteries is cash flow, particularly where cemeteries are used purely for burials. Cemeteries often operate crematoria, which provide a continuing cash flow but, where graves are involved, once all the land is used, unless those graves are reused, there is the ongoing cost of maintaining the cemetery. Once the sites are all used, there is no incoming cash to maintain the operation of the cemetery. So probably it is important, when looking at the operation of cemetery trusts and bodies operating cemeteries, that they have to put aside adequate funds when grave plots are sold to ensure that future maintenance expenses are adequately provided for. The Opposition does not oppose this cross-subsidisation or this legislation which will place the West Terrace Cemetery under the control of the Enfield Cemetery Trust. However, we want reassurances that nothing will take place in the operation of the West Terrace Cemetery to derogate in any way from the importance of that cemetery as a historical site in our community.

In the second reading explanation the Minister indicated that there will be no changes to the operation of the West Terrace Cemetery. The explanation reassures us that the regulations will remain in place to protect the operating practices at the West Terrace Cemetery. In spite of that I would like to ask the Minister some questions, because I think we should have answers on the record so that we can be reassured as to what will happen to the cemetery in the future.

What undertakings have been given to the Enfield Cemetery Trust about changes in policy that may affect the costs or liabilities of the West Terrace Cemetery in the future? We have been told that the Enfield Cemetery Trust has willingly taken over responsibility for the West Terrace Cemetery even though it will incur additional costs as a result of that. How fully has that been explained to Enfield Cemetery Trust and what assurances have been given to it? Has the trust been supplied with full details of the present and expected future income and expenditure requirements of the West Terrace Cemetery following the transfer?

The other matter that is of interest to me concerns future practices at the West Terrace Cemetery. As I said earlier, the Minister did assure us that the Bill has no effect on matters of policy regarding the disposal of human remains or the conditions of operation of the cemeteries, but can the Minister indicate how many unused burial sites remain at the West Terrace Cemetery? What is the position in relation to leases of sites which are currently not being used at the West Terrace Cemetery?

The second reading explanation states that the West Terrace Cemetery has substantial maintenance commitments for its heritage listed graves, although it generates insufficient revenue to cover those costs. What is the source of this insufficient revenue which currently is received by the West Terrace Cemetery? What are its current and expected future maintenance commitments?

We have no opposition in principle to the transfer of the West Terrace Cemetery to the control of the Enfield Cemetery Trust, particularly since we have been assured by the Government that at this stage there will be no changes in practice to the operation of the cemetery. However, we have been told that changes may be introduced further down the track when these matters are considered as part of a general review of the operation of cemeteries generally, and we will look carefully at that when it occurs. At this stage we see no reason to oppose the Bill, although I will listen with interest to the answers of the Minister to the questions that I have asked. We support the second reading of the Bill.

The Hon. M.J. ELLIOTT: I support the second reading of the Bill and in so doing echo some of the concerns that were raised by the Hon. Paul Holloway. In South Australia in recent times the question of the operation of cemeteries has been a fairly vexed one. I am aware that the Government over a significant period of time has been looking at the possibility of outsourcing the operation of cemeteries to private operators. I know that one large overseas company was looking at coming to Adelaide, a company which already had major operations in the Eastern States, which was vertically integrated, running cemeteries, crematoria and funeral parlours, and whose history indicated fairly extortionate behaviour in terms of what happened to charges and the way consumers were handled.

In Adelaide, where there is not a wide range of choices in terms of cemeteries, that was the last thing we needed although, for some time, it looked possible that that would happen. At this stage at least the Government appears to have decided to hand over the operation of the West Terrace Cemetery to the Enfield Cemetery Trust, which also, I understand, runs the Cheltenham site. But that again, in a sense, reduces the number of operators; I suppose it is not far short of bringing in a separate operator, which might be a private operator, and we may yet find ourselves in a situation analogous to that in the Eastern States and overseas.

In this place on previous occasions I have raised some of these matters, so I will not go into it in great depth now. As this Bill is focused on the West Terrace Cemetery I will make a few comments about it. The West Terrace Cemetery is considered to be one of Australia's most significant historic cemeteries. In fact, amongst the capital city cemeteries I understand that it is by far the most important. I understand that cemeteries of a similar or greater age in other States have been significantly reworked (if you like) and unfortunately have lost a lot of their historical use. Therefore, the West Terrace Cemetery is a very important cemetery. It was part of Colonel William Light's original plan for the City of Adelaide and is a fine example of a nineteenth century cemetery.

The South Australian Genealogy and Heraldry Society, which wrote to me and I think other members of this place, has described the State heritage listed cemetery as one of Adelaide's least appreciated but most important historical sites. That society states that there appears to no acknowledgment of the importance of the site and its headstones, which signify the burial places of many of South Australia's pioneering families, ordinary South Australians and prominent citizens. That point must be reiterated: it is not only a matter of knowing who are the famous people buried in the West Terrace Cemetery but of the ordinary citizens about whom stories are told and whose life can be followed by a study of the people who are buried at the cemetery.

The West Terrace Cemetery is still a working cemetery but does not have a great deal of remaining capacity, although it should be noted that most leases already have expired. Concern has been raised about what measures are or can be put in place to stop anything from happening to them. The Bill does not remove any protections from the cemetery, but

I have received calls from various sectors about the need to improve existing protections.

I note that the Enfield Council is supportive of the Bill. It has been put to me that the handover of the administration of the West Terrace Cemetery from the Department of Housing and Urban Development to the Enfield Cemetery Trust—which already controls several cemeteries, including the Cheltenham Cemetery—might be a positive move, and that is largely because it is considered that the Department of Housing and Urban Development has not done a particularly good job. I have been told that the West Terrace Cemetery is also not in a good state of repair, and there is concern that the style of some recent graves is out of keeping with the original character.

However, concerns have been raised about Enfield Cemetery Trust's handling of the redevelopment of the Cheltenham Cemetery in relation to the destruction of its historic element, as it was not on the State Heritage Register. I believe that it should be made explicit in the Bill that the new West Terrace Trust, controlled by the Enfield Cemetery Trust, must work with the Heritage Branch in ensuring the protection of the heritage aspects of the West Terrace Cemetery. This would involve maintaining the integrity of the site, including retaining all original headstones, and ensuring that new headstones complement original headstones in terms of scale and style.

This Bill is not the first time the Government has attempted to rationalise the administration of South Australian cemeteries. In fact, as early as the 1930s the State Government of the day attempted to centralise the management of our cemeteries. There is no doubt that there is a strongly held tradition against private enterprise in relation to cemeteries in Australia, and I am pleased to see that the Government has indicated that this Bill does not change this policy, but given the historical significance of the West Terrace Cemetery amendments are needed to ensure that its values are safeguarded.

I indicate that whilst I have had some amendments drafted they are not yet tabled. However, at this stage I indicate the content of those amendments. The first amendment is a simple change to the board of the Enfield Cemetery Trust, which will be administering the West Terrace Cemetery, requiring that one person with extensive knowledge of the historical significance of cemeteries be included on the board. The second amendment is a requirement that the trust would, within 12 months of commencement of this section, prepare a plan of management for the West Terrace Cemetery for the ensuing five years; that it would present that plan at a public meeting; and that it will finally make that plan publicly available.

The plan of management must take into account the historical significance of the cemetery and establish policies relating to the following matters: the retention or removal of existing headstones; the reuse of burial sites; the scale and character of new memorials or monuments; and the planting and nurturing of vegetation in the cemetery. That is not meant to be an all-inclusive list, but they are matters that must be considered. The amendments also would require that, in developing the plan, the trust consult with the State Heritage Branch of the Department of Environment and Natural Resources and other persons who, in the opinion of the trust, have a particular interest in the management of the West Terrace Cemetery. In indicating support for the Bill, I have also spoken about some amendments which all focus on the fact that the West Terrace Cemetery is a significant historic cemetery. I hope that all members consider supporting those amendments.

The Hon. J.F. STEFANI secured the adjournment of the debate.

RETAIL SHOP LEASES AMENDMENT BILL

The House of Assembly intimated that it had agreed to the recommendations of the conference.

Consideration in Committee of the recommendations of the conference.

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

That the recommendations of the conference be agreed to.

The Legislative Council made one amendment with which the House of Assembly did not agree, namely, to apply the provisions of the new Part 4A to existing leases. The Government took the view that that was not appropriate. Although it might have given comfort to a lot of people, the agreement that had been entered into between the Retail Traders Association, the Small Retailers Association, the Newsagents Association, the Australian Small Business Association, the Property Council of Australia and Westfield Corporation did not seek to apply the proposed new law to existing agreements.

That was a matter of principle which has been respected by the Parliament in many instances, most recently in relation to the 1995 Retail Shop Leases Act where the provisions of the old Part 4 of the Landlord and Tenant Act that relates to commercial tenancies continued to apply to the then existing leases. The Government, whilst it may have thought, in terms of the politics of it, that making, effectively, the provision retrospective might cure some difficulties, on an amendment to the law so significant as this it was not prepared to move from the agreement that had been negotiated between the parties to whom I referred, and preferred to maintain a consistent approach, where the substantive law changes, that it ought not to change existing arrangements.

During the course of the debate on this amendment in the Council, some assertion was made that Westfield is requiring tenants in Tea Tree Plaza, I think it was, to enter into 15 year leases. The information I have obtained from Westfield is that that is just not correct and is not occurring. Whilst there are those on the tenancy side who would prefer to have the legislation coming into effect to affect existing tenancy agreements, they accept that this is an area of significant change across Australia. They accept that South Australia is at the leading edge of that change, and there is no reason why at some time in the future some aspects of this may not be revisited as the Commonwealth in particular addresses the recommendations of the report that relates to small business, and particularly retail tenancies. In view of that volatility, the amendment of the Legislative Council was seen to be quite inappropriate and against the general principle of practice and the law.

The Hon. ANNE LEVY: I support the recommendation arising from the conference but must admit to doing so reluctantly. Many small retailers will feel that they have been had. They expected the Government to provide relief to their difficult circumstances as from the time the legislation passed the Parliament. They will be horrified to learn that it does not apply to any of their current leases or any rights of renewal under their current leases. They will also be horrified to learn

that, at the end of either the current lease or the one renewed, they will have no first right of refusal, and they will not have the right of refusal until the lease following that one which, for many of them, could be in 15 years. This is certainly not the relief they were looking for.

However, from the Opposition's point of view, many other things in the legislation are highly desirable and, if the legislation were to fail, then the other important measures in the legislation would not come into operation. On the basis that half a loaf is better than none, the Opposition agreed to the conference recommendation, in the light of the Government's intransigence that the Bill would either fail or would have to be accepted with the very long lead time before first right of refusal becomes operative.

As the Attorney mentioned, there have been many rumblings at the Commonwealth level, and it is not improbable to predict that Commonwealth legislation will arise in the not too distant future which, hopefully, for the sake of the small retailers, will not have this 15 year lead time but will become operative before then. Then, as we all know, Commonwealth legislation will override State legislation so that the relief the small retailers are seeking is more likely to be achieved through the Commonwealth than through this State Government.

I hope the small retailers will read the message loudly and clearly that their major cause of concern has not been addressed by this Government and that they have been left high and dry. While some reform has been achieved, regarding the major matter of reform which they were crying out for, as was most evident from the evidence given to the select committee, they will not receive that relief from this Government. With a forthcoming election, I hope they will take note of that and realise that, whatever rhetoric the Liberal Party may utter about being friendly to small business, when it comes to small retailers, it is anything but friendly and that it does not wish to provide the right of first renewal of a lease which was so urgently demanded by the small retailers.

As I said, it is with reluctance that I accept the result of the conference. It is a matter not of half a loaf but of a quarter of a crumb being better than nothing with regard to the major reform the small retailers wanted being put off for 15 or more years, and that is hardly the relief they are seeking. In view of the intransigence of the Government that the whole Bill would fail, we felt it better to support the recommendations of the conference and just hope that small retailers will remember this deplorable situation when the forthcoming election occurs.

The Hon. M.J. ELLIOTT: I indicate that the Democrats will not insist upon the amendments moved in this place, but we do so most reluctantly. We believe that, if the right of first refusal is a just situation, which is what this Bill is saying, then it should be in relation to current leases that expire and not just to leases taken out after the passage of this Act. It is a logical inconsistency to argue that justice demands that there be a right of first refusal in relation to new leases but not to current expiring leases. I am told—and I did not hear it itself—that Mr Ben Simon was on radio either this morning or yesterday morning. He is a prominent retailer in Rundle Mall and has just been asked to pay an exorbitant rent increase and, when he would not agree to do that, they gave him 30 days notice to get out of his premises. That is no mean fit for a jeweller given the sorts of fitouts they need. Clearly, wherever he goes he will be in for a quite amazing further fitout in the shift. It is happening to people all the time.

What is being done in terms of the demands of rent increases just simply cannot be defended. As I said, there is no logic at all in the Government's defending extortion in relation to existing leases but saying that it cannot occur in relation to new leases. However, we recognise that, once this Bill becomes an Act, we only have to delete four or five words, which are the four or five words we tried to delete this time, for the Act to be a very good one. It might need other minor change. However, the most important single issue for small retailers—and for large retailers, I understand—is the question of lease renewal. There will be a significant level of anger when people discover that what they thought was protection coming at last indeed is not.

I indicate that it is with reluctance that we will no longer insist on the amendments. It is an issue that we will continue to pursue and I feel confident that justice will not be denied forever. I rather think that a message might be given very strongly to the Government over the next couple of weeks, or months, which will cause it, if it happens to still be in Government, to move or suffer the consequences later.

Motion carried.

LIQUOR LICENSING BILL

The House of Assembly intimated that it had agreed to the recommendations of the conference.

Consideration in Committee of the recommendations of the conference.

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

That the recommendations of the conference be agreed to.

There are two amendments which were made to the Bill in the Legislative Council which the House of Assembly sought to remove, but after consideration at the conference and in view of the amount of work which had gone into the development of this Bill, the Government took the view that it was not prepared to lose the Bill because it does have substantial reforms for the hotel and hospitality industry and that there were significant benefits for community members, particularly in relation to some forms of licences where nuisance or disturbance might arise as a result of the granting of the licence or, more particularly, the activities carried on by the licensee within those licensed premises. The Government took the pragmatic approach that the two matters, which were the subject of amendment here and as a result in the House of Assembly, were not matters which should be the basis for losing the Bill.

