LEGISLATIVE COUNCIL

Thursday 9 July 1998

The PRESIDENT (Hon. J.C. Irwin) took the Chair at 2.15 p.m. and read prayers.

ROXBY DOWNS (INDENTURE RATIFICATION) (ABORIGINAL HERITAGE) AMENDMENT ACT

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to make a statement on the subject of the Roxby Downs (Indenture Ratification) (Aboriginal Heritage) Amendment Act 1998.

Leave granted.

The Hon. K.T. GRIFFIN: Members will recall the Roxby Downs (Indenture Ratification)(Aboriginal Heritage) Amendment Bill 1997, which was debated in the Council in December 1997. During the debate I advised the Parliament that WMC (Olympic Dam Corporation) Pty Ltd (which I will describe as WMC) and the Port Augusta Native Title Working Party had made a consultative agreement which provided for the parties to establish an Aboriginal Heritage Management Plan. I further advised that a period of 14 weeks had been set for negotiation and finalisation of the plan.

The consultative agreement was endorsed by members of the Port Augusta Native Title Working Party and a representative of WMC during a visit by the working party to Olympic Dam on 12 December 1997. Since that time, representatives of and legal advisers to WMC have continued to negotiate the Heritage Management Plan with members of and legal advisers to the Port Augusta Native Title Working Party.

When it became clear that the original 14 week deadline for the negotiation would not be met, WMC and the Port Augusta Native Title Working Party mutually agreed to extend the deadline, and the negotiations have been continuing in good faith. Indeed, legal advisers for WMC and the Port Augusta Native Title Working Party met as recently as 25 and 26 June 1998. During this period of negotiation, members of the Port Augusta Native Title Working Party have worked with WMC on a number of heritage issues, including a monitoring trip along the route of the new powerline between Port Augusta and Olympic Dam and surveys of areas within the special mine lease at Olympic Dam proposed for development of an additional evaporation pond and a new mine water disposal pond.

In addition, WMC has provided some funding to members of the Port Augusta Native Title Working Party for community development purposes, as contemplated by the consultative agreement. I am advised that negotiations at the moment are continuing, with further meetings scheduled for July and August. I am not therefore able to give a commitment on a time frame for resolution, but I will ensure that Parliament is kept apprised of developments.

QUESTION TIME

TRANSPORT, PUBLIC

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning a question about public transport.

Leave granted.

The Hon. CAROLYN PICKLES: When the Liberal Government came to power it began a process of privatising Adelaide's metropolitan bus services. Region by region was offered on a competitive tender basis and contracts were secured by successful tenderers. Some regions, such as the northern suburbs (including Salisbury) were won by the private UK company Serco. Other regions, such as the southern suburbs run by the Lonsdale depot, went to the publicly owned TransAdelaide.

Throughout this process the Liberal Government assured us that the contract process was driven by cost and service quality. However, the Opposition has come into possession of a document which suggests that TransAdelaide believes that, in part, the Liberal Government's public transport privatisation is determined by Party politics. Explicitly, the document says that the political status of an area, whether it is held by Labor or Liberal and how 'safe' the seat is, affects whether a private company or TransAdelaide wins in that contract area. In other words, politics, not passenger needs, helps determine what sort of bus you get.

The document even contains a map that overlays State electoral boundaries on Passenger Transport Board areas. The document prepared for TransAdelaide is dated 1 June 1998 and is titled 'Assessment of contract area competitive position.' Item 4 of this document, titled 'Political sensitivity', reads as follows:

> Any assessment of political risk associated with winning or losing a contract is highly uncertain. However, we may expect that:
>
> - a Liberal Government is less likely to introduce a new service provider in contract areas encompassing marginal electorates, due to risk of disruption. The most electorally sensitive contract areas are the following, which each include two seats held on a margin of less than a 4.5 per cent swing:
>   East—Hartley (Liberal) and Norwood (ALP);
>   Outer north-east—Wright (ALP) and Florey (ALP);
>   South-west—Elder (ALP) and Mitchell (ALP);
>   Outer south—Reynell (ALP) and Mitchell (Liberal).

They cannot even get that right: 'Mitchell' should be 'Mawson'. The document continues:

> - Based on experience in the previous contract round, a Liberal Government is more likely to introduce a new player in safe ALP held areas. On this basis, the ALP dominated north-west and LeFevre areas are the main candidates for outsourcing, while the safe Liberal inner south and east are least likely to be outsourced.

The document speaks for itself. It clearly demonstrates that passenger services are planned and delivered according to political imperatives and not passenger needs. This might help explain the decline in public transport patronage. My questions to the Minister are:

1. Can the Minister explain the content of this document?
2. Why does TransAdelaide believe that the political representation of an area affects the awarding of bus contracts, and does the Minister agree with the assessment?
3. Does she agree with the assessment implicit in the document that private bus operations are less popular due to risk of disruption?
4. Does the Minister agree that South Australians living in safe Labor seats should endure the disruption of a new operator and that those living in safe Liberal marginal seats should be spared such disruption?
5. Will the Minister launch an immediate investigation into the contents of this document?

The Hon. DIANA LAIDLAW: I have not seen the document and I am not sure whether the member has it with her. If she has, she may care to table it.

The Hon. Carolyn Pickles: Keep going.

The Hon. DIANA LAIDLAW: Will she table the document?

The Hon. Carolyn Pickles: Keep going.

The Hon. DIANA LAIDLAW: Would you be prepared to table the document?

The Hon. Carolyn Pickles: You just keep going.

The Hon. DIANA LAIDLAW: So, you are not prepared to table the document?

The Hon. Carolyn Pickles: Yes, I will table the document.

The Hon. DIANA LAIDLAW: You will table the document?

The Hon. Carolyn Pickles: Yes.

The Hon. DIANA LAIDLAW: Can you table it now?

The Hon. Carolyn Pickles: No. I haven't got the document with me.

The Hon. DIANA LAIDLAW: You haven't got the document with you. Perhaps you would table the file you have got there.

The Hon. Carolyn Pickles: No, I won't.

The Hon. DIANA LAIDLAW: No, you won't table the file, because there is no authorship given—

Members interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: There is no authorship given to the document, and I am certainly not going to dignify statements that are completely at odds with the process and are blatantly false. It is a ludicrous statement to have put forward. If the Leader is talking about relating electorates to the entrance of new operators, I cite the seat of Adelaide as an example. That is not an ALP seat, and has not been for many years: Serco is the operator through that region. So, it is a silly argument, even if you look at just one seat.

The Hon. Carolyn Pickles interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: Yes, presented by the paper. The honourable member says, 'Yes, it is a very silly argument presented by the paper,' and that is quite right.

The Hon. Carolyn Pickles interjecting:

The PRESIDENT: Order! The Leader of the Opposition has asked the question.

The Hon. DIANA LAIDLAW: I have stated that this Parliament insisted that the Act provide that I have no part in the tendering process. I have maintained that integrity, and I would never do otherwise. To reinforce the requirement that the Passenger Transport Board (PTB) is responsible for the process, it appointed an independent assessment committee—and the honourable member may like to look at this because, in making the statements that she has, she is reflecting on Mr Tom Sheridan, the former Auditor-General, who was the Chairman of the assessment panel in terms of all the tenders. I do not think, from the silence of honourable members opposite, that they would care to join the Hon. Carolyn Pickles in reflecting on the integrity of Mr Sheridan, as she has just chosen to do. There are two other members of that committee and the—

Members interjecting:

The Hon. DIANA LAIDLAW: Whose choice? Mr Sheridan was my choice? No, the Passenger Transport Board asked Mr Sheridan to chair that panel, and he did so. Some of the union members, after Serco 1 (the northern region), suggested political interference. They have not continued those arguments, because there is no basis for them. I suspect, without knowing where the—

Members interjecting:

The Hon. DIANA LAIDLAW: As to the next round, it has not even been determined when it will proceed, although I would like it to proceed early in the next calendar year. But I can undertake to you, Mr President, to everyone in this Council and to the Parliament as a whole that the integrity with which the process was undertaken on the last occasion—chaired by Mr Tom Sheridan and conducted by the board, as is required by the Act—will be maintained in the future.

WIK DECISION

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General a question about the Federal Government's decision on Wik.

Leave granted.

The Hon. T.G. ROBERTS: The i's have been dotted and the t's have been crossed in relation to the final amendments to the Wik Bill. It is a historic Bill, in the sense that the only history that I believe people can come away with accepting is that it involved the longest debate on any Bill that ever came before the Federal Parliament. The jury is still out, and people are still making their assessment and interpretations of how the Wik amendments will impact on the legislation of various State Parliaments, and I suspect that people are at the moment trying to work their way through the maze, given that the 12 point plan for the amendments ended up being a 10 point plan and that a lot of changes were made during the ongoing negotiations.

In *The Age* today, the editorial on page 14 is headed 'Native title fight is not yet over'. It states:

> The only certainty is that the Government no longer needs a double dissolution.

The article further states:

> When the vote finally came, it was almost an anti-climax. The Howard Government's native title legislation has finally passed the Senate, as a result of the blinking of Senator Brian Harradine, some slight modifications to the Government's original 10 point plan and the spectre of One Nation eating into the Coalition's vote in a double dissolution election. There is no doubt a sense of huge relief in the office of the Prime Minister, and among those who feared a divisive race-based election. Yet the reality is that the issue of native title in this country is far from over. In its final form, the legislation has given some certainty to miners and pastoralists, but it has compounded the deep sense of dispossession among indigenous Australians.
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> Beyond its failure in spirit, the Wik legislation faces an uncertain future in its implementation. The Government argument that its revision of the Native Title Act would produce legal certainty was always doubtful and there now appears to be a real prospect that the legislation will become bogged down in endless litigation.

In view of the good record that South Australia has had in a bipartisan way in relation to handling the difficult issues of native title, I ask what is the Government's interpretation of the Wik amendments and their effect on all the stakeholders in this State.

The Hon. K.T. GRIFFIN: I draw the honourable member's attention to a ministerial statement I made in this Council on 2 July, when I gave a quick response to the announcement that there had been a resolution to the so-called 10 point plan in the Federal Parliament, and I indicated that there were some distinct benefits for South Australia in that, particularly because it did provide for parties to reach an agreement, in the form of an area agreement, which would necessarily involve in this State the pastoralists, through the South Australian Farmers Federation, the Aboriginal Legal Rights Movement, as the body representative of native title claimants, the Government, the Chamber of Mines and any others who had an interest.

All members ought to recognise that this Government took the initiative last year to prepare, as the basis for discussion, a draft area agreement, which is now out in the public arena and has been the subject of consultation between the Government and a variety of interest groups, all directed towards providing a greater level of certainty for native title claimants, for pastoralists, for miners, for Government (State and local government) and others, and which provided a framework that would give a much higher level of certainty than the Commonwealth legislation ever could.

The fact that the Federal legislation enables those area agreements now to be made will really give us an added incentive to pursue negotiations with all those interest groups to try to reach an arrangement which will not disadvantage anyone but will provide, at least for this State, much greater certainty than in other jurisdictions.

That is not an easy process, but I am optimistic that we will be able to reach some agreement—because it is correct that the new Commonwealth legislation may, in fact, not overcome the necessity to take disputes to court if they cannot be resolved by negotiation. We have said all along that the impetus for area agreements, at least as we see it, is the disincentive of something like $5 million legal costs to Government for each native title claim which ends up in court. That does not take into account the costs for claimants and for others with interests who may wish to appear in court.

With 31 claims in South Australia, $150 million may well be the cost to the State alone, funded by the taxpayers, with something like 10 years of litigation ahead of us. That cannot be measured only in terms of monetary costs: it has to be measured in terms of what it does to relationships between litigants and in terms of the extent to which it distracts everyone who is involved in litigation from getting on and doing something constructive for the future.

We have had a very strong position about trying to negotiate settlements. In fact, it started as early as 1996 with some local agreements directed towards trying to clarify what was the extent of the rights granted under section 47 of the Pastoral Land Management Act. In respect of pastoral lands, those rights give Aboriginal people rights to cross over, to camp, to hunt, to conduct ceremonies and so on. Everyone has taken those rights for granted for the last 100 years but now, critically, they come up to be defined. What do they mean? What is their scope?

We published an agreement in draft form as a basis for discussion in 1996. The draft area agreement published last year is an advance on that, but it does not avoid ultimately the necessity for some more localised agreements involving Aboriginal people, pastoralists and others. What we want to do is get some certainty, and the Commonwealth legislation will provide a basis upon which, if we decide to take this initiative, as we have, but if other jurisdictions take initiatives they can do the same, we can reach a negotiated settlement. That is in the interests of all of us.

In terms of all the other issues that arise under the Commonwealth legislation, there is a requirement for some State-based legislation in any event, but there is also the opportunity to look at rights to negotiate in a State-based legislative framework rather than the Commonwealth. As with the right to negotiate provisions under our own native title mining legislation, the Opal Mining Act, and so on, they have to be ticked off by the Federal Government, they have to get through the Legislature, they have to be consistent with the Federal Act, and they have to be non-discriminatory. We have not made any decision as to whether or not as a Government we would propose to Parliament that we go down that path.

We do not yet have all the detail of the amendments made in Federal Parliament. We have got a three centimetre thick volume of amendments and there is another package on top of that. That has to be interrelated with the base Commonwealth Native Title Act. A huge amount of work is still to be done to fully understand what all the changes mean for South Australia before we ever get to a policy decision as to whether we should legislate a State-based regime as opposed to relying upon the Commonwealth Native Title Act.

If we decide to take the advantage to go down an improved path, as I believe we have with our own system, which was ticked off by a Labor Minister several years ago, obviously it will come to the Parliament. On the last occasion when we had a package of major legislation implementing the native title mining legislation and passing it through Parliament, it went to a deadlock conference, but the process ended up with a satisfactory outcome which only now is being recognised by a variety of interest groups as being a framework which is preferable to the current Federal Native Title Act before the amendments were made.

As I said in my ministerial statement, we support the agreement that was reached at the Federal level. We believe it will significantly improve the operation of the Commonwealth Native Title Act. It will also provide opportunities for South Australia to do its own thing, if necessary, but all directed towards providing certainty and to deal fairly with all those who have interests in land, whether as native title claimants, pastoralists, miners, State Government, local government or others. As I said, it will be some time before we are able to reach a considered view about the policy implications for the State, but in general terms this is a significant advance which will provide benefits for all South Australians.

ELECTRICITY, PRIVATISATION

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Treasurer a question regarding ETSA.

The PRESIDENT: Is leave granted?

The Hon. K.T. Griffin interjecting:

The Hon. T.G. CAMERON: I appreciate that the Treasurer is not here. Would it be too much to get special leave to allow Legh Davis to answer this question, Mr President?

The PRESIDENT: Leave is granted.

Leave granted.

The Hon. T.G. CAMERON: To allow Legh Davis to answer the question? First, let me thank the Treasurer for the briefing that was provided yesterday.

The Hon. A.J. Redford interjecting:

The PRESIDENT: Order!

The Hon. T.G. CAMERON: It was not only informative but also well worth attending. I also congratulate the Treasurer on providing the expert advice from Mr Ray Spitzley of Morgan Stanley and Mr Ed Kee of Putnam, Hayes and Bartlett—

The Hon. A.J. Redford: You asked some pretty good questions I am told, too.

The PRESIDENT: Order!