The two matters relate to, first, an amendment in clause 119 of the Bill which deals with issues of disciplinary action. There is a proper cause for disciplinary action against a person to whom this part applies, that is part 8, in relation to a business that is being or has been conducted under a licence, if there was a breach of an enterprise agreement or an industrial award. That paragraph is in almost identical terms to that which is in the present Act. It has not proved to be effective in dealing with the main issue raised by members, and that was topless waitressing, where it is a condition of employment that a person engaged to be a waiter or waitress should be required to undertake that work in a state of full or partial undress. We did give some consideration to an alternative in the amendment to deal specifically with that issue, but in the final consideration of alternatives the Government took the view that it was better to stay with the

provision that is currently in the present Act and now in the Bill and that I would consult further with industry and the community in relation to the way in which that issue can be more directly addressed in the legislation in a way which proves to be more effective than is occurring at the present time.

The other issue related to minors, those of the age of 16 up to 18 years, serving liquor. The present Act contains a prohibition against young persons of that age, or even younger, unless they are children of the licensee or the manager, from serving alcohol in a licensed establishment. What the Government sought to do was two things. First, to ensure that in that context the age should be 16. Anyone who was 16 years of age or over and is a child of the licensee or the manager was able to serve alcohol. So that, for the first time, there is a minimum age at which that provision might apply and that remains in the amendments. What is not in the present Act and what the Government sought to include was a provision which would allow young people who were 16 years of age and over but under 18 years of age to serve alcohol in a hotel, restaurant or other licensed establishment where they were undertaking a prescribed course of training and where they were under significant supervision—under the control of the person in charge of the course where the employment was required, where the licensee complied with conditions of approval in that a certificate given by that course coordinator or the person in charge of the course, and where there was adequate supervision at all times while selling, supplying or serving liquor in the course of the employment.

The Government took the view that that was quite a reasonable approach to take. We are in the business of encouraging young people to take up work in the hospitality industry to be trained for that purpose and there are a number of courses in this State which are available for young persons. We did not see the sorts of risks which the Opposition and the Australian Democrats saw to young people as a result of this very tightly controlled opportunity. We saw this as an opportunity for young people, and I suppose what makes me and the Government somewhat sad about the loss of this proposal is that we are trying to encourage young people to get appropriate jobs with a career path for the future.

The hospitality industry is a key industry for South Australia in terms of both hospitality and tourism. Only yesterday the State and Federal Governments announced a new program for providing opportunities to young people from regional South Australia at the same time as the Opposition and the Australian Democrats actually put the lid on opportunities within the hospitality industry in a way that we believe was likely to provide a distinct advantage to those young people. There is a sense of disappointment in the fact that we have had to forgo that opportunity but, as I said earlier, we were not prepared to lose the whole Bill on the basis of that issue.

The Hon. ANNE LEVY: I wholeheartedly support the motion before the Chair. As the Attorney has said, the legislation that will result is a major piece of reform legislation. I congratulate him and the Liquor Licensing Commissioner on the amount of work that has been done to arrive at what are basically very good liquor licensing laws for South Australia. I am sure that the community will benefit from the many changes in the Bill.

With regard to the two matters under discussion, I am very glad to have the undertaking given by the Attorney that he will consult with the industry as to the best way of seeing that topless waiters and waitresses are excluded from licensed premises in this State. The Attorney says that the section of the current Act which the Opposition sought to have retained in the new Act is not very efficacious, and I can only agree with him in this matter. But, as the Bill stood it was the only way in which the Liquor Licensing Commissioner could take any action regarding topless waitresses.

I wholeheartedly welcome his undertaking to consult with the industry to see whether a better form of words can be arrived at. Hopefully, an amendment to the Liquor Licensing Act will result in the not too distant future that will ensure that the deplorable practice of topless waitressing is removed from South Australia. I would like to make clear that my objection to topless waitressing has nothing to do with prudery: it is quite immaterial to me and to other members of the Opposition (and, I presume, to many members of the Government) whether people parade round with very few clothes on.

If certain members of the public want to attend strip shows, that also is fine by me, as long as I do not have to participate—because I cannot think of anything more boring. I am certainly not in the business of denying people access to strip shows of any description, if that is what they want.

But what we most strongly object to is that it should be a condition of employment as a waiter or waitress that one must go topless. Waiting and serving behind a bar is an honourable calling, an honourable profession, and people should be employed for their skills in this area. It should not be a condition of their employment to undertake such activity that they should be topless. If through legislation the Attorney can find a better way to ensure that it does not occur in South Australia, he will have my heartfelt thanks and those, I am sure, of many in the community—including, I may say, the union that represents the workers, some of whom at the moment are having to strip to the waist in order to have employment as waitresses. I find that utterly demeaning, and the sooner it can be banned, the better.

With regard to the second matter on which the conference deliberated at great length, I support the maintenance of the current prohibition on people under the age of 18 being able to serve liquor. I appreciate that the Government is concerned about the training of young people in the hospitality industry, but I point out that there are many areas in that industry other than serving liquor where training can be undertaken by those under the age of 18, and that those who are being trained in TAFE institutions at the moment have not experienced any difficulty with the current law.

I understand that in training to serve liquor coloured water is used. None of the training institutions have suggested that the current law is an inhibition on the proper training of young people who are undertaking courses with them. It seems totally unnecessary in order to achieve the aim of training young people.

It is not proving a problem at the moment to maintain the prohibition on those under 18 serving liquor. There is too much danger that abuse could occur had the Parliament agreed with the Government's suggestion. We felt that the safeguards inserted by the House of Assembly were not adequate. Whilst there was more emphasis on supervision, there was no suggestion that the high penalties would not still apply to anyone who served liquor to someone already intoxicated. Despite the requirement for supervision, 16 and 17 year olds would have been eligible for a fine of up to $5 000 had they served liquor to someone who was intoxicat-

ed, and there was no suggestion that these penalties would be in any way reduced or waived for the young people.

In any case, it seemed to me absurd that people of that age, who are not allowed to consume alcohol in public, should have the responsibility of serving it and judging when someone else had had too much alcohol.

I very much welcome the recommendations of the conference and, as I say, look forward to further amendments from the Attorney-General where he has consulted the industry about the question of topless waitresses.

Motion carried.

ENFIELD GENERAL CEMETERY (ADMINISTRATION OF WEST TERRACE CEMETERY) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 1866.)

The Hon. R.D. LAWSON: I support the second reading of this Bill. As has already been mentioned by the Minister in his second reading explanation and by other speakers, the West Terrace Cemetery is an important historic place in this State. I rise in relation to this measure only because of my interest in truth in titling. It seems to me to be anomalous for the Enfield General Cemetery Act to be the legislation to which one must refer in the future when looking to ascertain the provisions which relate to the administration of the West Terrace Cemetery.

The Enfield General Cemetery Trust has performed very well in relation to the Enfield General Cemetery, and it is also now administering the Cheltenham Cemetery. The fact that it is the body which has been selected now to administer and maintain the West Terrace Cemetery is a testament to its competence, and it is a measure of the trust which the Government is prepared to place in that organisation. However, when the Enfield Cemetery Trust takes over the West Terrace Cemetery, having already taken over the Cheltenham Cemetery, it seems to me to be inept for it to continue to have the title 'Enfield General Cemetery Trust'. That simply seems to me to be a misdescription.

The inquiry I put on notice to the Minister is: is it not appropriate in these circumstances to rename the Enfield General Cemetery Trust as, for example, 'the Adelaide Metropolitan Cemetery Trust', 'the Adelaide General Cemetery Trust' or something of that kind, because it will seem to be an anomaly to have to consult the Enfield General Cemetery Trust when one wants to ascertain the statutory arrangements relating to the arrangement of the West Terrace Cemetery. I support the second reading and look forward either in the Minister's response or in Committee to the Government's attitude to the matter raised by me.

The Hon. J.F. STEFANI secured the adjournment of the debate.

[Sitting suspended from 5.55 to 7.45 p.m.]

INDUSTRIAL AND EMPLOYEE RELATIONS (HARMONISATION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 3 July. Page 1693.)

The Hon. R.D. LAWSON: I support the second reading of this measure. The desire of the Government to harmonise this State's industrial relations system with that of the Commonwealth is laudable. South Australia has not chosen to go the same route as the Kennett Government undertook earlier. In effect, that State has ceded its industrial relations powers to the Commonwealth, and the Commonwealth tribunal will supervise workplace relations in that State. In the fullness of time, I believe that other States will follow that example. However, for the time being, the South Australian Government has decided that we will continue to exercise the traditional industrial jurisdiction, and that is a concurrent jurisdiction with the Commonwealth. Many employees in South Australia are covered by Commonwealth awards. The industrial tribunals are largely harmonised and there is a ready exchange of jurisdiction.

This harmonisation measure is complex. It is a matter for regret that our industrial relations laws in this country have become highly complex and difficult to understand. The laws are complex in the sense of enmeshing two different jurisdictions. The attempt to make this hybrid system compatible has not, in my view, been entirely successfully undertaken, and it may well be that that is a function of the complexity of the task. It is difficult for companies trading in South Australia and in other States to ensure compliance with all industrial laws.

The first amendments I wish to speak to are those that facilitate the access of small business in this State to Australian workplace agreements. The Australian workplace agreement system was introduced by the Commonwealth Workplace Relations Act. The Commonwealth's exercise of power in this regard was founded upon its corporations power and, accordingly, the Commonwealth legislation is, of necessity, limited to those workplaces that are not operated by a financial corporation or a trading corporation. This has the effect that small, unincorporated businesses, partnerships, sole traders, entities (such as incorporated associations), clubs, statutory authorities and Government departments are not able to access the Australian workplace agreement system. This Bill seeks to redress that deficiency by giving to South Australian workplaces access to those agreements, and that is a laudable measure.

The means by which that has been achieved is, once again, rather complex. The legislation reflects the Government's intention to adopt the Australian workplace agreement provisions as a law of the State of South Australia. Of course, one other means of achieving it would be similar to that employed by Victoria, namely, to cede to the Commonwealth the power to extend those workplace agreements to corporations over which the Commonwealth does not have conventional constitutional power.

The second topic on which I wish to comment is the proposal that State enterprise agreements will be made for employers who are subject to Federal awards. These amendments utilise provisions contained within section 152 of the Commonwealth Workplace Relations Act 1996. That section states that an award of the Australian Industrial Relations Commission does not prevent a State employment agreement, made after the commencement of the Commonwealth section, coming into force, and that for the duration of the State employment agreement the award is not binding on the parties to that agreement.

The next segment of the legislation on which I wish to comment is the unfair dismissal system. The unfair dismissal provisions that were initially inserted in the South Australian

law were very satisfactory provisions and worked well to the mutual advantage of employers and employees in South Australia. I do not think it can be said that the interposition of the Commonwealth unfair dismissal laws was an improvement.

The new provisions will not apply to non-award employees who earn greater than an amount fixed by the regulations, and I would like to put on notice a question to the responsible Minister to indicate whether any decision has yet been made as to the amount which will be fixed by the regulations if this amendment is carried.

The new section will provide that applications for relief to the Industrial Relations Commission must be made prior to 21 days after the date upon which the dismissal takes effect. That time limit is in substitution for the existing limit of 14 days, and I cannot forbear to comment that these are very tight time limits. They impose upon employees and their advisers a stringent test, but it is appropriate that there be short time limits for the institution of unfair dismissal applications, otherwise both parties stand to be substantially prejudiced; for example, the employer who fills a vacancy in the expectation that no claim will be made stands to suffer detriment if that time limit is too long. Likewise, it is in the interests of most employees to promptly institute a claim. It can thereupon be settled sooner rather than later.

One of the difficulties with the unfair dismissal system is the fact that the existence of the provisions and the rather complex mechanisms which are undertaken mean that many employers will settle claims purely for the purpose of avoiding expense. The threat of a protracted hearing in the Industrial Relations Commission, with all the costs attendant upon such a hearing, is enough to make most employers—especially substantial employers—realise that on a cost benefit analysis it is probably better to pay several thousand dollars to an employee rather than contest the matter. That is an unfortunate fact. It is unfortunate, because it leaves a very bad taste in the mouths of many employers who have been stung with specious unfair dismissal claims. Regrettably, on all the surveys done to date, that is an impediment to the employment of new workers. Any measure which eliminates that impediment or minimises it warrants the support of the Council.

By way of the second reading contribution, I should say only this: the previous unfair dismissal provisions were not appropriately harmonised. There was a great overlap between the State and Federal provisions. There was debate about whether or not the Federal provisions were adequate alternative provisions, and a number of cases had to be decided before even experienced legal practitioners in this field were able to determine the operation of the Act.

The Bill contains provisions under clause 14 dealing with freedom of association. The essence of these provisions is found in proposed sections 116, 116A and 116B. Section 116 provides that no person should be compelled to become or remain a member of an association. That is a fundamental freedom which ought be enshrined in legislation of this kind. Section 116A provides that a person must not require another to become, or remain, a member of an association or to induce another, for example, by threats, promises, or in any other way, to enter into a contract or undertaking not to become or remain a member of an association. These offences carry with them a heavy penalty and are necessary for the purposes of ensuring the principle of freedom of association. Section 116B is an important provision. It provides that an employer must not, for a prohibited reason, do or threaten to do any one of a number of things. For example, to dismiss an employee, injure an employee, alter the position of an employee to the employee's prejudice, refuse to employ a person or discriminate against a person in the terms and conditions on which the employer offers to employ that person. There is a heavy fine of $20 000.

Prohibited reason is defined in section 115. That section provides that a person acts for a prohibited reason if the person discriminates against another for one or more of the following reasons: for example, because the person is or has, or proposes to become an officer, delegate or member of an association, or for the reason the person is not and does not propose to become a member of an association. A large number of reasons are specified as prohibited reasons. These reasons aim not only to protect the interests of workers but also the legitimate interests and expectations of unions. It is entirely appropriate that they be included alongside the important and to me crucial provision that no-one can be compelled to become a member of a union.

The objects of the Act are also amended. I must say that I do have some quarrel and reservations with some of the language used. It is proposed to insert into section 3 of the principal Act, which deals with its objects, the following additional object:

> to provide employees with an avenue for expressing employment-related grievances and having them considered and remedied including provisions for a right to the review of harsh, unjust or unreasonable dismissals—
>
> (1) directed towards giving effect to the Termination of Employment Convention—

an ILO convention—

> (2) ensuring that both employers and employees on any such review are accorded 'a fair go all round'.

This expression 'fair go all round' was used by Justice Sheldon in the New South Wales arbitration decision of *Loty v The Australian Workers Union* in 1971. In my view, it is a mistake for Parliaments to simply adopt a particular phrase such as that used by a particular judge in a particular case in particular circumstances. In my view, it is seldom helpful to simply adopt the language of a judge in this way.