The Hon. T.G. CAMERON: I warn the honourable member to wait until he hears all this. I congratulate the Treasurer on providing expert advice instead of doing the

briefing himself. Not only did we receive a very professional presentation from people with a high degree of expertise but they actually answered our questions openly and honestly, which was a welcome change. They were a bit more to the point, in sharp contrast to the verbose ramblings that some questions seem to receive in this place. I have had a look at the Quiggin-Spoehr analysis of the Sheridan report—

The Hon. A.J. Redford: You started off so well, too, Terry.

The PRESIDENT: Order!

The Hon. T.G. CAMERON: —the Democrats' statement and others. There is a wide disparity on a whole range of issues, particularly ETSA's revenue, its expenses, its earnings and its forecast profitability under NEM. One would have thought that in an informed debate there would be more certainty, given the wild numbers being thrown about by all participants. Without a proper economic analysis, how can a proper evaluation of the merits of the economic benefits to South Australia take place?

The Government has no mandate to sell ETSA, that is, the issue is politically untested, but it does have an obligation to provide as much information as possible, not only to us as participants but to all South Australians. My question is: will the Treasurer provide us with the Government's projections of revenue and profit of ETSA until the year 2007?

The Hon. K.T. GRIFFIN: There are a number of perspectives from that explanation and, quite obviously, the Treasurer would want to respond personally to them. There are compliments but there are also some potential criticisms, although I did not take them as such. I recognise the even-handed approach of the Hon. Mr Cameron.

The Hon. T.G. Cameron: I would not criticise Robert Lucas.

The Hon. K.T. GRIFFIN: No, and I am sure that he would appreciate the compliment that the Hon. Mr Cameron paid to him and his recognition of the professional presentation that was made. The honourable member referred to more certainty in the wild numbers that were being thrown around. That is a paraphrase of what he said, but it is the essence of it. It might be that it is not possible to give a greater level of certainty, but if the Treasurer is able to do so I know that he will endeavour to oblige. I will pass those on. The honourable member made a passing reference to a mandate, and I cannot resist raising this question: what is a mandate and when does it apply?

The Hon. T.G. Cameron interjecting:

The Hon. K.T. GRIFFIN: No, but there are many occasions where Governments, of all political persuasions, do not mention issues in their election policy for a variety of reasons, not the least of which is that the information may not have been available at the time. Even if there is something to which the policy specifically refers it will not necessarily mean that either the Opposition, the Australian Democrats or the Independents will, in fact, endorse that: witness voluntary voting. I do not want to get involved now in a lengthy debate about what is or is not a mandate and how that is judged to be the position.

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: I am sure the honourable member was really raising that more as a side observation designed to provoke some response from me rather than to get to the nub of the issue which is in his question. I will refer it to the Treasurer and I am sure that he will reply with alacrity.

FERRIES

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning a question about ferries.

Leave granted.

The Hon. J.S.L. DAWKINS: During a recent visit to the northern Mallee districts, I travelled across the ferry at Walker Flat. Traversing the Murray River in this manner reminded me of the important role played by the network of ferries which service river and lake communities from Lyrup to Narrung. My questions are:

1. Will the Minister indicate whether Transport SA has a program of maintenance upgrading for the ferry network?
2. Will she also indicate any proposals to utilise the two ferries that were located at Berri prior to the opening of the bridge in that town last year?

Members interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: Transport SA owns, on behalf of taxpayers, 13 ferries. The two larger ferries, of which there are five within Transport SA's fleet of ferries, have been put into dry dock for refitting since they were no longer needed for commissioned work from July 1997 when the bridge opened. One of those two ferries that has been dry docked and refitted is now being used for some work at, I think, Swan Reach. Swan Reach and Wellington are the favoured sites for one of the two ferries from Berri. It is proposed that the other be dry docked and used for replacement purposes, mechanical breakdowns with the other ferries, or when the other large ferries must be refitted with mechanical overhaul, and the like, which is required on a five year revolving program.

I think that the cost of the refit of those two Berri ferries was $1.2 million. Traffic counts in recent times have been carried out at Swan Reach, Lyrup, Wellington and Tailem Bend to analyse seasonal factors and demand in areas such as tourism, the grain market and generally heavy business. Those traffic counts suggest either Wellington or Swan Reach as a site for one of those two larger ferries. I reiterate that the maintenance program is a revolving program over a five year period for a complete refit.

GLENELG TRAMCARS

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning a question about the condition of the Glenelg tramcars.

Leave granted.

The Hon. SANDRA KANCK: My office has received information from a former tram driver, Mr Reiman, regarding the dilapidated condition of some of the tramcars in service on the Glenelg line. Mr Reiman detailed a list of maintenance deficiencies, including steps to board and alight the tram not being flush against the door, screws that could be pulled out from panels by hand, speedometers that did not work, broken guard rails and trams running on two motors rather than four. It should be noted that motors are also used as emergency brakes and that smoke has been seen coming from the brakes.

Mr Reiman's concerns were confirmed by a member of my staff who inspected a number of trams at the Victoria Square stop. Mr Reiman also provided video evidence to substantiate his claims. The Passenger Transport Board is required under section 21g of the Passenger Transport Act to

establish, audit and, if necessary, enforce safety service equipment and comfort standards for passenger transport within the State. Section 54 of the Act requires inspections of the vehicles covered by the Act and provides that a vehicle inspector must not issue a certificate of inspection unless satisfied that the vehicle does not have a mechanical defect or inadequacy that may render the vehicle unsafe. My questions to the Minister are:

1. Is she concerned about the safety implications resulting from inadequate maintenance of the Glenelg tramcars?

2. Have certificates of inspection been issued for each of the tramcars currently in service on the Glenelg tramline and, if so, how long ago and how frequently are such certificates issued?

The Hon. DIANA LAIDLAW: I will have to seek advice on the second question in relation to the certificates. In relation to the first question, I challenge that the tramcars have not been adequately maintained. I do not deny that we have a problem in terms of the age of the tramcars, and that is why the Government this year announced, as part of a five year refurbishment program, that work totalling $2.3 million will commence this financial year to refurbish those tramcars. The tramcars are nearly 70 years old. Next year we celebrate the seventieth anniversary of the continuous use of those tramcars.

It is just almost impossible to get replacement parts today. They must be made by hand. It is a very expensive and time consuming process. I indicate that enormous effort is therefore made by those responsible for maintenance for the tramcars at Glengowrie to keep them in operating order, and passenger safety is a key to the way in which TransAdelaide conducts its business overall. Mr Reiman aired these same complaints on the television some weeks ago. He has subsequently written me two or three letters to which I have replied with two or three page letters containing very fine technical detail.

Even before Mr Reiman appeared on television, the manager of the tramcar operation, Mr Jim Sandford, had been to see Mr Reiman, who is a former employee of approximately 30 years ago but he continues to have an active interest in the status of the tram track, and I commend him for that. Mr Jim Sandford saw Mr Reiman before the program was aired on television and he has seen him subsequently. There are ongoing discussions as Mr Reiman lists various things that he would like Mr Sandford and others to address in respect of various tramcars. I think he believes that, with some goodwill, TransAdelaide is addressing these matters. I highlight that safety is paramount to TransAdelaide—we just could not afford not to have that as the focus.

Because these tram cars are old, it is difficult to keep them in peak presentation, but they are safe in terms of their operating capacity. I have been given unqualified undertakings in that regard by TransAdelaide, although they believe there are matters they would like to address and are working through those with both the maintenance crews and Mr Reiman.

CAMPANIA GEMELLAGGIO

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Multicultural and Ethnic Affairs, a question on the gemellaggio (or twinning) between the Campania region of Italy and the State of South Australia.

Leave granted.

The Hon. CARMEL ZOLLO: In October 1996 as a Labor candidate for the Legislative Council ticket, I was pleased to receive an invitation from the Campania Region Federation to an information evening following a visit to Italy by the then Premier of South Australia, the Hon. Dean Brown, who had travelled to the Campania region of Italy accompanied by several of his Liberal colleagues. The trip, at a State level, was to reaffirm the strong relationship that exists between Campania and South Australia and to promote cultural and economic exchanges. It was obvious that a great deal of work and public relations had taken place to make the visit a success, especially on the part of the Consul of Italy to South Australia and his staff.