The conventional phraseology in the South Australian jurisdiction has been 'industrial fair play', which has been used for many years in many of the decisions and which I think is well understood in the South Australian industrial context. I doubt that we are improving our legislation by adopting this expression 'fair go all round'.

The Hon. R.R. Roberts: So, you'll be supporting our amendment?

The Hon. R.D. LAWSON: Notwithstanding the reservations that I have about the use of that expression, it does form part of a considered package and is part of legislation that is designed to harmonise with other systems. Accordingly, I will not, in response to the interjection, support the deletion of that phrase. There are provisions in the legislation dealing with enterprise agreements and enterprise agreement disputes, and I note them briefly. These amendments, we are told, have been introduced as a result of representations to the Government from both employer and employee associations. They will enable industrial disputes involving employees and employers subject to an enterprise agreement to be heard in certain circumstances by any member of the Industrial Relations Commission. Currently, as members will be aware, the provisions require that such a dispute be heard by an enterprise agreement commissioner.

Because a large number of enterprise agreements now exist, this provision has led to some problems in the expeditious disposal of this type of dispute, and the proposed amendments will overcome these difficulties by giving greater flexibility to the President in assigning members to deal with this form of dispute. The Minister is to be congratulated for bringing in this harmonisation measure. It is necessary for the South Australian law to be brought into line with the Commonwealth provisions. It is beneficial for South Australian employers and employees to have the benefit of Australian workplace agreements. I support the second reading.

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

EQUAL OPPORTUNITY (SEXUAL HARASSMENT) AMENDMENT BILL

Returned from the House of Assembly with the following amendments:

No. 1 Clause 3, page 2, line 11—Leave out paragraph (b).

No. 2 Clause 3, page 2, lines 18 and 19—Leave out 'another member of the council or'.

No. 3 Clause 4, page 2, line 24—Before 'a member of Parliament' insert 'a judicial officer or'.

No. 4 Clause 4, page 7, lines 27 to 36 and page 3, lines 1 to 22—Leave out paragraphs (a) to (g) and insert new paragraphs as follows:

(a) the Commissioner must refer the complaint to the appropriate authority;

(b) if the appropriate authority is of the opinion that dealing with the complaint under this Act could impinge on judicial independence or parliamentary privilege, as the case may be, the appropriate authority will investigate and may deal with the matter in such manner as the appropriate authority thinks fit;

(c) on the appropriate authority giving the Commissioner written notice that a complaint is to be dealt with under paragraph (b)—

(i) no further action can be taken under any other provision of this Act on the complaint; and

(ii) the Commissioner must notify the complainant and the respondent that the complaint will be dealt with by the appropriate authority;

(d) on the appropriate authority giving the Commissioner written notice that a complaint will not be dealt with under paragraph (b), the Commissioner may proceed to deal with the complaint under this Act;

(e) a notice must be given under paragraph (c) or (d) by the appropriate authority no later than one month after the referral of a complaint to the appropriate authority;

(f) the Commissioner may at the request of the appropriate authority—

(i) assist the authority in investigating a complaint that is to be dealt with under paragraph (b); or

(ii) attempt to resolve the subject matter of such a complaint by conciliation;

(g) if the Commissioner is to act under paragraph (f), the appropriate authority must notify the complainant and the respondent accordingly;.

(h) if the Commissioner attempts to resolve the subject matter of a complaint by conciliation but is not successful in that attempt, the Commissioner may make recommendations to the appropriate authority regarding resolution of the matter;

(i) the appropriate authority must notify the complainant and the Commissioner of the manner in which the appropriate authority has dealt with a complaint under paragraph (b).

No. 5 Clause 4, page 3, after line 36—Insert new paragraph as follows:

(aa) in relation to a complaint against a judicial officer—

(i) the Chief Justice; or

(ii) if the Chief Justice is the respondent or considers it inappropriate that he or she should deal with the matter—the most senior puisne judge of the Supreme Court who is not the respondent, is available to deal with the matter and does not consider it inappropriate that he or she should deal with the matter;.

Consideration in Committee.

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

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

The amendments reflect the Bill as it was introduced into the Legislative Council and the Government's preferred position dealing with the issues in respect of sexual harassment and members of Parliament. As the matter is going to a conference, I do not intend to explore again the rationale for the amendments.

The Hon. CAROLYN PICKLES: I oppose the motion. The Opposition will insist that the amendments passed in the Legislative Council be agreed to. As the Attorney said, it is obvious that the Bill will go to a conference, so we can further explore the issues there.

Motion negatived.

The following reason for disagreement was adopted:

Because the Legislative Council's amendments are preferred.

NON-METROPOLITAN RAILWAYS (TRANSFER) BILL

In Committee.

(Continued from 10 July. Page 1834.)

Clause 1.

The Hon. T.G. CAMERON: We have raised concerns with the Minister regarding problems associated with the AN principal scheme. I understand that some 325 people are involved in that scheme and that an amount in excess of $4 million is in dispute. This could mean an increased payment of anywhere between $5 000 and $20 000 for these workers who are about to become redundant. We hoped that this matter could be resolved before this legislation passed the Upper House. However, the Democrats seem determined to see this legislation pass through the Council tonight, so that will not be possible. I understand that some progress has been made in relation to the AN scheme. Can the Minister report on where we currently are on the question of the superannuation scheme?

The Hon. DIANA LAIDLAW: I appreciate and should record that the honourable member has been particularly diligent in pursuing this and a number of other issues during his second reading contribution. It would be fair to say that they are matters upon which we have worked closely together for the benefit of the work force. There has been no disagreement between the Hon. Mr Cameron or me in terms of the earnestness with which we have endeavoured to negotiate with the Federal Government for resolution of a number of employee concerns.

The first of these issues that the honourable member raised relates to the AN principal scheme. I can advise that, further to the indication I gave when summing up the second reading debate that a review of that scheme was being undertaken, that review has now been completed. I have been advised by AN that the review, including recommendations, has been circulated to the commissioners of AN and, in turn, the AN management has sought advice from the Department of Transport and Regional Development and the Department of Finance at the Federal level about the recommendations.

While I have been given no advice about those recommendations, I have reason to believe that the advice of both departments would not have been sought unless there was some positive movement in this area. I am suggesting but

cannot confirm that, if the review of the scheme had indicated that there was no way in which additional funds could be made available for distribution, that matter would then not have been referred to the Department of Transport and Regional Development nor the Department of Finance. But that was the aim of the review of the scheme: to look at what additional funds could be made available for distribution to members who were made redundant.

That review will be considered by the commission when it meets this coming Friday. I have provided that advice to the honourable member. I appreciate that it is not satisfactory as far as either he or his Party is concerned and that they do not have a full indication of the outcome of that consideration by the board. However, I cannot provide greater confirmation of the issue at this stage because management of AN will not provide me with advice which I can relay here and which would compromise the consideration by the board this Friday.

The Hon. T.G. CAMERON: We have raised concerns in relation to the apprentices. I went into some detail about the fate of some 40 second and third year apprentices in my second reading speech and I will not repeat it now. Will the Minister give a complete report on where we currently are with preserving the employment of both the State and Federal apprentices?

The Hon. DIANA LAIDLAW: Following a conversation tonight with the Federal Minister for Transport and Regional Development (Hon. John Sharp), my latest advice is that the Federal Government will meet its commitments in terms of the apprentices completing their training. My family comes from a trades background (Perry Engineering), and I know that many members opposite are very concerned and understand the issue of apprentices and that once a business takes them on it is a legal undertaking. It is a craft business, and the understanding is that that legal undertaking will be fulfilled, even if that business may not continue operating.

The Federal Minister completely understands the nature of apprentices. He understands, too, that the reform fund State committee's chief recommendation to the Federal Government in terms of the distribution of the $10 million of funds from the last financial year was that consideration be given to the ability of apprentices to continue their training. I understand that the Federal Minister will be in Adelaide on Thursday, and he will be making statements in this regard.

The Hon. T.G. CAMERON: The deadline is 21 September in relation to unemployment benefits for any workers who are retrenched. If they are retrenched after that date, they will be required to use up their entitlements before being eligible for unemployment relief. Will the Minister report on her success in getting the Federal Government to extend the deadline for AN workers?

The Hon. DIANA LAIDLAW: I must report with some regret that I have had no success whatsoever in this regard. There has been regular contact between my office and the office of the Federal Minister for Social Security (Senator Jocelyn Newman), and there has been regular contact between the Hon. Mr Cameron's office and mine in this regard. However, the message earlier today from Senator Newman, and again in a telephone call when I returned to my office after 6 o'clock this evening, is that there is no provision in the legislation for discretion to treat one area of employment or business differently from any other area of the workplace in terms of retirement benefits or redundancy provisions. Therefore, because there is no discretion in the legislation, no dispensation or special circumstances can be provided to Australian National.

I have also been advised by the Federal Minister that the reason why there is no discretion—even if there were discretion—is that there would be grave concern about the precedent in providing this to one area of the work force, and then only to a Commonwealth section of the work force, when in some circumstances, I regret to say, there has been a change in the capacity of business that is operated by the State or Federal Government, by local government or by the private sector. According to the Federal Minister, to distinguish one sector of the Commonwealth business alone without taking into account all other sectors of business would set a precedent which would undermine the integrity of the legislative reforms to be introduced from 20 September.

The Hon. T.G. CAMERON: The deadline is 21 September. I appreciate that this question is hypothetical, but should these Bills go through both Houses of State Parliament this week, we are some two months away from 21 September, and I find myself in the unusual position, if the legislation goes through—

The Hon. A.J. Redford: Mike Rann has picked at least three dates prior to that for the election—

The Hon. T.G. CAMERON: I thank the Hon. Angus Redford for his timely interjection about election dates. However, this is a little more important than any speculation about an election date. The deadline is 21 September. If this legislation goes through, it is actually in the AN workers' interests to have the sale wrapped up as quickly as possible so they are offered retrenchment prior to 21 September. What does the Minister believe are the chances of having the sale wrapped up and the question of their redundancies settled by 21 September, particularly for the people at Port Augusta?

The Hon. DIANA LAIDLAW: On behalf of the work force I have been seeking to have these issues resolved as soon as possible. Concern was expressed earlier this year that the whole process was moving so fast that the State Government should seek to slow down the process and call on the Federal Government to do so. I would not be part of that. The initial deadline for a decision about the new owner was 30 June, with bids being received before that time. Notwithstanding any representations from me or the State Government to extend this whole process of negotiation, bidders presenting their tenders and assessment of those tenders, the date continues to be extended.

The latest advice I have is that bids will close on the 28th of this month. There will be briefings for State officials about the Federal Government's initial assessment of those bids in the first two weeks of August. At the latest, it will be the end of August before the successful bidder or bidders are known. It may unfold that way, but the State's position has always been that our preference is ownership of State rail assets. By the end of August at the latest we will know the successful bidder or bidders. Considering all the legal documentation, that will make any transfer of ownership very difficult to achieve before 21 September.

The Hon. T.G. CAMERON: Will the Minister outline where we are with her representations regarding our concerns and our request for the ANLAP scheme to be reinstated?

The Hon. DIANA LAIDLAW: The Federal Minister of Transport has indicated emphatically that he will not reinstate this scheme. The honourable member, through various discussions we have had in the past few weeks, would be aware that I have had discussions with the State Minister for Employment, Training and Further Education, the Hon. Dorothy Kotz, and there have been considerable discussions

with her officers in TAFE to develop programs that will look at providing opportunities to reskill or upgrade skills.

My preference is that those schemes, when developed, be supported by the Federal Government through various funding initiatives, and there is also consideration for the State to put a submission to the next round of the Federal Reform Fund for funding support to subsidise some of those training programs for the AN work force. I am very aware, for instance, that many fitters and turners, although they are highly skilled in what they do, do not have skills in hydraulics as they were never needed at AN, but they will need them in the wider world. I am very keen to see that, certainly at the State level—and, in my view, there is an obligation at the Federal level—those trainee programs are supported.

With TAFE, we have been working on an initiative which from a State perspective, I can assure members, we will pursue in terms of providing counsellors and others looking at options for the work force leading up to the successful bidder's being named. We will continue to fund the schemes up to the date when the sale is finalised. Hopefully they will be supported by the Federal Government also, but there will be support. The level of that support will depend very heavily on our success in obtaining Federal funds for this endeavour.

The Hon. T.G. CAMERON: Is the Minister able to advise whether any of that $20 million fund that has been set up will be available for Port Pirie and/or Peterborough?

The Hon. DIANA LAIDLAW: The State committee received and assessed applications from all over the State. We certainly gave consideration to townships in the regional areas where there has been an AN employment base in the past. Peterborough and Port Pirie were given strong consideration and favourable assessment by the State committee. Those recommendations went to the Federal Government and I understand there will be initial announcements in respect of some of those recommendations, if not all of them, by the Federal Minister, Mr Sharp, within the next few days.

The Hon. T.G. CAMERON: We have been approached by a number of the users of the Angaston to Gawler line concerned about the implications of the sale on their business. What guarantee do these companies have that they will not be subjected to pressure for substantially higher rates for haulage on this line, and/or what access may they have to it?

The Hon. DIANA LAIDLAW: This has been an important consideration, and the State Government officers have worked closely with the users' group of intrastate rail services. The spokescompany for that group has been Penrice Soda, whose operations are based at Angaston. As a result of the diligence of those negotiations and the depth of concern about a party's being subjected to a pricing by a monopoly private sector operator this Government, in terms of the Railways (Operations and Access) Bill, has made provision for negotiation of access.

If a party such as Penrice, the grains industry, the gypsum plants at Thevenard and farther west, or any other party does not like the price with which they are presented by the operator of the line they may use, if they wish, the provisions in Part 5, commencing with clause 30, in terms of the negotiation of access. A whole part of the Railways (Operations and Access) Bill is specifically designed to ensure that the current users of rail are not subjected to an inability to negotiate in their best interests or are made vulnerable because of a monopoly private operator.

This practice, in terms of the third party access, was adopted by the former Federal Government when AN had assumed that it would be the sole interstate operator. With respect to interstate services, the former Federal Government adopted a process for third party access. We propose that same third party access on our intrastate lines. If the user wishes to make use of these facilities it is provided for in the Railways (Operations and Access) Bill.

The Hon. T.G. CAMERON: Finally, I place on record my appreciation to the Minister for her efforts in persuading the Federal Minister to allow the Opposition to read the complete Brew report.

Clause passed.

Clause 2.

The Hon. SANDRA KANCK: A number of dates were mentioned when discussing the previous clause, and I wondered, in the light of all that is happening with the Federal Government, what date we are looking at for the commencement of the Act, and will we see the whole matter proclaimed at the one time?

The Hon. DIANA LAIDLAW: At the latest, the Act will certainly have to be proclaimed shortly before the buyer is determined and announced, because users would need to know with whom they are dealing. We would see that this Act be proclaimed within the month—in fact, probably earlier if possible, hoping that we are no cause for frustration to the Federal Government's announcing the successful bidder.

The Hon. SANDRA KANCK: Under those circumstances, if it appears that the agreement reached between the State and Federal Ministers contains some flaws, will that agreement be altered before that time?

The Hon. Diana Laidlaw: Are you claiming that it does have flaws?

The Hon. SANDRA KANCK: I am sure it will have, because of the speed at which we have done it and, if you discover those flaws, I am wondering whether they will be altered before the time that the Act is proclaimed. If so, how will we be advised of that?

The Hon. DIANA LAIDLAW: Certainly, I would never consider not advising you if I had done such a thing as seek to amend the agreement. I believe that Parliament is, naturally, entitled to such advice. The agreement was signed on 30 June 1997 by both the Federal Government and me on behalf of the State Government. There is provision in the agreement for amendment. Whether you agree with it or not, knowing where we came from, I believe that we negotiated a particularly advantageous agreement for rail in this State. I believe that, in some areas, the Federal Government is now starting to fully appreciate some of the implications of what we have secured, and I am not tempted at all to suggest that we are ready to amend this agreement at this stage.

However, it is an opportunity for me to draw to the attention of members the fact that the copy of the railways agreement contained in the schedule of the Bill is undated (page 8 of the attachments to the Bill) and this is a clerical error. It occurred because a copy of the agreement provided to Parliamentary Counsel for inclusion in the Bill had a blank space there. It had in fact been signed off, and Parliamentary Counsel should have been provided with the signed and dated copy. I understand that, because this is a clerical error, I can move at this stage that we insert '30 June' in the relevant space at the top of page 8 of the Bill.

The CHAIRMAN: We can do that when we get there.

The Hon. DIANA LAIDLAW: So, the agreement is relevant from 30 June. The whole Bill, accompanied by the agreement, will be proclaimed by mid August, at the latest, I would hope. There are no regulations for Parliamentary Counsel to use as an excuse for delaying proclamation, so I

do not really see that there is much reason to hold up the proclamation overall.

Clause passed.

Clauses 3 and 4 passed.

Clause 5.

The Hon. DIANA LAIDLAW: I move:

Page 1, line 27—Leave out 'Facilities' and insert 'Terminal Site'.

This is simply to ensure that the Bill corresponds with the references that are in the agreement, in terms of Passenger Terminal Site Lease.

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 2, line 1—Leave out 'Facilities' and insert 'Terminal Site'.

The Hon. DIANA LAIDLAW: This is consequential.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 2, after line 2—Insert new subclause as follows:

2(a) The Minister must, within six sitting days after executing the Ground Lease or the Passenger Terminal Site Lease, have copies of the lease laid before both Houses of Parliament.

The agreement that has been reached by the two Ministers provides that there will be a Ground Lease and a Passenger Terminal Site Lease. My amendment simply aims to create more openness and requires that, once these leases have been signed, they be made available to the Parliament as a way of examination as much as anything else, if people want to be able to see them—they probably will not but I would like them to be able to be seen if needed.

The Hon. DIANA LAIDLAW: On behalf of the Government I accept the amendment and the rationale behind it. There is some merit in laying the agreement before both Houses, because it is not a commercial in-confidence document: it is an operational arrangement. It is not one negotiated in terms of price on the competitive market. In those circumstances, it is reasonable for members, if they so wish, to know the lease arrangements in terms of the land, the operator, and operating arrangements generally.

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

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 2, line 4—Leave out 'Facilities' and insert 'Terminal Site'.

This is consequential on an earlier amendment.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 2, after line 5—Insert new subclauses as follows:

(4) The Minister must not give consent on behalf of the State to the removal of track infrastructure in accordance with the terms of clause 9.1(f) or 9.2(e) of the Railways Agreement unless—

(a) the giving of the consent is authorised by resolution of both Houses of Parliament; or

(b) the Minister is satisfied—

(i) that the track infrastructure has been replaced, or will be replaced, with new track infrastructure; or

(ii) that the track infrastructure is being removed so that it can be serviced or repaired and that it will be returned as track infrastructure within a reasonable time; or

(iii) that the track infrastructure is no longer required for the safe, efficient and effective use of the relevant railway line.

(5) The Minister must, as soon as practicable after giving a consent in the circumstances described in subsection (4)(b), prepare a report on the matter and have copies of the report laid before both Houses of Parliament.

This relates to one of my longstanding concerns about this whole process, that is, the possibility that the track will be removed from a particular route, thereby making the route completely redundant. I was not happy with any other aspects of the Bill that attempt to cover it. So, in my amendment I am attempting to strengthen the legislation and to give both the Minister and the Parliament more power in this regard. My subclause (4) will not require the involvement of Parliament but, if the Minister permits track to be removed under the other three provisions contained in paragraph (b), she would be obliged to report to Parliament. In other words, if the reason for removing the track does not fall into that category of subparagraphs (i), (ii) or (iii) of paragraph (b), then Parliament gets to have a say about whether the track will be removed.

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

Page 2, after line 5—Insert new subclauses as follows:

(4) The Minister must not give consent on behalf of the State to the removal of track infrastructure in accordance with the terms of clause 9.1(f) or 9.2(e) of the Railways Agreement unless the Minister is satisfied that the track infrastructure is no longer required for the safe, efficient and effective use of the relevant railway line.

(5) The Minister must, as soon as practicable after giving a consent in the circumstances described in subsection (4), prepare a report on the matter and have copies of the report laid before both Houses of Parliament.

In part, we support the position put forward by the Democrats. Our amendment picks up subparagraph (iii) of the amendment to which the Hon. Sandra Kanck has just spoken, that is, that the track infrastructure is no longer required for the safe, efficient and effective use of the relevant railway line. I cannot imagine that on subparagraph (i) the Minister would not be advised, and we see subparagraph (ii) as being somewhat bureaucratic: that is, the Minister would have to be advised formally every time there were repairs or service work to the track infrastructure that required track to be removed. We are happy to support the third subparagraph of the Democrats' amendment but not subparagraphs (i) and (ii) or subclause (4)(a).

The Hon. DIANA LAIDLAW: The Government will support the Labor amendment. Since the Hon. Sandra Kanck tabled her amendment earlier today, there has been some discussion, and I understand where she is coming from. It is for this very reason that, in terms of the lease, the Government, in its negotiations with the Federal Government, insisted that there be a specific provision such as is contained in clause 9.1(f):

that the track infrastructure on that land will not be removed without the prior written consent of the State.

It may have been seen as rather unusual for the private sector that is bidding for our railway lines in non-metropolitan areas not to be able to do as it wished with its property. However, the State determined that this asset was not to be available for any bidder simply to pick up bits and sell them—flog them off, in a sense—if they wished, for scrap, and that it was an important part of our transport infrastructure in this State.

Therefore, we wanted to have a say. We have had a say but it has not been a particularly effective one in terms of the provisions of the current Rail Transfer Agreement. We wanted a say, and that has been provided for. I am happy to accept the Hon. Terry Cameron's amendment, because I do not believe that there can be any other circumstances where the State would agree to the removal of that infrastructure unless it was felt that it was no longer safe, efficient or of effective use in terms of a railway line. It is a broad category,

but it provides some guidelines for the Minister to make a decision. So, in those circumstances I am prepared to accept the amendment.

The Hon. Sandra Kanck's amendment negatived; the Hon. T.G. Cameron's amendment carried; clause as amended passed.

Clauses 6 to 8 passed.

The CHAIRMAN: I point out that clause 9, being a money clause, is in erased type. Standing Order 298 provides that no question 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.

Clause 10 passed.

Clause 11.

The Hon. DIANA LAIDLAW: I move:

Page 3, after line 10—Leave out 'Facilities' and insert 'Terminal Site'.

This amendment is consequential.

Amendment carried; clause as amended passed.

New clause 12.

The Hon. DIANA LAIDLAW: I move:

Page 3, after line 12—Insert new clause as follows:

12. The Wrongs Act 1936 is amended by inserting after subparagraph (ii) of paragraph (b) of the definition of 'motor vehicle' in section 35A(6) the following word and subparagraph:

or

(iii) a person who holds an accreditation under the Rail Safety Act 1996;

This amendment is consequential. It is required by virtue of the discovery of a reference to Australian National in the Wrongs Act. Section 35A of the Wrongs Act 1936 relates to the assessment of damages for injuries arising from a motor accident. A 'motor accident' is defined as an incident in which injury is caused by or arises out of the use of a motor vehicle. A 'motor vehicle' is defined to include a vehicle that runs on a railway, tramway or other fixed track and is operated under an authority under the Passenger Transport Act 1994 or by Australian National.

Given that various aspects of the business of Australian National are to be transferred to other parties after the passage of this legislation, a consequential amendment needs to be made to the Wrongs Act 1936. The best way to deal with the matter is to add, as I am now proposing, a subparagraph that will relate to other railway operators who can be identified as persons who hold accreditation under the Rail Safety Act 1996.

New clause inserted.

The Hon. SANDRA KANCK: I move:

Page 3, after line 12—Insert new clause as follows:

Referral of power to the Commonwealth

12. For the purposes of section 51 xxxvii of the Australian Constitution, the matter of the Commonwealth acquiring, holding, disposing of or dealing with shares in National Rail Corporation Limited when the company engages in intrastate rail services in the State is referred to the Parliament of the Commonwealth.

I regard this amendment as quite a significant one. It relates specifically to National Rail Corporation. It is important because, if this clause is not included in this legislation, National Rail Corporation will not be able to obtain access to the State's rail system but any other operators will be able to come in and use it. I would be most surprised if I found the Government opposing this, but I will be interested to hear what the response will be. We have a Government that supports competition policy and this is a company that wants to be part of the competition but under the current rules it would not be able to. My amendment assists in having that happen.

It is important that this clause be passed because of the significance of National Rail to South Australia. At the present time National Rail employs 358 people in South Australia. It is contributing $20 million in wages and salaries in South Australia and payroll tax coming into State Government coffers is $1 million. It has been making annual payments to Australian National of $133 million. Some 2.7 million tonnes of freight is planned to be moved outwards this year and 2 million tonnes inwards. Its planned expenditure in South Australia for this financial year is $170 million. I will not continue putting all this on the record unless I find that I do not get support for the amendment. Despite the fact that most of us in South Australia tend to hold National Rail responsible for what happened to Australian National, we have to put the past behind us and allow this company to be able to enter into the competition with other rail freighters on an equal basis.

The Hon. DIANA LAIDLAW: The honourable member may be very surprised to learn that I am vehemently opposed to this amendment. I find it interesting in terms of NR—which, I acknowledge, is a big and important employer in South Australia—that it never gives up an opportunity to enter the intrastate business in this State. I make that point not because I am stuck in the past but because I am looking to the future and I look to the future with NR in terms of being a highly efficient and effective operator of interstate rail. That is what it was set up to do. I found it particularly difficult to see that that was its charter and one of the ways in which it made its business look more profitable to the wider community within its first year of operation was essentially to poach what it claimed to be interstate business, namely, the Pasminco line from Broken Hill to Port Pirie, a line which historically—and I think legally—had always been part of the South Australian rail system and which should have been maintained by AN in terms of ensuring that it could continue to operate efficiently in terms of SA Freight in this State.

That Pasminco line was taken, and AN was left with further debt problems. We are here tonight because of that. I do not want to sound stuck in the past. I have always argued when in Opposition and on behalf of the Government now that NR was set up with the highest hopes and I have an expectation that it will deliver on those hopes. I am still waiting to see it. I am not surprised that it has so many employees in this State—so it should—in terms of its national rail business. Much of that business is based on formal profitable parts of AN's business and, unless it takes more of it interstate in terms of its contractual arrangements, I would certainly expect this large number, if not higher numbers, of employees for National Rail in future.

I have explained to lobbyists on behalf of NR in the past, to the Deputy Chairman, in correspondence to Mr Vince Graham, the General Manager, on countless occasions and to Dr Fred Aflick on even more occasions, that this Government has never said that it would not be prepared to consider NR operating in this State if it won an intrastate freight contract, but it has never been successful, despite its bids to do so. I will not provide it easy access at this stage until it proves that it is competitive to do so in winning such contracts. It runs enough of our business in terms of what I would still claim is intrastate business—the Pasminco line—without seeking any changes to the current arrangements.

I understand that NR is amongst the final bidders being considered for BHP. If we learn from BHP and NR that it is

the favoured bidder, as the Premier has advised the Deputy Chairman, Mr Young, and as I have advised Mr Graham, in accord with earlier advice from the South Australian Government on this matter, we will seek to accommodate NR if and when NR wins an intrastate freight contract.

We are not blinkered on this matter, but expect that its first priority should be what it is established to do. If it can prove that it is so good, even in intrastate business, against other competitors, even though it was not established for that, we would look at accommodating it; but we will not amend its charter of operation to essentially establish it to do the profitable parts of AN's business that AN was never allowed to execute itself. It is a vicious circle, there is an irony about it, and not one that brings a smile to my face. We are not against it. We appreciate and value the employment and the business it does. I certainly want it to do better.

I am also aware that the Federal Government has indicated that it will sell its share in National Rail by 30 June next year, at which time the current agreement, which does not permit NR to operate in this State in terms of intrastate rail services, will no longer be valid. From that time whatever we say in this House or whatever are my feelings, past or future, about this business, NR will be able to operate and perhaps it will put less time into lobbying and more time into running an efficient freight business interstate.

The Hon. T.G. CAMERON: The Opposition finds itself in the unusual position of being persuaded by the arguments that the Minister has put forward in this matter. I assure the Hon. Sandra Kanck that the position we have arrived at here is in no way related to the past and in no way related to some of the problems about which one day someone might sit down and write a detailed history, that is, the problems that existed between AN and NR over the years. I am reassured by the Minister's assurance on National Rail, should it be a successful bidder, and I further note the situation in relation to National Rail's being sold off and that as from 1 July next year it will almost certainly have the right to tender for intrastate rail.