The establishment of formal friendly relationships between the State of South Australia and the region of Campania occurred on 1 October 1990 in Naples and was signed by the then Premier of South Australia, the Hon. John Bannon, and the Hon. Ferdinando Clemente di San Luca, President of the region. They committed their respective States 'to examine the possibility to promote in the future exchanges in the cultural, artistic, economic, social and touristic fields'. It is no coincidence that there are three politicians born in the Campania region of Italy in this Parliament alone, two from the Labor side of politics and one from the Government side. Migrants from that region make up nearly one third of all Italian born migrants in South Australia. Along with migrants from other regions of Italy, many are also well represented in all walks of life.

At the information evening, I was particularly pleased to hear that cooperation and exchanges had been promised with the University of Naples. My questions to the Minister are: what specific exchanges or other benefits have resulted since the visit, at an official level or any other level, that were initiated or promised by the then Premier's (Hon. Dean Brown) trip to Campania in 1996? What exchanges have occurred with South Australian universities and the university of Naples?

The Hon. K.T. GRIFFIN: I will need to refer that to the honourable the Premier and I will do so and bring back a reply.

COURTS, SENTENCING

The Hon. IAN GILFILLAN: I seek leave to make a brief explanation before asking the Attorney-General a question regarding sentence discounts for guilty pleas in criminal cases.

Leave granted.

The Hon. IAN GILFILLAN: In a recent edition of the Flinders University *Journal of Law Reform*, two eminent academics from Flinders University, Associate Law Professor Kathy Mack and Associate Professor Sharyn Roach Anleu raised doubts about the practice of providing sentence discounts for guilty pleas in criminal matters. This practice has support in the common law, with the South Australian case of Shannon (1979) 21 SASR 442 being the leading one. However, South Australian statute law is silent on the practice. Section 10(g) of the Criminal Law (Sentencing) Act 1988 obliges a judge to 'have regard to' a guilty plea, but does not oblige the judge to offer any discount.

In their paper, Professors Mack and Anleu point out that in South Australia a practice has arisen whereby express discounts are offered, usually around 25 to 33 per cent of the sentence. The earlier the plea, the greater the discount, and this is made explicit to the accused in a status conference.

Professors Mack and Anleu argue that offering a more lenient sentence, especially a discount as large as this, in return for a guilty plea, has several negative effects. As listed by the professors, it—

puts an inappropriate burden on the accused's choice to plead guilty;
creates a penalty for those who plead not guilty but are subsequently unsuccessful at trial;
undermines consistent and proper sentencing principles;
risks inducing a guilty plea from the innocent;
risks double dipping by the accused, because the guilty plea might have been induced by the laying of a less serious charge, and this plea bargaining is often not known by the sentencing judge;
contributes to public perceptions of unwarranted leniency towards criminals;
undermines judicial neutrality and independence; and
does not directly address the problems of time and delay, which is purportedly its justification.

To the extent that this practice does reduce the delay and cost of trials, and the professors say there is no evidence that it does, then it does so partly by sacrificing the court's primary function, that is, determining guilt or innocence. In the light of this research, I ask the Attorney-General:

1. How prevalent is sentence discounting in South Australia?

2. Is it practised by all judges or only some of them?

3. What is the difference in average sentence between a guilty plea and a trial verdict of guilty in comparable criminal cases?

4. Is that difference justifiable? If so, how and on what terms?

5. What measures will the Attorney-General pursue to address the negative consequences of this practice as identified by the two Flinders University professors?

The Hon. K.T. GRIFFIN: There may not in fact be negative consequences, and I do not accept for one moment what may have been promoted by the two university academics might in fact match with reality. I just remember seeing something about the paper that had been prepared by them, but I must confess I am not able to recollect detailed consideration of it. The practice of giving some discount for a plea of guilty has long been a practice within the courts, for a variety of reasons. It is not just a matter that has come to the fore since the enactment of the Criminal Law (Sentencing) Act in 1988. I think I can remember it even from the days when I was an articled clerk, which is a long time ago—let us say it is 35 years or so.

The Hon. T.G. Roberts interjecting:

The Hon. K.T. GRIFFIN: Quills had actually passed. We were just into word processors at that stage.

Members interjecting:

The Hon. K.T. GRIFFIN: I do have a solid philosophical belief that I have had for a long time, and nothing the Labor Party, the Democrats or anybody else has been able to do has been able to shake my belief in Liberal principles. No-one can ever have any doubt about my principles and philosophical basis for the things I seek to do. But back to the question.

Some of the reasons why there may be a sentence discount for a plea of guilty might be in cases involving a sexual offence. It may be that there is a child victim; it may be there is an adult victim; but it may be a recognition of the trauma which might be saved if there is a plea of guilty and the witness is not put into the witness box to be cross-examined. That might be an appropriate consideration for some discount being awarded for a plea of guilty. There might be 101 other reasons why the sentence discount might be applied in circumstances where there is in fact a plea of guilty.

The practice is not one which is outlawed by the Criminal Law (Sentencing) Act. Section 10 of that Act, which deals with the general sentencing powers, provides:

A court in determining sentence for an offence should have regard to such of the following matters as are relevant and known to the court.

It then lists a number of matters, and the last is, 'Any other relevant matter'. So, that does not preclude a discount for a plea of guilty. As the honourable member says, I suppose one might be able to argue some sense of double dipping if the charge to which a plea is entered is something less than the original charge, but there may be a number of reasons for that, and one is that the prosecutor is not satisfied that a conviction on that more serious charge could actually be achieved before a jury.

So, the prosecutors frequently weigh up what is the best prospect for a conviction and what is reasonable in all the circumstances. If a lower charge is acknowledged by the prosecutor as one for which the facts can be established and therefore there can be a plea of guilty accepted, that is not double dipping if in that context there is also a discount for pleading guilty to that lesser charge: it matches the reality.

In South Australia and I think in other parts of Australia also there is not the plea bargaining which occurs in the United States. In the United States plea bargaining occurs frequently because there is a three or four year wait for a matter to get to trial. In the United States of America in some jurisdictions the District Attorney's Office, I think, or the Federal Attorney's Office, will accept a plea of guilty merely to get a conviction, when they would otherwise have to wait four or five years or longer for the matter to come on for trial with all the attendant risks of that prosecution.

That is not the position in South Australia. A trial will come on once there has been a committal within a matter of months. So it is not a matter of trying to free up the system, it is a matter of trying to do the right thing by the law and also to ensure that there are proper and reasonable approaches taken to charges, pleas and sentencing which might follow from the way in which the system is administered in this State. I will have another look at the other issues raised by the honourable member. I do not concede any aspect of the explanation, but they are issues which would warrant a more detailed response if I have not adequately covered the issues in what I have said so far.

The Hon. Ian Gilfillan: Will you get the data requested?

The Hon. K.T. GRIFFIN: If it is possible to get the data, I will. I do not know that that data is kept or, if it is kept, how accessible it is. But if it is readily available I would have no hesitation in bringing it back for the honourable member.

ELECTRICITY, PRIVATISATION

The Hon. NICK XENOPHON: I seek leave to make a brief explanation before asking the Attorney-General, representing the Treasurer, a question about electricity privatisation.

Leave granted.

The Hon. NICK XENOPHON: I refer to the document produced by the so-called Electricity Reform and Sales Unit headed 'South Australia Electricity Privatisation', and in particular page 23 of that document which has a heading 'Retail competition will dramatically change electricity business'. A table on that page headed 'The timetable for change' refers to businesses with a typical annual bill of $16 000 being able to avail themselves of the competitive

retail market from 1 January 2000, but small businesses with a typical annual bill of $1 200 per annum will not have access to that competitive market until 1 January 2003.

I understand that a small business which is part of a franchise chain will be able to access the competitive market three years earlier than, for instance, a stand-alone small business, leaving that small business at a significant commercial disadvantage over competitors that belong to such a chain. My questions are:

1. Can the Treasurer confirm that the proposed arrangements in the document referred to apply equally to a privatised ETSA or to a publicly owned ETSA?

2. Does the timetable for change referred to mean that a small business that is part of a franchise chain will have advantages over a stand-alone small business?

3. If 'Yes' to the second question, will the Treasurer undertake to ensure that under either public or private ownership of our electricity utility small businesses not part of a larger chain or franchise will not be commercially disadvantaged or, alternatively, will have the right to form a cooperative arrangement with other small businesses to purchase their power needs on the same terms as a franchise small business?

The Hon. K.T. GRIFFIN: I will have the questions referred to the Treasurer, and I am sure he will bring back a reply.

ADELAIDE FESTIVAL CENTRE

The Hon. R.R. ROBERTS: My question is to the Minister for the Arts. What is the extent of the contamination of asbestos in the air-conditioning system at the Adelaide Festival Centre? What are you doing with respect to the contamination to ensure public safety? What time frames do you envisage will be required to overcome the problem prior to the twenty-fifth anniversary of the opening of the Festival Centre?

The Hon. DIANA LAIDLAW: We are in the twenty-fifth year of the Festival Centre. Many buildings of that period—25 years and older—do have an asbestos problem. The honourable member would appreciate that the Government has invested heavily—I think $6 million has been pledged—this year for the upgrading program. The range of activities that will be undertaken this financial year as part of the expenditure of that $6 million is currently being prepared by the General Manager, Ms Kate Brennan, for consideration by the board. I will provide Ms Brennan with a copy of the honourable member's questions and bring back a reply.

AGEING

The Hon. T. CROTHERS: I seek leave to make a precied statement prior to directing some questions to the Minister for the Ageing on the subject of impacts on the ageing.

Leave granted.

The Hon. T. CROTHERS: Much has been written of recent note about the percentage increase of our ageing population. An article appearing in the OECD *Observer* of June just gone riveted my attention. This article dealt with the problem of the ageing in Europe and I would like to place on the record some of the matters canvassed, a major one being the pension problem confronting the European Economic Community within the next decade.

The article talks of factors as well as age which contribute to the problem. For instance, it asserts that the acquisition of new skills requires an investment of time and effort and that this acquisition of new skills may well lead to decisions by older workers or their employers not to proceed with such an investment if they are not going to stay long enough in the work force to recoup the costs involved. The article further asserts that in some countries the absolute number of employees is likely to fall.

In dealing with the issue of pensions, the article proclaims that the public pension system currently in force in the OECD countries is, in general terms, funded by the taxes of people in work which pays the pensions of people who have retired, and that there is no fund into which an employee's pension contributions are paid and which could be drawn on when that particular employee retires. The present pension taxation provision restricts the servicing of existing pensions so that, when all things are considered, in a decade or so the cost of further pensions in the European Union will rise faster than ever and the taxpayers for financing pensions will simultaneously shrink further.

In addition, older people use medical resources more intensively than younger citizens. The article then asserts that an ageing population will put additional pressure on public finances since there will be relatively more older people. The public pension problem is thus fiscal in nature, the article asserts, and, unless existing individual pension benefits are reduced and our individual contribution rates are raised, the gap between revenues and expenditure will show up as a gap in public finances and will entail rising public sector deficits, higher taxes, lower expenditure on other items or a combination of all three.

This article concludes by asserting that if the problem is left unchecked Government debts would soar, exceeding 100 per cent of GDP in Europe and Japan and up to 70 per cent in the United States. Currently the position here, in light of the foregoing, is much better, and is so because of the far seeing and far reaching decisions of the ACTU and the then Hawke and Keating Governments. These decisions when taken were opposed tooth and claw by the then Federal Liberal Party Opposition. In light of the foregoing, my question to the Minister is as follows:

1. Does the Minister think that the far reaching national superannuation scheme of arrangement entered into by the ACTU and the Hawke and Keating Governments will have beneficial impacts on Australia and its people when compared with the current parlous plight of Europeans and Japanese in respect of the future of old age pensions in those geographic areas of the world?

The Hon. R.D. LAWSON: I am familiar with the article published in the recent issue of the *OECD Observer* on the impacts on Europe of the ageing population. The article actually addresses ageing from a financial or economic perspective, as one would imagine of that organisation. But there is a tendency to view ageing as having a negative impact upon the community. When one sees the *Advertiser* publish editorials describing South Australia as 'God's waiting room', one realises the extent of negative perceptions about ageing in the community.

It is undoubtedly true that the ageing of our population presents challenges to us all. However, they are challenges that can be overcome. It is worth remembering that in 1901 in our community older people (people over the age of 65) comprised some 4.1 per cent of the total population. That proportion is now 14 per cent and will reach almost 20 per

cent by the year 2021. So, there are challenges, and the costs of an ageing community will need to be met.

One of the effects of an ageing community is that there are greater pressures on the health system, for example; much disability funding is directed to the frail ageing. The cost of providing aged accommodation is also an extensive imposition upon the Commonwealth budget.

However, the honourable member's question relates specifically to the Federal superannuation laws and to the superannuation schemes originally introduced by the Hawke Government and subsequently adjusted and further adapted by the current Howard Coalition Government. They are matters well outside the purview of the South Australian Government. Our dedication is to ensuring appropriate home and community care for those in South Australia; positive programs to assist in the ageing process; and to improve the quality of life and enhance the enjoyment of life and citizenship of our elderly community.

STATUTES AMENDMENT (FINE ENFORCEMENT) BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Correctional Services Act 1982; the Courts Administration Act 1983; the Criminal Injuries Compensation Act 1987; the Criminal Law (Sentencing) Act 1988; the Expiation of Offences Act 1996; the Magistrates Court Act 1991; the Motor Vehicles Act 1959; the Summary Procedure Act 1921; and for other purposes. Read a first time.

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

That this Bill be now read a second time.

Fine and expiation enforcement is always difficult and always a matter of public controversy. Extensive and complex governmental systems are inevitably required when the desired result is to get the public to pay money to the State against the will of any one of those people, even when it is a punishment imposed as a result of the commission of a criminal offence.

It is natural for some individuals to avoid payment and their legal obligations deliberately. In some cases, people will acknowledge their obligations but ignore any action required to meet those obligations. On the other hand, it is absolutely necessary to ensure that the punishment imposed by the law is not visited harshly or unjustly upon those who, for a variety of reasons, are in social or personal difficulties and who, despite their best efforts, are simply unable to comply with their obligations to society.

In short, it is not an easy matter to devise legal and administrative practices which effectively deal with those who avoid their obligations and yet dispense justice to those who wish to meet their obligations but are incapable of doing so for one reason or another.

The fine and/or expiation notice is a principal feature of our criminal justice system. It is by far the most common punishment for breaking the criminal law. Any weakness in its imposition and enforcement is a fundamental weakness in our system of criminal justice. It is lamentably uncommon for people and agencies to pay sufficient attention to the central nature of the fine and the correctional purpose that it is supposed to serve. The fine is imposed as an alternative to imprisonment or a non-custodial supervisory sentence.

Custodial and supervisory sentences are both costly to the State and, more importantly, intrusive on the individual. They form a continuum of criminal punishment, and imprisonment is the punishment of last resort. On the other hand, a fine may in ideal circumstances be readily adjusted to the circumstances of the individual and the gravity of the offence, but it is a very blunt instrument all the same.