The most persuasive part of the argument that the Minister put forward in her rejection of this amendment is that AN is being sold to private interests. If this amendment were carried, my understanding is that no sooner would it be up and running than it could face a competitor in the form of National Rail—not that that would necessarily be a good thing, but to allow National Rail into the intrastate rail services in this State at this stage would be premature and could place unnecessary impediments in the way of the success of the likely new operator. I would not go as far as the Minister and say that we are vehemently opposed to this amendment, but I would say that we are strongly opposed to it—

The Hon. Diana Laidlaw: What's the difference?

The Hon. T.G. CAMERON: I think there is a difference.

The Hon. A.J. Redford interjecting:

The Hon. T.G. CAMERON: If the Hon. Angus Redford wants to start a fracas at this late hour of the night and suggest that we are having two bob each way, I fail to understand his rationale. We are not accepting this amendment, but I was merely attempting to outline that our opposition to it is not as strong as the Minister's. If the honourable member wants a semantic legal argument about the use of words such as 'strong' or 'vehement', let him feel free to go off to the library, consult the dictionary and talk to himself for the next half an hour. I was genuine when I stated that we are attracted to the arguments put forward by the Government and are not persuaded by the arguments put forward by the Democrats. So, we are strongly opposed to this, but not vehemently opposed.

The Hon. SANDRA KANCK: I was surprised by some of what the Minister had to say in her response. Are there any other operators that the State Government will prevent from accessing our intrastate lines?

The Hon. DIANA LAIDLAW: No, but it is not an entirely relevant question, because the amendment that the honourable member is moving deals with the shareholding agreement between the Commonwealth, Victorian and New South Wales Governments; it is not an agreement that we were party to. I am not suggesting that our Parliament should recommend that there be amendment to that shareholding agreement without advice—and I am not sure whether the honourable member has it, but I can pursue this point. I am not sure whether she has advice from the shareholders themselves, if they are willing to accept this suggestion and reference of power and that the shareholders agreement be amended, because my understanding is that the Commonwealth would not be particularly interested in it, anyway. Furthermore, I think it is worth noting for the record that in my understanding NR does not run an intrastate service in any other State, even those States that are parties to the shareholding agreement.

The Hon. SANDRA KANCK: In light of the Minister's comments I feel I should also inform her that, in relation to the BHP situation, National Rail is the only tenderer. The Minister indicated that the Government would take such a matter into consideration. I invite her to consider it now, given that it is the only tenderer.

The Hon. DIANA LAIDLAW: I have never been provided with that advice by NR. If NR was so keen to operate such intrastate services, I would have expected it to contact me with that advice rather than work through the Australian Democrats to advise me. It is an interesting way of doing business, but it has not been very effective.

New clause negatived.

Schedule.

The Hon. DIANA LAIDLAW: I move:

Page 8—Insert '30 June 1997'.

Amendment carried.

The Hon. SANDRA KANCK: I refer to the definitions in the schedule, that is, clause 1.1 of the agreement. I would like some clarification about the definition of 'operational railways land'. The definition provides that it means that part of the SAR land and Commonwealth Railways land other than the Leigh Creek line which is used on, or intended by the freight operator to be used after, the effective date, etc. Within the context of that definition how does it all happen? In the tender process does the freight operator indicate to the Federal Government that it does or does not want this land, or that it will or will not require it in the future? Can local government dictate the terms, for instance, or can the State Government have some say in this? How will it be finalised? Will it be part of the sale contract? How will we know all about it?

The Hon. DIANA LAIDLAW: The land has already been defined, and I refer the honourable member to schedules 2 and 3 of the agreement. The excluded land outlined in schedule 2 of the agreement is land that the Commonwealth Government advised the State Government that it wished to exclude from the general transfer of AN land to the State. Under schedule 3, the interstate mainland track was never

available in this stage of the sale process. That is why further legislation and further agreements concerning the interstate mainland track and the sale of that business will come before this Parliament in the future.

The Hon. SANDRA KANCK: Is the Minister saying that the land that is now defined is basically immutable: that this is what it is and no-one can alter it?

The Hon. DIANA LAIDLAW: All the land that is not excluded under schedule 2 or is not deemed to be interstate mainland track under schedule 3 returns to the State.

The Hon. A.J. REDFORD: I am curious why Seafield Towers or the bowling club at Port Augusta are excluded, because they seem rather strange properties to be owned by AN in any event.

The Hon. DIANA LAIDLAW: All those lands were owned by the Commonwealth Railways and were never South Australian Railways land prior to the 1975 agreement. So, even if we said we wanted them, they are not subject to the Rail Transfer Agreement because they were Commonwealth Railways lands before 1975. It may seem reasonable to question the significance of those lands to the Federal Government in terms of the whole ambit of the negotiations on this Bill, but they were always Commonwealth lands.

Secondly, I know that the ANI Bowling Club and the Stirling Golf Club are important to the work force and the workplace, and specific negotiations are being undertaken by the Federal Government in relation to those lands.

The Hon. A.J. REDFORD: I suppose the reason why AN owns Seafield Towers at 7 South Esplanade, Glenelg, will remain a mystery to all of us.

The Hon. DIANA LAIDLAW: It is holiday accommodation for the AN work force, whether it be at Cooke or anywhere along the line, and I suspect that it is a very valuable asset. It has been much valued over the years by the work force. Lots of those kids out on those lines do not have much company at any time, and they rarely see the sea. At holiday time AN has always sought to accommodate families and develop a wider social circle for the kids.

The Hon. SANDRA KANCK: Moving to point 6.3 of the agreement concerning the Leigh Creek line, I seek more detail from the Minister about how the line will be managed? It has been transferred to Optima Energy. Will it be responsible for all maintenance on that line? As part of the agreement we have money coming from the Commonwealth for the Pinnaroo line but is any money going to be spent by the State or Federal Government on the Leigh Creek line?

The Hon. DIANA LAIDLAW: I know that the maintenance of this line will be the future responsibility of SA Genco or Optima Energy, as it is commonly called today. I understand that they will contract out that maintenance and the operator of the remainder of the system is the most likely company to which that maintenance will be contracted out. However, that will be a choice for Optima. It may well want to bid on that process, but it certainly will be contracted out and it will make a determination of who will undertake that contract.

In respect of funds from the Federal Government, the honourable member is correct in indicating that there are no specific funds from the Federal Government for the upgrade of the line. Specifically, this is an issue for Optima Energy, but it is keenly interested to upgrade that system overall. It was one of the factors that the State Government took into consideration in making this decision to exclude the track infrastructure on the Leigh Creek line from the general sale because of commitments for almost immediate investment in upgrading the line, which will help overall ensure a more efficient and cost competitive delivery of coal to Port Augusta. That is critical for the future livelihood of the township, too, because if the Port Augusta power station is not competitive with fierce competition from the Eastern States in terms of interconnection we will have even more trouble at Port Augusta in terms of employment issues. From an unfortunate situation in terms of rail, this investment and commitment by Optima Energy is an important sign of the confidence in the future of Port Augusta.

Amendment carried; schedule as amended passed.

Long Title.

The Hon. DIANA LAIDLAW: I move:

Page 1, line 7—After 'railways;' insert 'to make a related amendment to the Wrongs Act 1936;'.

This is a consequential amendment.

Amendment carried; long title as amended passed.

Bill read a third time and passed.

RAILWAYS (OPERATIONS AND ACCESS) BILL

In Committee.

Clause 1.

The Hon. DIANA LAIDLAW: When we were last debating this Bill the Hon. Sandra Kanck asked a series of rather technical questions. She was generous enough to consider that I may not be able to answer all of them on the spot, and I certainly was not. I did give an undertaking, however, that I would correspond with her during the past week when Parliament was not sitting to answer those questions, and a copy of that correspondence has been forwarded to the Hon. Terry Cameron. This advice was prepared by Andrew Rooney, Coordinator of Transport Policy and Strategy within the Department for Transport, and he indicated that the advice provided was an information exchange rather than a formal letter because I, as Minister, had not seen its contents. I wish to confirm the advice by reading it into *Hansard*, as follows:

Application of the Railways (Operations and Access) Bill 1997.

Clause 6: The Bill (other than the access regime) applies to all railways in South Australia, except as may be excluded by the Governor [through proclamation]. Such an exclusion power is not unusual.

Clause 7: As to the access regime, operators and railway services will only be covered to the extent that the regime is applied by proclamation. At this stage, the Government does not intend to apply the access regime to passenger services or to freight services, but only to fixed railway infrastructure and associated yards, sidings and equipment. Any access to this infrastructure would then be subject to the principles set out in the legislation and, if an access proposal results in arbitration, especially the principles set out in clause 37.

A comparison to K&S Freighters is not particularly valid as anyone with a complying vehicle can gain access to the road system and it is much easier to locate and establish trucking terminals.

Key objectives of the access regime include:

- the need to avoid monopoly situations;
- to encourage competition;
- to achieve the more efficient use of what is a rather unique asset and, in this case to assist in moving more goods and services on to the rail network.

These two clauses provide the Government with the flexibility to apply the legislation appropriately to a variety of situations, according to the circumstances that might apply from time to time.

Regulator.

Clause 9: The regulator has functions and responsibilities as set out in the clauses of the Bill. It is intended the regulator will be a senior public servant, probably the Chief Executive of the Department of Transport (DoT) or [as the Chief Executive is now a male but may not always be] his [or her] delegate, as DoT will be the agency that will administer this legislation. The regulator's powers will be as set out in the Bill. A conflict of interest would be highly

unlikely, given that the regulator will be exercising statutory duties and will be required to comply with recognised principles of administrative law. The regulator will be appointed by the Governor on the recommendation of the Executive Council in accordance with normal Government practices. Numerous Acts provide for the creation of such specific statutory officers.

Fixed infrastructure.

Clause 11: This severs the fixed infrastructure from the land and thus, in the case of Australian National, enables the Commonwealth to sell the fixed infrastructure whilst transferring the land to the State. Note that the operator cannot remove such infrastructure as the leases will have provisions as set out in the Railways Agreement preventing its removal.

Traffic Control Devices.

Clause 12: Traffic control devices has the same definition as in the Road Traffic Act and will generally involve minor installations including, for example, signs and line marking. The onus for other matters normally dealt with under road legislation, such as level crossing control, is unchanged.

Local Government Rates.

Clause 16: This preserves the status quo. Australian National has only paid the equivalent of rates for residential properties in the past.

We intend to continue such matters. The advice continues:

Common Carrier.

Clause 17: The concept of a common carrier is a term well known at common law and thus does not need definition in legislation. At common law, a common carrier must take anyone's goods on request and is bound to provide insurance for goods so entrusted. The concept is rather outdated and access to rail transport is to be covered by the access regime in any event.

Authorised Business.

Clause 21: This clause is needed so that rail costs are kept separate for purposes of setting access charges. It would also facilitate the (hopefully rare) situation in which an administrator had to take over the business. It is not a big imposition, as subsidiaries can be set up in the case of businesses with other interests and in any event there is provision in the Bill for exemptions to be granted in appropriate cases.

Segregation of Accounts.

Clause 22: As mentioned above, it is not intended to apply the regime to passenger terminals. Rather the clause is needed for those aspects that are proclaimed.

I outlined that proclamation process earlier. The advice continues:

Pricing Discrimination.

Clause 23: The regulator will be provided with a copy of each access contract. The regulator will also be able to require an operator to provide information relevant to monitoring the costs of railway services (clause 59) and other information (clause 61). The regulator will be able to disclose any relevant information to the Minister, including confidential information if to do so is in the public interest.

However, there are amendments on file from the Australian Democrats to address some of these relationships between the regulator and the Minister, so more will be said on that later. The pricing principles were also addressed by the honourable member. The advice continues:

The development of these principles will take into account the New South Wales experience. This is an advantage as we can achieve a clearer, more certain, efficient and streamlined process.

The New South Wales experience has not been particularly satisfactory, so we definitely aim to learn from that exercise. The advice continues:

The approach adopted here is designed to conform to the National Competition Principles Agreement to which the State is a signatory so that our regime is unlikely to be overturned on appeal. These principles favour commercial negotiation, but this does not rule out posted prices so long as it is possible to negotiate if a particular applicant has special needs or would impose extra costs not allowed for in the posted prices. We agree that there is an extra burden on rail of these approval and arbitration processes but, given the need to have some form of regime in place, they have been designed to be as light-handed, efficient and flexible as possible. If the Commonwealth were to accept the role of coordinating and providing an overall access framework that met our and other States' needs, we would be happy to be part of a centralised scheme. At present each State needs to meet its own needs.

I have also enclosed, for your information, clauses 4 and 9 from the draft lease agreement relating to step in rights.

As the draft lease is not a public document and has only just been distributed to potential bidders, in his advice to the Hon. Sandra Kanck and the Hon. Terry Cameron Mr Rooney indicated that he would appreciate this matter being treated as confidential at this stage, and I respect the fact that both members have done so, to my knowledge.

Clause passed.

Clause 2.

The Hon. SANDRA KANCK: Again, as I asked with the transfer Bill, it appears that this Bill will be proclaimed in bits and pieces. That is certainly my reading of the Bill as it currently stands. Which bits will be proclaimed at what time and, if it is being proclaimed in bits and pieces, why is this being done in different stages?

The Hon. DIANA LAIDLAW: This will be proclaimed before the sale of AN is completed. A number of regulations have to be prepared in terms of the regulator and the scope of the access regime. There will be two proclamations, both prior to the conclusion of the sale.

Clause passed.

Clauses 3 to 5 passed.

Clause 6.

The Hon. SANDRA KANCK: This clause allows the Governor by proclamation to exclude a specified railway from the application of this Act. What particular lines does the Minister have in mind here?

The Hon. DIANA LAIDLAW: No lines are proposed to be excluded.

The Hon. SANDRA KANCK: I am not quite sure where else to ask this question, but the heading 'Application to Railway' seems to fit. I understand that as yet we have no regulations in place for the Rail Safety Act. Also, no money has been provided to get things up and running. It would seem to me to be a very significant part of this whole process of both the transfer of AN and allowing other operators in on the system that the Rail Safety Act be operating and operating effectively.

The Hon. DIANA LAIDLAW: It has certainly been a much longer process than any of us envisaged; in fact, it is almost too complex in some respects. The date for proclamation is now seen to be November. That will not jeopardise the accreditation of operators who may wish to purchase all or part of AN because interim arrangements for that accreditation will be made, just as we made interim arrangements under the Passenger Transport Act some years ago for operators until the full set of regulations and accreditation procedures had been confirmed. Otherwise we will just be stopping a business that we want to build up.

The honourable member's reference to cost is highly pertinent. We are now negotiating the TransAdelaide and Treasury costs of seeking accreditation and the acceptable time limit for achievement of that accreditation within moneys available. It is my understanding that it has cost New South Wales almost $5 million to $6 million to budget for accreditation, and I do not think many people anticipated this when, with good intentions, this Rail Safety Act was introduced. My concern is that it has become a bureaucratic minefield.

I am not seeking to delay the process, but I am certainly asking our regulators in the Department of Transport responsible for preparing the regulations to be absolutely

confident that all parts are necessary; or whether in fact we can stage the process so that it does not consume all of TransAdelaide's time, or any other operator's time, just to win accreditation and does not involve a minefield of up-front costs.

The Hon. SANDRA KANCK: Does this mean that the regulations for the Rail Safety Act will also be appearing in November?

The Hon. DIANA LAIDLAW: Yes.

Clause passed.

Clauses 7 and 8 passed.

Clause 9.

The Hon. SANDRA KANCK: I move:

Page 4, after line 36—Insert—

(2) The regulator is subject to the control and direction of the Minister.

(3) However, no ministerial direction can be given to suppress information or recommendations provided or made under this Act.

(4) The regulator must, on or before 30 September in every year, forward to the Minister a report on the work carried out by the regulator under this Act for the financial year ending on the preceding 30 June.

(5) The minister must, within six sitting days after receiving a report under subsection (4), have copies of the report laid before both Houses of Parliament.

I asked a number of questions about the regulator in my seconding reading contribution as it seemed that someone popped up from nowhere who had enormous amounts of power. I have put this amendment on file to provide a clearer picture of where the regulator fits into the system. I was also concerned that, under the legislation as it currently stands, there did not seem to be any real way of getting the information from the regulator. It seemed to me that, if a problem was occurring, without some sort of mandatory reporting back to the Minister we might not necessarily know enough in order for the Minister to give directions to the regulator. I am requiring that there be an annual report and that it be tabled within six sitting days after the Minister receives that report.

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

Page 4, after line 36—Insert—

(2) The regulator is subject to the control and direction of the Minister.

(3) However, no ministerial direction can be given to suppress information or recommendations provided or made under this Act.

(4) The regulator must, on or before 30 September in every year, forward to the Minister a report on the work carried out by the regulator under this Act for the financial year ending on the preceding 30 June.

(5) The Minister must, within 12 sitting days after receiving a report under subsection (4), have copies of the report laid before both Houses of Parliament.

The Opposition is attracted to the amendment put forward by the Hon. Sandra Kanck; however, this is, as I understand it, an annual report. We do not have any idea how large or how technical this document might be, or what information it might contain. Whilst supporting the Democrat position, the Opposition moves an amendment to allow the Government a longer period in which to review the report until it is laid before both Houses of Parliament. Our amendment provides for 12 sitting days instead of six sitting days.

The Hon. DIANA LAIDLAW: The Government also had no difficulty with the sentiments and specifics incorporated in the Hon. Sandra Kanck's amendment, but our preference would be 12 sitting days in terms of the Minister's tabling the report before both Houses of Parliament. I make the point that it is the Government's view that the regulator be the CEO of the Department of Transport. I also believe there may be a potential to incorporate the regulator's annual report, as proposed by the honourable member, as part of the Department of Transport's annual report.

If that option is pursued, the annual report for the Department of Transport must be tabled within 12 days. So, it gives us that further option, depending on the size and scale of this report, to possibly include it with the Department of Transport's annual report, which saves on printing costs and is certainly relevant to transport safety regulation and efficiency. It would seem appropriate at this stage to report in that form.

In terms of the regulator being subject to the control and direction of the Minister, as with the Ports Corporation, the Passenger Transport Act and a whole range of things, I believe that is a practice common within the transport portfolio and is reasonable in these circumstances. The regulator does not have quite the powerful position that the honourable member envisages. Basically, it is a monitoring role and, while the regulator's name and functions appear throughout the Bill, they are monitoring, essentially, prices and principles, as set out in clause 26. In clause 30, the regulator's role is referred to in terms of appointing an arbitrator for negotiation of access; clause 34 relates to a dispute and arbitration; and clause 59 refers to monitoring costs. So, it is not an extraordinarily powerful role but is an important one in terms of the efficiency of the access regime and pricing principles.

The ACTING CHAIRMAN: Just so that the Chair is getting the drift, did I hear you correctly when you said that you were supporting the Cameron amendment?

The Hon. DIANA LAIDLAW: Labor.

The Hon. Sandra Kanck's amendment negatived; the Hon. T.G. Cameron's amendment carried; clause as amended passed.

Clauses 10 to 14 passed.

Clause 15.

The Hon. SANDRA KANCK: I am wondering how this issue of fencing fits in with the Rail Safety Act. I presume it would not be contradicting it but I would like to have some reassurance that that is the case. For instance, the week before last I asked the Minister a question about the Outer Harbor line. I noticed that around North Haven railway station there were fences lacking. I feel some concern about the safety aspect when trains pass through built-up areas where there are no fences. It is a matter of some concern to me that there is no requirement for fencing in a built-up area.

The Hon. DIANA LAIDLAW: Clause 15 simply restates the *status quo*, so we are not changing anything in terms of the current operations of rail as they involve AN or NR. This does not have any impact as such on the Rail Safety Bill, being later legislation. We would expect all operators to abide by the Rail Safety Bill in terms of their accreditation. With respect to fencing, we just looked at the competitive advantages of road and rail. Road is not required to be fenced, and we feel that it would be an unnecessary burden—probably one the taxpayers would have to meet, too, because we could not get the rail operators to go to that expense and still ask them to have competitive charges. That is why we have again determined that an operator would not be required to fence a rail corridor.

The Hon. SANDRA KANCK: I am not quite sure where to ask this question. However, as the track apparently does not have to be fenced, it might provide the answer to the question. Where you have a rail corridor going through farming land, for instance, and a farmer needs to be able to

get across that line on a regular basis to get from one side of the property to another, or local government needs to do so, for instance, will these sorts of entities and people be able to have that right? It is a fairly important question because, in a sense, the Government is the landlord in this case. Does something need to be in place to ensure that that right is there?

The Hon. DIANA LAIDLAW: Farmers can negotiate with the operator, and I understand that all existing agreements will be honoured.

Clause passed.

The ACTING CHAIRMAN: Clause 16 is a money clause and stands on its own. I point out to the Committee that this clause, being a money clause, is in erased type. Standing Order 298 provides that no question 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 17 to 21 passed.

Clause 22.

The Hon. SANDRA KANCK: Obviously, accounts and records have to be kept so that someone can look at them. Who is that someone likely to be? How many people would have access to them, and where would they be able to see them?

The Hon. DIANA LAIDLAW: The regulator would be the person who could have access to these accounts and records; for example, they might need to work out whether the business is becoming insolvent, ceases to provide railway services or fails to be an efficient or effective use of railway infrastructure in the State, as outlined in clause 25. That is one task for the regulator. Another use involves access disputes. When the regulator becomes involved under clause 33, or Part 6, in terms of arbitration of access disputes, the regulator would also have access to these records. That is why we seek the separation of accounts. It is mainly an access issue.

The Hon. SANDRA KANCK: I am sure most operators would want some sort of reassurance that if the regulator is looking at those accounts there will be some degree of confidentiality. I am not aware of anything in the legislation which provides that the regulator must treat it confidentially.

The Hon. DIANA LAIDLAW: Confidentiality of information is provided for in clause 47 regarding the powers of the arbitrator. It provides:

(1) A person who gives the arbitrator information, or produces documents, may ask the arbitrator to keep the information or the contents of the documents confidential.

(2) The arbitrator may, after considering representations from the parties (or the other parties), impose conditions limiting access to, or disclosure of, the information or documentary material.

(3) A person must not contravene a condition imposed under subsection (2).

Maximum penalty: $60 000.

The earlier examples that I gave related to access by the regulator, not just the arbitrator. That is provided for in clause 62 in terms of the monitoring powers of the regulator.

Clause passed.

Clauses 23 and 24 passed.

New clause 24A.

The Hon. SANDRA KANCK: I move:

Page 9, after line 26—Insert new clause as follows:

24A. If the regulator considers that an operator or other person has contravened or failed to comply with this division in any respect, the regulator must prepare a report on the matter and furnish it to the Minister.

This relates to my earlier amendment regarding the regulator. It stems from some questions I asked at the second reading stage about pricing discrimination and whether, if there were pricing discrimination by the track access provider, that would be discovered. It seems to me that this is one of those situations where if something is going on we need to ensure that the regulator communicates that to the Minister. This new clause is simply to ensure that that happens.

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

New clause inserted.

Clause 25.

The Hon. DIANA LAIDLAW: I move:

Page 9, after line 31—Insert new subclause as follows:

(1a) In exercising its jurisdiction under this section, the court is bound to apply principles and criteria agreed between the State and the operator or the State and a secured creditor of the operator affecting the basis on which the court's jurisdiction will be invoked or exercised.

This amendment relates to the appointment of the administrator and the matters to be taken into account by the court. I highlight that this whole clause 25 deals with the fact that, if an operator becomes insolvent, ceases to provide railway services or fails to make efficient and effective use of its railway infrastructure in the State, the court may, on application by the regulator, appoint an administrator to take over the business of the operator in the State. Since this Bill was presented to this House, it has been brought to the attention of the Government that a number of the very genuine bidders for AN have indicated that this provision, in terms of the words 'fails to make efficient and effective use of its railway infrastructure in the State', has raised the eyebrows of some financiers and possibly also the bidders because it is so broad that at almost any stage they could have the States stepping into their business and with no consideration given to them in terms of their assets or the way in which this whole appointment and the business of the administrator would be undertaken. In light of the representations that have been made to us, this amendment is an important one and I trust it will be supported by members.

The Hon. T.G. CAMERON: The Opposition supports the Government's amendment.

Amendment carried; clause as amended passed.

Clause 26 passed.

Clause 27.

The Hon. SANDRA KANCK: Clause 27 interests me because I am wondering what this information brochure is. Obviously it must be an important document. Obviously it is not just a pamphlet or something, but it is unclear to me what it is. For that reason, the maximum penalty of $20 000 for failing to provide the information in this information brochure seems an extraordinarily large penalty. Will the Minister explain the significance of this information brochure and why it brooks such a huge penalty if the information is not provided?

The Hon. DIANA LAIDLAW: This is all in terms of the pricing principles and information relevant to this third party access issue. In terms of the information brochure—and it is one that with the help of my explanation the honourable member will support because she is always after more information on all matters—what this is saying is that the operator must provide on the written application of industry participants a whole range of information about the principles and business that were factors in setting the price for access. That information must be provided and only then will the

regulator, if required, be able to determine whether there were grounds for getting involved because of access issues and whether they were fair in terms of the operator's establishing the first pricing formula. It is all to do with the pricing, the access and providing the user with as much information as possible about the basis for the operator's decision making in terms of price.

Clause passed.

Clause 28.

The Hon. SANDRA KANCK: I refer in particular to subclauses (2) and (3) in regard to a reasonable charge being able to be levied and, specifically, in relation to subclause (3), if there is to be that charge, the operator has to advise the regulator. Does the Minister have any idea of what would be a reasonable charge and, if the amount being charged is regarded by the organisation concerned as too high, what power would the regulator have to take any action in regard to that charge?

The Hon. DIANA LAIDLAW: This relates to the operator's obligation to provide information about access. For instance, the applicant might ask to operate heavy rail on an operator's line, for instance, Eyre Peninsula narrow gauge, and the operator may say that it is not sure that it can accommodate such business and that it would need an engineering study that would cost some money. The operator could then charge that to the applicant.

Clause passed.

Clauses 29 to 31 passed.

Clause 32.

The Hon. SANDRA KANCK: This clause in part talks about formal objections. I may have missed something, but I am not sure with whom any formal objections would be lodged. Will the Minister inform me?

The Hon. DIANA LAIDLAW: As I understand, the person who has made the application and objects to what the operator has determined, or to the new access proposal in general, can make a written, formal objection setting out the grounds of his objection to the proponent, the respondent and other respondents to the proposal.

Clause passed.

Clauses 33 to 38 passed.

Clause 39.

The Hon. SANDRA KANCK: Could the regulator be a party to arbitration?

The Hon. DIANA LAIDLAW: No, it would not be appropriate, because the regulator would need to accept the outcome as part of the arbitration proceedings.

Clause passed.

Clauses 40 to 57 passed.

Clause 58.

The Hon. SANDRA KANCK: This is again a question of curiosity. I have not looked to see what the Commercial Arbitration Act 1986 is. I am curious to know why this Act does not apply.

The Hon. DIANA LAIDLAW: It just avoids any duplication. This is the process for appeal and for resolving access issues, so the applicant cannot also resort to the Commercial Arbitration Act. He is confined to this process.

Clause passed.

Remaining clauses (59 to 67) and title passed.

Bill read a third time and passed.

INDUSTRIAL AND EMPLOYEE RELATIONS (HARMONISATION) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 1871.)

The Hon. R.R. ROBERTS: I rise on behalf of the Opposition to oppose this Bill as it is currently drafted. My contribution in this debate will not be as long and wide ranging as other contributions may have been because I canvassed most of these issues when I moved that those regulations be disallowed and canvassed many of the arguments involved. However, I do wish to address some matters.

There are a number of reasons for our opposition to this Bill. Contrary to what the Government has claimed, these amendments are not about creating jobs and in reality are not even about the harmonisation between the Federal and State systems, because the Government has chosen selectively which part it wants to harmonise. It does not wish to harmonise everything, and it has quite deliberately taken out those parts of the Federal scheme which disadvantage workers in South Australia and deny people access to rights they have normally had. In fact, where its own legislation is more restrictive, the Government has agreed to leave it in place.

One of our objections is that a principle behind the amendments to this Bill is the introduction of Australian workplace agreements, known as AWAs or individual contracts. I remind members that in 1994, when the Government introduced the principal Act, the union movement and Australian Labor Party said that the Liberals were intent on introducing individual contracts, and back in 1994 the Liberals assured this Parliament that in no way was that its intention. Now, under the guise of harmonisation, the State Liberal Government is seeking to amend the principal Act and introduce individual contracts at a time when the current system has not failed and indeed is working very well.

The truth is that our system is held up as probably the best system in Australia. The whole purpose of the principal Act was for collective enterprise bargaining. This Government has just wanted to push the union movement out of the way and deny workers the rights to freedom of association and to be represented. Now this Government is overturning everything that was promised to the public in 1993.

For those members opposite who do not understand how these changes impact on our system, I am prepared to explain. The Commonwealth legislation, given that it is created under the corporations power, applies only to corporations, but AWAs under this State legislation will allow unincorporated bodies, partnerships and the like—those which are not picked up by Federal legislation—to enter into individual agreements on the basis not of what is provided under the State Act but of what is provided under the Commonwealth Act.