Even if it can be adjusted, the sheer volume of criminal work passing through the Magistrates Courts makes sensitive adjustment of the fine a practical impossibility, and there can be no doubt that, while a fine may be seen as a measure imposing deterrence upon an offender, its imposition and execution may in some circumstances impose more hardship upon others, such as the offender's dependants, than on the offender himself or herself. There are, in addition, inherent contradictions in the utility, effectiveness and justice of the imposition of the fine as a criminal sanction. The Mitchell committee said:

> . . . the basic difficulty with the fine as a correctional measure. . . [is] that its proper function within the scope of its inherent limitations has not been satisfactorily identified. In itself, it can hardly be regarded as reformative, although it may indirectly produce that result. If it does, it must be because it operates by way of deterrence consequent upon retribution. . . [However] any thought of basing the fine on simple deterrence, whether special or general, suffers from the weakness that although deterrence by sentence is widely believed to be effective. . . very little is actually known about it. The fine shares with imprisonment, for which it is in general intended as a substitute, the characteristic of being a sentence imposed in default of a better alternative.

That is the first report, 1973, paragraph 6.2.

Some of the basic concerns about the penal effectiveness of a fine relate to the assessment of the ability of the offender to pay. The Australian Law Reform Commission has said:

> The practical difficulties involved in the courts having to determine accurately an offender's ability to pay are too great. Not only would the time involved be excessive, especially in magistrates' courts, but possibly the only method of obtaining the necessary data with complete accuracy would involve access to the offender's taxation records. This would raise privacy problems. The existence of artificial taxation schemes might lead to white collar offenders being able to conceal their financial position from the courts.

That is in the ALRC 44, 1988, at paragraph 114. Yet all would think that assessment of means to pay is essential to the efficacy and justice of a fine, and the Criminal Law (Sentencing) Act now contains a principle of sentencing which rightly says so. Section 13(1) of the Act states:

> The court must not make an order requiring a defendant to pay a pecuniary sum if the court is satisfied that the means of the defendant, so far as they are known to the court, are such that:
> (a) the defendant would be unable to comply with the order; or
> (b) compliance with the order would unduly prejudice the welfare of dependants of the defendant,
> (and in such a case the court may, if it thinks fit, order the payment of a lesser amount).

Equally, though, in a statutory acknowledgment of the same difficulties pointed out by the Australian Law Reform Commission, section 13(2) states:

> The court is not obliged to inform itself as to the defendant's means, but it should consider any evidence on the subject that the defendant or the prosecutor has placed before it.

I now refer to problems with the current system. The current system of fine enforcement can be described as a criminal enforcement model, and has been fundamentally the same for very many years, although there have been numerous and frequent adjustments to components, sometimes major

components, of the system. The fine as a sanction is very common, but the basis for its imposition is not widely understood. This ambivalence is a vital component of the effectiveness of its enforcement. That effectiveness is in this State not high. A fine is commonly perceived not as a criminal punishment but as a bill which it is optional to pay. In relation to some offences, it is seen as an imposition to be resisted and certainly not as the punishment for the commission of a criminal or statutory offence.

The key point is that it may not be seen as a true criminal punishment, which is meant to be a punishment, and not just a way of paying for the service of escaping an inconvenient, perhaps very inconvenient, intrusion into normal life.

The results of this problem, or sequence of problems, are plain. We have, and have had for some time, a serious fine enforcement problem in this State. The problems may be defined as follows:

1. The fine payment rates achieved are poor by comparison with those in other jurisdictions. They are also poor when considered in relation to the idea that they are punishment for the commission of a criminal or statutory offence. In South Australia, 72 per cent of people pay infringement notices and 51 per cent pay their court fines without the need for enforcement procedures to be taken. In Western Australia and New Zealand, rates in excess of 90 per cent are achieved.

2. Imprisonment is the primary sanction for default. This is an outdated and inappropriate sanction. For many defaulters it is not seen as a deterrent and they are prepared to erase the debt of unpaid fines by going to prison rather than paying. The consequences are that fines are not collected, people are imprisoned, not for a serious crime but for what is essentially a debt and the State is required to maintain expensive custodial services. A relatively recent experiment with a separate prison for fine defaulters was not a success and has been discontinued.

3. Community service is available as an alternative to payment on the basis of a bureaucratic judgment about hardship. There is a public perception that these methods are soft in allowing defaulters to too easily claim hardship and thereby frustrate the system by converting fines to community service and by rendering warrants void. Intervention at the warrant stage of the process seriously undermines police and community confidence in the system and provides a loophole which is exploited by regular defaulters.

4. As with imprisonment, for many community service is seen not as a deterrent but as an attractive way of erasing the debt of unpaid fines. It is accessed by some defaulters who can pay but choose not to and is not meeting its intended objective by being restricted to providing relief for those who genuinely cannot pay. Community service programs are expensive to administer.

5. The current system of enforcement is not as effective as it might be. This is not the fault of any one governmental agency. It is a system fault, and it may be capable of correction. Three major current problems of this kind are:

· courts currently perform the fine enforcement process inefficiently because the system is dependent on resources in agencies over which they have no control. In addition, they have no overall vision of what the fine sanction should mean and the justice system context in which an application for relief from enforcement should be viewed. The result is inconsistent and imprecise decision making;
· Police are responsible for executing enforcement warrants issued by the courts. This is not regarded as core business for police and is an inefficient use of trained expert resources. When police have tried to concentrate on enforcement of fine warrants, the process has cost far more than it gained.
· The Department of Transport was supposed to give effect to the will of Parliament and produce a system by which the registration of an offender's motor vehicle could be suspended on conviction and unpaid fine for a vehicle related offence. It apparently could not be done without major expenditure of resources, so it has not been done. The system would not allow for it in that form.

In summary, there is no coordinated approach to the overall management of the system and the participating agencies are not necessarily concerned with the outcomes sought by the judgment of the court. The three agencies, Courts Administration Authority, SA Police and the Department for Correctional Services operate independently and consequently the system suffers because of a lack of ownership. None of these problems are easily curable, nor is there any perfect cure, because the sanction is not well defined. It is the principal sanction of a stressed criminal justice system and it applies to offences which, to be frank, the public tend to regard as not really criminal offences at all but rather some kind of infraction which will, if studiously ignored, go away.

None of this is new and none of this is attributable to either the present or past Governments. It is common across States and Territories, across Government and across nationalities. Other jurisdictions in Australia have recognised these problems and take steps to address them. The question is whether we can learn from these measures and whether something can be done to improve the situation in this State.

I seek leave to have the remainder of the second reading report and the detailed explanation of the clauses inserted in *Hansard* without my reading them.

Leave granted.

Expiation Notices

Expiation notices are not the same as fines. An expiation notice is not a notice that the recipient must pay the sum on the notice. It is not a criminal sanction. It is not an on the spot fine for it is not a fine at all. It is a notice that an official is going to make an allegation that the recipient has committed a criminal offence and that, in the interests of expediting justice, if the recipient wants to plead guilty to that allegation, he or she can do so by the payment of a very rough minor version of the fine that would otherwise have been applied. The recipient of an expiation notice has not been found guilty of any offence and can, if he or she so chooses, opt to go to court. The expiation notice is not a new invention—in fact, South Australia was the first to use the idea in 1938—and it is now very common all over Australia.

The effectiveness and justice of expiation notices is often questioned. This Government has not been quiescent in the face of that concern. If anything, the law about expiation notices was less satisfactory when this Government came to government than the law on fines. In 1996-1997, the expiation of offences system was thoroughly overhauled. This reform was contained in the expiation legislative package. The expiation of offences package came into operation on February 3, 1997. It consisted of the *Expiation of Offences Act*, 1996, the *Statutes Amendment and Repeal (Common Expiation Scheme) Act,* 1996, the *Summary Procedure (Time For Making Complaint) Amendment Act*, 1996, the *Expiation of Offences Regulations* 1996 and the *Regulations Variation (Common Expiation Scheme) Regulations,* 1996. The package provided a comprehensive and unified system for all expiable offences whether they be issued by State or local government authorities. It is not proposed to make more than minor amendments to this scheme, but some amendments will be necessary as the fines enforcement system and the expiation fee enforcement system are interlocking to some extent.