One of our main objections to this Bill is the actual procedure of approving the AWAs. Once individual contracts have been negotiated and brought into force, they will be referred to the Employee Advocate, not the South Australian Employee Ombudsman. I add that this was because of the work done by the Australian Labor Party and the Democrats in ensuring that the Employee Ombudsman was made statutorily independent of the Government, and this has worked well with non-union employees having protection, especially by the open scrutiny of the Industrial Relations Commission and its no disadvantage test.

The problem with incorporating the Federal system into our State system is that, even though the Federal Employee Advocate is statutorily independent, his affairs are not conducted in the open. He receives the agreement, looks it over and judges for himself whether it meets the Federal no disadvantage test. This is all done in secret. It does not go before the Industrial Relations Commission, and it does not have to pass a test where other employees or members of a registered trade union can present their arguments in open court and hear the arguments of employers. This process is not open and transparent; no reason is given for the decision; and no opportunity is provided for the individual parties to complain about an individual contract's not measuring up to the no disadvantage test. A decision is simply given, it is final and there is no right of appeal.

However, if we contrast that with the South Australian Employee Ombudsman, who is part of an open process, we see that the Employee Ombudsman appears before the State Industrial Relations Commission, and the unions or individuals who are affected by the proposed enterprise agreement can appear before the Enterprise Agreement Commissioner and argue their case. This Commissioner gives a written decision, including his reasons, and he traverses the arguments for and against and his decision, which is appealable under the legislation.

The logic that the Government has proposed for the introduction of AWAs stems from its belief that the unions had too big a role to play in enterprise agreements. But if we look at the figures from February this year, we see that about 92 000 workers in South Australia were covered by enterprise agreements under section 75 of the State Act. From these figures there are about 3 000 to 4 000 employees covered by private sector or purely non-union agreements. Clearly, the fallacy becomes apparent.

It would appear that a minuscule number of employees in the private sector have availed themselves of purely non-union enterprise agreements, so it is fallacious to suggest, as the Minister did, and indeed as his Government did in 1994, that we would clear the log jam of enterprise agreements simply by getting rid of the trade union movement as a necessary part of the signing of those contracts. I add that my colleague in another place, Ralph Clarke, and I on his behalf in this place, did warn the Government and suggested that this proposed line of activity would not work.

Employees feel comfortable with the award structure and, at the end of the day, will not pursue individual contracts. Employers are not interested in having to negotiate individual contracts in South Australia—they are out there trying to make money—and, frankly, the Federal legislation is badly written and difficult to comprehend.

I refer to the unfair dismissal proposals in this legislation. The Opposition is also opposed to this section of the Bill and will in Committee seek for it to be struck out. As members would already be aware, the Government sought by regulation on 29 May to introduce a new group of employees exempt from the unfair dismissal provision. Clearly, this indicates the contempt that the Government has for the parliamentary process when it seeks to bypass the Parliament and to introduce changes of such import that take away individuals' rights to claim unfair dismissal. It claimed in its reasons for this provision that this would provide the same access for those employees in South Australia who have access to unfair dismissal under the Federal legislation. The reality is that members of the South Australian working public who have their case heard before an independent commissioner to determine whether it is harsh, unfair or unreasonable will now be excluded. So, far from giving people rights, it is a clear attempt to deny working South Australians who allege that they have been badly treated the right to have their case heard by an independent arbiter.

I turn to the correspondence we have received from Mr Andrew Stewart, a Professor at Law from Flinders University. I repeat what he states about so-called harmonisation. He wrote to the Premier and said:

> I appreciate the Government's desire to harmonise State and Federal law, but harmonisation is no excuse for the importation of provisions from ill-conceived and poorly drafted legislation.

This man is an expert. He then refers to the Federal Act and states:

> SA has a proud history over the past three decades of creating a complaint procedure that has been progressive in offering industrial justice to workers, yet at the same time balanced and above all workable. To copy from a grossly inferior Federal equivalent, as it has been ever since it was enacted in 1993 by the Keating Government, makes little sense, especially when there is no evidence that the present State system is causing any problems at all.

These are the thoughts of Professor Stewart from Flinders University. The current system of unfair dismissal has worked well in this State. Workers have had a right to the unfair dismissal provision except in circumstances where non-award persons have been earning more than $64 000 at today's rates of pay. One of the problems that the Opposition has with this process is the regulatory aspect in that this Government feels that it is legitimate to bypass the parliamentary process and to regulate. The threats of regazetting are quite outrageous.

The Hon. R.D. Lawson: It has nothing to do with the Act.

The Hon. R.R. ROBERTS: I might add that this is the same process as we have seen in the Federal Parliament where Minister Reith decided that he would seek legislative and regulatory change but where the Democrats, to their enduring credit, did not fall for the trick. In fact, they rejected the regulations and the legislation. I invite the South Australian Democrats to follow the lead of their Federal counterparts and do exactly the same thing.

The other area is freedom of association. The Opposition again opposes these changes and, frankly, is amazed that the Government wants to introduce into our system the confusing and complex language of the Federal Act. The Opposition would prefer that the current Act stay as it is. We have heard stories that Howard's national employee advocate has, in fact, harassed workers who decided to join a union, even to the extent of advising the employer on the union position. This is totally unacceptable and highlights the abuse that these provisions can open up.

I note also that in terms of freedom of association the Government intends to introduce penalties for unionists who may wish to apply some form of persuasion to non-union members, and I note that it proposes a $20 000 fine if someone is convicted in this regard. We need to contrast the difference in attitude that this Government shows towards workers and towards employers. There can be no more stark example than the idea, in the case of an unfair dismissal, as the Minister has put up, of what is called the 'viability clause'. If an employer is taken to court by an employee who claims to have been harshly or unjustly treated, who can overcome all the hurdles to get before the commission, and who can get a decision in his favour and a ruling that he ought to be entitled to $32 000 or $20 000, as the case may be, the Minister can introduce the viability clause. The

viability clause allows the employer to show that it would affect the viability of his enterprise if he had to pay the due fees awarded by the Industrial Commission. That is enough to ensure that the decision is overturned.

However, in the case of a union, where the commissioner says that in his view there has been undue pressure applied by workers to encourage other employees to join the association, there is a $20 000 fine but the viability clause does not apply. I can tell members that a number of unions faced with those types of fines would have viability problems.

This amendment Bill is far from harmonisation. It is hypocrisy, it is double standards, and it ought to be rejected. The very successful enterprise bargaining system that operates in South Australia under the guidance of the Employee Ombudsman in his statutorily independent position has worked extremely well over the past couple of years and is held up by those commentators of industrial relations as probably the best system in Australia. It ought to be allowed to proceed and the rest of these unfair provisions ought to be knocked out. I invite the Australian Democrats to join with the Opposition to do just that.

The Hon. T.G. ROBERTS secured the adjournment of the debate.

ENFIELD GENERAL CEMETERY (ADMINISTRATION OF WEST TERRACE CEMETERY) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 1869.)

The Hon. L.H. DAVIS: It is perhaps apt that in the dead of night we address this Bill. It is not unimportant, because it seeks to merge the administration of the cemeteries owned and operated by the South Australian Government. There are four major cemeteries in Adelaide—Centennial Park, Cheltenham, Enfield and Smithfield—and then West Terrace Cemetery, the first and major cemetery, which is now not used because it is at capacity. It is the most historic cemetery in the City of Adelaide.

This Bill proposes to merge the administration of the Enfield General Cemetery and West Terrace Cemetery. Enfield, which has a reputation for efficiency and effectiveness of operation and which took over the Cheltenham Cemetery in the 1980s from the Port Adelaide council, is given the capacity under this Bill to administer the West Terrace Cemetery.

Cemeteries which have been subject to ownership and operation by the South Australian Government have had a chequered history. In fact, it is interesting to note that the West Terrace Cemetery has been administered variously by SACON, the Public Buildings Department, the Chief Secretary, the Treasurer, the Architect-in-Chief and Department of Housing. In fact, it is now under the umbrella of the current Department of Housing and Urban Development. Quite often over decades it has been put into the too-hard basket by Governments. Public servants who are on light duties or who are perhaps not held in high regard have often had carriage of the administration of cemeteries over the years.

West Terrace Cemetery is very special in so far as it tells probably more of the history of early European settlement from 1836 than any other place in Adelaide. Largely as a result of the efforts of people such as the State Historian, Dr Robert Nicol, West Terrace was placed on the Heritage Register in 1989. In fact, Dr Nicol has written a riveting book on the history of the West Terrace Cemetery, which is not inappropriately called *At the End of the Road*.

One of the problems with the West Terrace Cemetery is that, because it is at capacity and very few burials can take place there, there are no incoming fees. Very little money is available for maintenance. When the West Terrace Cemetery is visited, the richness of history that exists there is quickly appreciated. From a religious point of view, one finds prominent Catholics, Anglicans and Jews buried in their respective areas. The history of some of the leading politicians and businessmen and prominent women of the colony is there for later generations to view and reflect on. The headstones and the monuments are a lasting reminder of the history of South Australia over the last 160 years.

This Bill is not dissimilar in many respects to the 1930s Metropolitan Cemeteries Bill which did not see passage through Parliament. It was an attempt to amalgamate the administration of the metropolitan cemeteries under one umbrella. It can be said that this Bill is a watered-down version of what was proposed 60 years ago.

In looking at this Bill, it is important to recognise that it does not seek to alter policy in any way. It simply seeks to ensure that Enfield will have the legal capacity to properly administer the West Terrace Cemetery. Because Enfield Cemetery has significant fees generated from the burials that still take place there, and because it has a significant surplus, this proposal to give it power to administer the West Terrace Cemetery will enable some of those surplus funds to be spent on the significant maintenance commitments at West Terrace.

As members would be aware, there have been criticisms of West Terrace Cemetery over the years, including the lack of maintenance, the lack of care, and the lack of regard for the conservation and preservation of the State's history, and this Bill seeks to ensure that those problems are properly addressed. One of the difficulties at West Terrace has been an increase in modern memorials which have been perhaps out of keeping with the history and tradition, and the form of those earlier memorials. It is important that, in any future development of the cemetery, proper regard should be taken for the monumentation.

The Hon. T.G. Roberts interjecting:

The Hon. L.H. DAVIS: The Hon. Terry Roberts asks whether I will be retiring there. I would say to the honourable member that I intend to see out this century and will be kicking on well into the next. I hope that my colleague will accompany me across the millennium.

This is a simple Bill. It is interesting to see that it is contained in a handful of pages. It makes an interesting contrast to examine the Enfield General Cemetery Act and the West Terrace Cemetery Act, and to look at the difference in the length of that legislation. The Enfield General Cemetery Act of 1944 is of 14 pages. Obviously cemeteries at that time were serious business. It is an example of 1940s drafting in enormous detail.

In sharp contrast, the West Terrace Cemetery Act of 1976 was a very brief Bill of just three pages, followed by a schedule which sets out a diagram of West Terrace Cemetery, explaining how it is segregated into the Roman Catholic cemetery reserve, the Jewish memorial area, the Church of England section and the general area surrounded by the parklands. I am not sure what purists such as Ian Gilfillan would say about a cemetery in the parklands. Everything is fair game for the Hon. Ian Gilfillan, except for his Nikes, which do terrible damage as they tear through the grasslands.

Members interjecting:

The Hon. L.H. DAVIS: I always stick to the paths. I do not tear through the grasslands like the Hon. Ian Gilfillan.

An honourable member interjecting:

The Hon. L.H. DAVIS: I am always the conservationist. The other aspects of the legislation include an increase from seven to nine in the membership of the trust, with one of those additional members to be nominated by the Minister and the other to be nominated by the Treasurer, and with a subsequent necessary increase in the quorum.

The main thrust of the legislation is to ensure that the Enfield General Cemetery has the ability to apply its revenue to the West Terrace Cemetery. In Committee, I will seek from the Minister an assurance, which I am sure will be forthcoming, that the historic nature of West Terrace Cemetery and the conservation and preservation of the monumentation will be protected in what is otherwise, I think, a very commendable piece of legislation. I support the Bill.

The Hon. T.G. ROBERTS secured the adjournment of the debate.

ELECTRICITY (VEGETATION CLEARANCE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 10 July. Page 1837.)

The Hon. P. HOLLOWAY: This Bill is the outcome of negotiations between the Local Government Association and ETSA over the lopping of trees located under or near powerlines. This most recent phase of negotiations between local government and the Electricity Trust began after this Council, late last year, rejected those parts of the Electricity Bill that referred to vegetation clearance. Under this Bill the Electricity Trust will be able to negotiate agreements with councils to prune vegetation below and around powerlines. In the event of a dispute over such vegetation clearance schemes, the services of a technical regulator can be called upon to act as an impartial arbiter of such disputes.

Of course, the genesis of this Bill began long before that. We could go back as far as the 1983 Ash Wednesday bushfires when subsequent claims led to ETSA's being found liable for a number of bushfires that occurred on that day. As a result, there were rapidly increasing premiums and ETSA had to turn its attention to questions of liability for bushfires. In 1988 changes were made to the regulations to try to address those questions of liability. As a consequence, of course, ETSA sought to heavily prune trees in all areas—not only in the bushfire regions but also in the metropolitan area—to meet its liability obligations.

In some areas, such as St Peters, Unley Park, and so on, the trees were large, significant and listed on heritage registers, and many had been established longer than the electricity distribution system itself. Naturally, there was a great deal of community opposition, particularly where the trees were so significant and were a very attractive part of some suburbs. As a consequence of ETSA's heavy pruning there was community outrage. A series of negotiations with councils ultimately led to the Government's attempting, late last year, to try to hand over to local government the entire responsibility for vegetation clearance.

Of course, along with the responsibility, the associated duty of care was to be handed to councils. At the time, the Opposition opposed that measure: we believed that there had not been sufficient consultation with local government over that issue and we did not support the Government's move. We suggested that it go back and negotiate with local government on the matter. And, indeed, that is what took place. I understand that the Hon. Sandra Kanck took a particular interest in negotiations that took place with various local government officials and the Electricity Trust over this matter.

As a result, the Government introduced its amendments to the Electricity (Vegetation Clearance) Act which came into the House of Assembly a month or two ago, and we were told at the time that the Local Government Association had signed off on those amendments. However, subsequently, some local government areas, particularly those in the inner suburbs which have significant trees in their area, have expressed concerns about the legislation. I believe that it would be fair to summarise their concerns along the lines that they do not believe that the particular measures under this Bill give effect to the agreement that was negotiated. As a result of that, the Opposition believes that there is some need to amend the Bill (not to amend the principles behind it) to clarify a number of issues involved: in other words, to ensure that this legislation does truly reflect the agreement reached between the Local Government Association and the Electricity Trust, to protect both the interests of ETSA and significant trees in our council areas.

During her second reading speech on this Bill the week before last, the Hon. Sandra Kanck raised a number of questions that had been put to her by some of the local government groups, which have also approached the Opposition, expressing their concerns. We look forward to the answers that we hope will be provided by the Minister to those questions that were raised by the Hon. Sandra Kanck—and I will not go through all those matters again.

I would like to briefly outline the areas where we believe that some amendments should be moved to this Bill to clarify the issues involved. The first of those relates to the question of Optus and Telecom cables, the broad band communication cables and the associated equipment which is now being strung up around the metropolitan area. We believe that this legislation relating to vegetation clearance should not apply to those telecommunication cables. In other words, we do not believe that those cables should really be considered as powerlines in relation to clearance. We understand that is the situation at present; we understand that these cables will not be part of any negotiated agreements involving vegetation clearance. However, we believe that it will be helpful to the councils concerned if that is clarified by spelling it out in legislation. So, one of the amendments that I will be moving on behalf of the Opposition will exclude telecommunications cables from the definition of powerlines. There are a number of other amendments relating to the functions of the technical regulator.

As I indicated earlier, part of the process that has been negotiated between ETSA and the Local Government Association is that, where there is a dispute, the technical regulator can be involved to act as an independent arbiter. Some concerns have been expressed to us by councils as to just how this process might work. I have tabled some amendments that we hope will address some of these concerns, to at least make clear how this process should work. The Opposition does not wish to move away from the principle of negotiated agreements between ETSA and local government. However, we would hope that our amendments

will make clearer the functions involved and that, as a consequence, some of the concerns that have been expressed to us by local government will be negated.

One of the questions relates to the transfer of risk; in other words, when a dispute has arisen over vegetation clearance and the technical regulator is involved, the technical regulator can provide for a scheme of vegetation clearance that may be transferred to local government. Local government is saying that, should this occur, there should be no retrospectivity in that transfer of risk, and also that it should apply only to specific areas of the council—those streets where the council would accept responsibility because it wishes to protect significant trees.

Some concern has been expressed by councils that the outcome of these vegetation agreements where the technical regulator is involved may be to make the council responsible for whole areas. Obviously, if only a few streets which include significant trees are involved, that is an area where ultimately undergrounding may be the optimum solution, and all of us would recognise that. The trees in some of the most significant streets in our community, such as Victoria Avenue or Northgate Street, Unley Park, and some of the roads through St Peters, give those streets a particular character and they are the sorts of areas where undergrounding ought to be considered.

One of the best examples of the impact of undergrounding is at Hahndorf. I remember that five or 10 years ago the trees at Hahndorf used to be heavily pruned regularly because of the powerlines in that area. Now that the powerlines are underground the trees have been able to regain some shape, and that is of great benefit to the aesthetics and the tourist potential of that important and historical area of the State. We believe that there should be an amendment that at least clarifies the transfer of risk to council to ensure that there are no retrospective elements to it.

The third area of amendment relates to the principles of vegetation clearance. The principles of vegetation clearance are effectively the regulations that were gazetted by the Government last November. The Bill provides that there should be no derogation from the principles of vegetation clearance—except in relation to the species of trees which can be planted underneath or around powerlines. It is the view of the Opposition that, if we are to have the technical regulator involved in arbitrating disputes between local government and ETSA, the technical regulator should have the powers to make some variations, if they are considered appropriate. The technical regulator should be the person best suited to do that, which can perhaps provide a better solution that is acceptable to ETSA and to the councils concerned. Section 11(1) of the vegetation clearance regulations provides:

> The Technical Regulator may, on application—
>
> (a) exempt an occupier of land on which vegetation is planted or nurtured for commercial purposes (not including the production of timber) from compliance with regulation 9.

Regulation 9 requires the occupier of land to clear vegetation. It seems to me a little odd that the regulations provide that a private occupier of land using that land for commercial purposes may be exempted from the principles of vegetation clearance when the Government is not prepared to provide that exemption to local government bodies under this Bill.

My amendment simply reflects what is provided in that clause. Where councils are concerned we believe that if the technical regulator can exempt the principles of vegetation clearance for commercial purposes—which I assume would be, for instance, an apple orchard in the Adelaide Hills in a bush fire zone—why should not the technical regulator be able to exempt a local government body in a non-bush fire area of metropolitan Adelaide?

My next amendment relates to legal representation. There was some concern that, because the Electricity Trust may have lawyers on the staff, that could put councils at some disadvantage. The amendment that I will move on behalf of the Opposition will seek to get all lawyers out of the system, because we believe that the arbitration process should be decided on its merits rather than on legal points.

The next question where an amendment would clarify and help the process involves confidentiality. We believe that there should be a presumption that hearings before the technical regulator between ETSA and the local government body concerned should be open to the public. It is a fact that last year we amended section 62 of the Local Government Act, which enables councils to hold their meetings in private, to ensure that there is far more openness of matters considered by local government. In other words, we reduced the option of councils to use section 62 of the Local Government Act to restrict hearings in public. We believe that hearings before the technical regulator in relation to vegetation clearance should be treated in the same way in which we treat local government under the new section 62 of the Local Government Act. In other words, there should be a presumption that these hearings are held in public and that holding hearings *in camera* should be a last resort.

Our final amendment relates to the fact that some concern was expressed by local government that ETSA could use the technical regulator provisions as a sort of an ambit claim. In other words, if ETSA wished to transfer the duty of care for cutting vegetation around powerlines to a council, it could make some sort of an ambit claim to try to force that to happen. What we wanted to make clear in the regulation was that the use of a technical regulator as an arbitrator should be only a matter of last resort. I intend to move amendments along those lines in Committee, but again I point out that we do not wish to move away from the principle of negotiated agreements between local government and the Electricity Trust. Rather, we wish to clarify those procedures to ensure that local government has no cause for concern about the procedures that might operate.

I also place on record questions for the Minister to answer. As I said earlier, the Hon. Sandra Kanck asked a series of questions in her speech, and we will certainly be listening with some interest to the answers to those questions. What income does ETSA receive for the use of its poles for the carriage of the telecommunications cable? In other words, how much do Optus and Telstra pay for using ETSA poles? Also, what is the period for this arrangement? In other words, do they pay annually or do they pay over a period? Finally, to what purpose is this income applied? In other words, is it available for the undergrounding of cables?

In relation to the questions asked by the Hon. Sandra Kanck, the Opposition is particularly interested in the answer to the question about whether the vegetation clearance principles, the regulations to which I referred earlier, will be reviewed by the Government. It was my understanding that during negotiations with the Local Government Association the Government had indicated that it was prepared to review the vegetation clearance principles. I hope the Minister can provide some information concerning when that review might take place and what the scope of the review might be.

In conclusion, the Opposition supports the second reading of the Bill. I hope that the Government will accept the constructive amendments that I will be putting up to reassure local government at the front line of this debate; that is, that those councils that have significant trees that they wish to protect from unnecessary pruning will be treated fairly and as equal partners under the vegetation clearance schemes which we are debating. With those reservations, the Opposition supports the second reading, and I look forward to the opportunity of debating the details during the Committee stage.

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their contributions to the second reading. The Hon. Sandra Kanck raised a number of questions and I thought it would be appropriate to give those responses and, if there are other matters which arise from the contribution of the Hon. Paul Holloway, I will seek leave to conclude and try to give those responses tomorrow. The first question raised by the Hon. Sandra Kanck relates to the apparent inconsistency between proposed section 55(1a) and proposed section 55A(3). It is clear from the first comment in the letter from St Peters council that it is the regulations—that is, the principles of vegetation clearance—to which the council objects. The council says it has objected consistently to those regulations which, in its own view, are draconian, unnecessary and there is a wealth of evidence to say so.

I remind the Council of the twenty-first report of the Environment, Resources and Development Committee of 30 July 1996. In that report (less than a year old) the committee recommended that the present regulations being drafted in 1998 to bring them in line with national standards are adequate. The Bill endorses that view but even here has granted a concession to councils, namely, in those cases where the council has accepted or been given the duty, then the schedule dealing with the planting or nurturing of vegetation will not apply—proposed subsection (6) of section 55A applies.

As to the alleged inconsistency between proposed section 55(1a) and proposed section 55A(3), the principles of vegetation clearance in regulation 11 currently allow for applications to be made exempting a person from compliance with a provision of schedule 2 dealing with the planting or nurturing of vegetation. Such an exemption may have conditions attached to it, including a condition as to paying for the costs of clearance, and this approach has been followed in section 55A. There is, in the Government's view, no inconsistency.

The second question relates to whether an electricity entity could declare a dispute and in what circumstances the technical regulator would intervene. As to whether or not an entity could declare a dispute with the possible consequence of the duty being imposed to some degree on a reluctant council, and the comment that this would be last year's legislation by stealth, I draw attention to proposed section 55C and, in particular, subsection (2). The technical regulator is not obliged to determine a scheme dispute in the circumstances set out there. Where a dispute has been manufactured or is not a real dispute, such as where an ambit scheme is proposed, I would expect that the technical regulator would decline to hear it. The technical regulator has the power to do this, as in paragraphs (b) and (c) of proposed section 55C(2). The technical regulator will act where there is a genuine dispute which has been shown to be intractable, notwithstanding reasonable and constructive negotiation between the parties.

The third question relates to the issue in the absence of a council's agreement. The duty to clear vegetation will continue to reside with the electricity entity. The honourable member seeks an assurance that, in the absence of a council's agreement, the duty to clear vegetation will reside with the electricity entity. Subsection (2)(b) of proposed section 55D makes it clear that a duty can, in the circumstances set out there, be transferred to a council without its consent, but it is important to note that this will be in respect of such power lines as the technical regulator considers appropriate in the particular circumstances of the case, as provided by subsection (3). Where a dispute relates to only one street or part of a street, one would expect that a technical regulator would likely confine the non-consensual transfer of the duty to that street or part of it.

The honourable member has invited me to walk through a few scenarios of disputes. This would not be helpful as the range of matters that could form a dispute are so various. The thrust of the legislation is that, wherever possible, parties should resolve their differences by agreement. Only where that fails does the technical regulator become involved, and there follows a comprehensive examination of the matter and the parties' views in relation to it. As an independent arbiter a technical regulator must balance all competing elements in reaching a conclusion. It is important to emphasise that the Bill sets out a process which parties must follow before the technical regulator would be involved as a last resort.

In the fourth question, in relation to proposed section 55A(6), guidance is sought. Where the council has a duty, schedule 2 to the regulations—a schedule relating to what species may be planted or nurtured near public power lines—does not apply. If the council has the duty in relation to one street, then the schedule does not apply in relation to that street and the council can decide what vegetation to plant in that street.

Question five refers to the transfer of duty to a council where vegetation has not previously been cleared by ETSA. The honourable member raised concerns by St Peters council that the technical regulator could transfer the duty to a council where the fact is that vegetation has not been cleared by ETSA and the fault is ETSA's. The technical regulator must take into account the parties' views at the end of the day and be satisfied that it is appropriate to confer a duty on the council. The technical regulator is unlikely to consider it appropriate to confer the duty on the council where the electricity entity has been at fault. The technical regulator is obliged to take into account, amongst other things, the extent and frequency of past vegetation clearance in the area and whether requirements with respect to vegetation clearance and the planting and nurturing of vegetation have been complied with in the area and, if not, the reasons for non-compliance as in proposed section 55E(1)(g) and (h).

Question 6 relates to the Technical Regulator seeking professional advice. Proposed section 55F(7)(e) empowers the Technical Regulator to refer matters to experts for reports and to accept those reports in evidence. Section 55F(9) as proposed allows the Technical Regulator to engage legal advice on the conduct of the proceedings and to assist in drafting a determination.

Question 7 relates to cost sharing for undergrounding. The constraints on councils raising money must be considered by the Technical Regulator, as he is obliged by section 55E(1)(k) to take account of the costs of proposals and the financial

resources of the council and entity. As to whether an amendment to local government legislation is required or desirable, I expect that the Minister for Local Government would always be willing to consider representations made to him.

Question 8 relates to hearings held in public and in private. I would expect that hearings for the most part would be in public and, indeed, the Bill limits the situations where a hearing or part of it may be in private. It should be remembered that one or both parties may be subject to binding confidentiality obligations and that the confidential information under discussion may be coming from someone who is neither the council nor the electricity entity.

Question 9 relates to the derogation from the principles of vegetation clearance. The vegetation clearance scheme is defined by clause 3(b) of the Bill to mean a vegetation clearance scheme agreed by the parties or determined under part 5 by the Technical Regulator. Derogation from the principles of vegetation clearance is prohibited by proposed section 55A(3) except in so far as a scheme, whether agreed or determined, may exempt the council from the principles relating to the planting or nurturing of vegetation near overhead public powerlines, that is, from schedule 2 of the regulations.

The complaint from St Peters council quoted by the honourable member is a reiteration of the council's view that the regulations (the principles of vegetation clearance) are draconian and unnecessary. I refer again to the July 1996 report of the Environment, Resources and Development Committee, the recommendation of which was that the present regulations are adequate. It is worth noting from that report that South Australia's regulations, in terms of clearance distances, are not as severe as those of other States. As mentioned earlier, while endorsing the report the Government has provided a concession in that schedule 2 is not to apply near overhead powerlines for which the council has the duty of vegetation clearance.

Question 10 relates to the review of the schedule of trees under vegetation clearance regulations. Should councils have any suggestions for additions to the schedule to facilitate their tree planting schemes, I would be pleased to ensure that these are considered either as part of an overall review of the schedule or prior to such a review.

Question 11 relates to the alleged civil liability of ETSA's directors. This question is a side issue. The Government has been engaged for a considerable time in trying to make more appropriate arrangements with respect to vegetation clearance in metropolitan council areas, and this has been motivated not by issues of directors' liabilities but by the problems caused by the resistance of some councils to ETSA's carrying out vegetation clearance work.

Question 12 relates to whether telecommunications cables are treated as subject to pruning requirements. The Bill prescribes only powerlines. Telecommunication cables, as with telephone cables, do not require clearances so that the vegetation can contact the cable. During installation, in most cases, the vegetation can temporarily be pulled aside and returned after the cable is installed. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

ADJOURNMENT

At 11.19 p.m. the Council adjourned until Wednesday 23 July at 2.15 p.m.