Review Of The System

The legislative part of the fine enforcement system is contained in the *Criminal Law (Sentencing) Act 1988*. This part of the Act has not been reviewed thoroughly since 1988 and has been the subject of piecemeal amendment from time to time in the intervening years.

In general terms, it takes a traditional form which was the standard method of operating in 1988. The court is given the power to impose fines, with imprisonment the standard default, and the court is given the power to mitigate a fine in cases of hardship to be served by a term of community service instead at a standard cut out rate. Powers to suspend a driving licence and to suspend vehicular registration, both in the case of vehicular offences, were subsequently added. There is also a power to seize and sell land or goods in default of a fine, which power has been in the Act since its enactment and in its predecessor before that, but the power is not used in practice against individuals. It is sometimes used against companies. It must be recognised that, aside from legislation, the *administration* of any fine or expiation fee system is of critical importance.

In June 1997, the Attorney-General's Department and the Courts Administration Authority (CAA) agreed to a collaborative project designed to review the expiation and fines enforcement system. A senior officer from the CAA was seconded to the Attorney-General's Department to develop a modern fine enforcement system for report to the Justice Chief Executives Group. This Bill is the outcome of that work.

The fine enforcement system necessarily involves many agencies of government as well as local government. These agencies and local government have a considerable stake in what happens to the system. It was therefore necessary to establish an inter-agency project team with a brief to consider the fine and expiation enforcement system across government agencies. That team met on a large number of occasions and worked intensively on the reform proposals. It consisted of representatives of the Attorney-General's Department, the Courts Administration Authority, the Correctional Services Department, the Department of Treasury and Finance, the Police Department, the Department of State Aboriginal Affairs (plus a representative of the Aboriginal Legal Rights Movement), the Department of Family and Community Services, the Department of Transport and Urban Development and the Local Government Association.

The Proposed Reforms

The contemplated reforms consist of administrative changes and legislative changes. It is a scheme based on models currently in force in Western Australia and New Zealand and accepted for implementation in New South Wales and Queensland. In general terms, the essence of the scheme is to discard what has been described as the criminal enforcement method of fine enforcement and instead to align the fine enforcement process more closely—indeed very closely—with that used in the collection of civil debts. A very general description of the proposal follows.

Collection and enforcement of fines and expiation fees will become a major function of the Courts Administration Authority. This will be achieved by establishing a dedicated unit known as the Penalty Management Unit, with a Manager of statutory rank. The Unit will have a singular and specific focus on the collection of fines. It will manage the complete collection process and will be responsible for its outcomes. The functions of the PMU will include the facilitation of payment by people by various means, the reference of those who are unable to pay to the Magistrates Court (or Youth Court) for alternative sentence, the pursuit of offenders who fail to keep agreements to pay, and the tracing of offenders who have debts outstanding. The Unit will develop appropriate business rules and methods of operation designed to balance with sensitivity the obligation to pay the debt to society imposed by order of the court with the personal plight that such an obligation may cause in any individual case. Particular attention will be paid to the special needs of people who live and work outside the metropolitan area, particularly in relation to suspension of the licence to drive.

The proposed system is founded on a philosophy of securing payment early in the process with a number of techniques involving personal, written and telephonic communication with the debtor. The emphasis will be on payment—that is, the primary sanction, and the enforcement of the order of the court. But, in addition, there will be adequate options available for those who are genuinely unable to pay at once and on time. They will be identified through a process of examination and means assessment conducted by expert staff from the Penalty Management Unit. The usual options will be payment by instalments and extension of time to pay. These agreements will be formalised in a written arrangement with the Unit. People will be encouraged to meet their obligations early or to contact the collection unit who will facilitate access to a range of payment options or alternative sentence options for those who can not pay.

To that end, both fines and expiation notices will become payable 28 days after they have been incurred or imposed. Whether or not extended time to pay is granted will cease to be a function of the sentencing court and will instead reside with the Penalty Management Unit. Therefore, a person sentenced to a fine will automatically have 28 days to either pay or make an alternative arrangement with the Unit. This represents a substantial change to the current expiation and fine system. The reason for this measure is simple. People who can pay will delay until the last minute. This is avoidance. People who cannot pay within the time allocated can and should contact the Penalty Management Unit and say so. Then sensible and sensitive arrangements can be made for the satisfaction of their legal obligation. The idea of the new system is that those who can pay their legal obligation, by whatever means, should be given every opportunity to do so—but that those who will not or who do not want to take the step to acknowledge their responsibility should be given strong encouragement, or indeed inducement, to do so.

The new system being oriented to capacity to pay will be complemented by the provision of a variety of commercially proven payment methods. They will include:

- payment by credit card by post, by telephone and at Penalty Management Unit offices;
- EFTPOS facilities (no cash withdrawals);
- Voluntary periodic deductions from bank and credit union accounts; and
- Voluntary deductions from wages.

The Bill provides a menu of measures designed to obtain the attention of the reluctant, inattentive or recalcitrant debtor. These include the ultimate sanctions of driver disqualification by licence suspension (even for non-vehicular offences), cessation of the ability to do business with the Registrar of Motor Vehicles, registration of a charge on land owned by the debtor, (but without power of sale) and power to issue a summons for an investigation of the means of a debtor and power to arrest if the summons is not obeyed. It must be emphasised that the first two measures, being measures designed to attract the attention of the debtor, will cease once the debtor has reached a written agreement with the Unit as to payment and every effort will be made to avoid these consequences if the debtor genuinely co-operates.

The current standard imprisonment for default will be abolished entirely in favour of alternative enforcement orders, being driver disqualification by licence suspension (even for non-vehicular offences), cessation of the ability to do business with the Registrar of Motor Vehicles, warrants authorising the seizure and sale of property and garnishee orders. Only a Registrar may make a garnishee order, which, in effect, attaches money owing or due to the debtor from a third person or money held on behalf of the debtor by a third person, notably, for example, a bank account. It should be noted in this connection that Commonwealth law prevents a garnishee operating on social security or other Commonwealth benefits and so these are not placed at risk by this power.

These measures are all designed to extract payment from those who, for various reasons, could satisfy the debt—and their legal obligation—but choose to try not to do so or to make it as hard as possible for the system to function.

However, there will, of course, be some, perhaps not a few, who simply cannot pay, or cannot pay anything like a substantial amount of their obligation. In that case, logic and justice says that the fine was and remains the incorrect sanction for their wrong-doing. The objective of the fine as a sanction for a criminal offence cannot and will not be met. In such a case, logic and justice says that the person should go back to court and have the whole matter reconsidered. And that, in essence, is what the new system will provide. The Penalty Management Unit will have the power in such cases to refer the matter to the Magistrates Court (or Youth Court) for reconsideration of sentence, irrespective of whether the fine was imposed by a superior court. In essence, the Court can then confirm the pecuniary penalty, remit it in whole or in part, or revoke it and order community service, driving disqualification, or cancellation of drivers licence plus disqualification.

It follows that the ability to substitute a pecuniary penalty with community service will be restricted to those who cannot satisfy a warrant for the seizure and sale of land or goods or a garnishee order and who have been assessed upon investigation of means as being unable to pay—in short, to those for whom the monetary sanction is wholly inappropriate. In addition, special provision will be made for young offenders to "work off" their monetary obligations by community service, on the basis that young people are much more likely to have little or no income on which to draw to satisfy a fine. In that respect, however, the proposals make different provision between fines imposed upon young offenders which arise out of the

use of a motor vehicle, in which case they will be treated in the same way as an adult driver, and other cases, in which the special provisions will apply.

A strict test applies in relation to the remission of any part of a pecuniary sum which consists in whole or in part of a levy imposed under the *Criminal Injuries Compensation Act*. The Government's commitment to the levy, and its imposition, can be seen clearly in the reordering of the priorities in which payments are to be applied. The reforms contained in the Bill make it clear that where a pecuniary sum is paid by an offender, the payments are to be applied first to the satisfaction of the criminal injuries compensation levy, then to any order of compensation or restitution to the victim, then to the payment of costs, then to the complainant and lastly to General Revenue.

Police will no longer have the responsibility for executing default warrants. A consequence of the changes noted above will be that the principal warrants will be warrants for enforcement by seizure and sale of land or goods handled by the Penalty Management Unit and its staff, with police support only if there are reasonable grounds to apprehend a threat to public order. This shows a major aspect of the explicit shift from criminal enforcement to civil enforcement.

Aboriginal Justice Officers will be appointed by the Courts Administration Authority in order to ensure that the fine and expiation fee collection system will be and will continue to be effectively communicated to the Aboriginal community, particularly those who live in remote areas, and that the system will be responsive to their needs.

There will be an extensive public education campaign on the changes and consequences of the new system which is particularly aimed at changing public attitudes to payment, and performance of civic obligations.

Conclusion

This is a major effort at reform of the fine and expiation notice enforcement system designed not only to bring South Australia into line with changes that have proven successful elsewhere, but also to try to bring some stability and order into a system which is fundamental to the criminal justice system and which has, for many years, shown signs of being in serious trouble. There are no quick fixes in this, however. The legislation is a radical reform but, even so, it is mainly facilitative. Much depends on the commitment of those who will be charged with making the structure work and much will also depend upon changes in the culture of our community. Many who call stridently to get tough on crime fail to see that getting tough on the majority of crime that occurs in our society is about the enforcement of fines and expiation notices which make up the bulk of law enforcement effort in this society, and in Australia generally, and have done so for very many years. For too long it has been the case that traffic offences and fishing offences and minor thefts are seen by many as just little things punished only by a fine or an expiation notice after all—just a nuisance really and not to be taken seriously. On the other hand, there are many who do take them seriously and meet their obligations. This Government also takes these matters seriously. The red light running driver who incurs a fine has committed a criminal offence and will be punished—and will pay his or her debt to society. This legislation is about trying to ensure that he or she cannot run away from a debt to society, but it is also about ensuring that where people genuinely cannot pay, there will be a system in place which properly deals with such inability.

I want to conclude with two strong commitments. The first relates to the fact that this legislation has not been the subject of wide public consultation although, as is clear from my remarks so far, it has been the subject of thorough and widespread consultation within Government. The Government therefore presents this Bill as the result of careful and thorough review within Government. I will therefore welcome public comment on the scheme and the legislative proposals and encourage those individuals and organisations concerned with it to make comments and representations, preferably in writing, to my office. I should say, however, that this does not mean that my office will conduct an investigation or re-investigation, as the case may be, of individual or particular cases, however contentious they may seem to those concerned. Rather, the Government is interested in and encourages constructive comment on what is after all, a very hard balance between the obligation of a person who commits an offence to pay his or her debt to society and the hardship that this may cause some people. Any comment should be made quickly because the Government wishes to have this Bill passed through the Parliament by the end of this session.

The second commitment is that I undertake to review the operation of the whole scheme 12 months after it has come into full operation. I understand that there is a certain nervousness when Government makes what I admit to be radical changes to a legal process which has the capacity to profoundly affect people's finances and their legal liabilities. I can assure Honourable Members and the community generally not only that the new scheme proposed has undergone a thorough scrutiny but also that it is based upon legislative and administrative schemes that have been implemented elsewhere with reported success. But I appreciate that what might suit the needs of one community may not suit another—and so, as I say, I commit the Government to a thorough review of the system as implemented 12 months after it has been in operation. The results of that review will be made public.

I commend the Bill to the House.

Explanation of Clauses

PART 1 PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

Clause 3: Interpretation

These clauses are formal.

PART 2 AMENDMENT OF CORRECTIONAL SERVICES ACT 1982

Clause 4: Amendment of s. 4—Interpretation

Clause 5: Amendment of s. 27—Leave of absence from prison

Clause 6: Amendment of s. 31—Prisoner allowances and other money

These amendments to the *Correctional Services Act 1982* provide for the collection of CIC levies from prisoners out of their earnings (whether by way of prison allowances or through employment outside the prison). The amount to be so collected will be determined in accordance with the Minister's directions. An exception is given for a prisoner who is currently in prison solely for the purpose of "serving off" an unpaid CIC levy—it would be a form of double jeopardy if money were also to be collected from such a prisoner in reduction of the same levy. This exception is of a transitional nature since under the new scheme warrants of commitment will not be issued for enforcement of pecuniary sums.

PART 3 AMENDMENT OF COURTS ADMINISTRATION ACT 1993

Clause 7: Amendment of s. 10—Responsibilities of the Council

This clause expands the responsibilities of the State Courts Administration Council to include provision of resources for administrative functions of courts and their staff. This will enable the Council to provide for a penalty enforcement unit.

Clause 8: Amendment of s. 21A—Non-judicial court staff

The Manager, Penalty Management is added to the list of non-judicial court staff of the Courts Administration Authority. The Manager is appointed under a new provision to be inserted in the *Magistrates Court Act 1991. (see Part 7)*

PART 4 AMENDMENT OF CRIMINAL INJURIES COMPENSATION ACT 1978

Clause 9: Amendment of s. 4—Interpretation

Clause 10: Amendment of s. 13—Imposition of levy

These clauses amend the *Criminal Injuries Compensation Act 1978*. References to "juvenile offender" are replaced with references to "youth" in line with other legislation.

Section 13(6) is altered in two respects. A requirement is inserted that the amount of a CIC levy is to be shown on a warrant of commitment issued for a sentence of imprisonment. The current prohibition against reducing the levy or exonerating a defendant from liability for a levy is restricted to a prohibition applying at the time of convicting or sentencing the defendant for an offence. (The new scheme set out in the *Criminal Law (Sentencing) Act* for enforcement of pecuniary sums provides for the remission of CIC levies by the Magistrates Court (or Youth Court of other officers) if they are satisfied that the offender does not have, and is not likely within a reasonable time to have, the means to satisfy the sum without the debtor or his or her dependants suffering hardship).

Section 13(7) is struck out as the obligation to collect CIC levies from prisoners is now to be placed in the *Correctional Services Act* (*see Part 2*).

PART 5 AMENDMENT OF CRIMINAL LAW (SENTENCING) ACT 1988

Clause 11: Amendment of s. 3—Interpretation

The amendments to the interpretation provision are consequential to the proposed scheme:

- a definition of "the Administrator" is inserted as the State Courts Administrator is to appoint authorised officers for the purposes of penalty enforcement under the new scheme;

- a definition of "authorised officer" takes the place of the current definition of appropriate officer (the term is expanded to cover the Manager, Penalty Management and the persons appointed by the Administrator);
- a definition of "CIC levy" is inserted for consistency and ease of reference;
- the current definition of "goods" extending that term to include money is deleted (the reference is unnecessary under the new scheme);
- a definition of "the Manager" is inserted (the Manager, Penalty Management is to administer the new scheme);
- the amendment to the definition of "a pecuniary sum" is consequential to the insertion of the definition of CIC levy (the current definition is particularly relevant under the new scheme: it means a fine; compensation; costs; a sum payable pursuant to a bond or to a guarantee ancillary to a bond; or any other amount payable pursuant to an order or direction of a court; and includes a CIC levy);
- the definition of "prescribed unit" is deleted because imprisonment and community service are not available under the new scheme for working off an unpaid pecuniary sum (except that youths may undertake community service if they are unable to pay a pecuniary sum).

Clause 12: Amendment of s. 13—Order for payment of pecuniary sum not to be made in certain circumstances

Clause 13: Insertion of s. 14A—Court not to fix time for payment of pecuniary sums

Clause 14: Repeal of s. 33

Clause 15: Repeal of s. 35

Clause 18: Amendment of s. 53—Compensation

Clause 19: Repeal of s. 54

Clause 20: Repeal of Part 8

Clause 22: Amendment of s. 58—Orders that court may make on breach of bond

Clause 23: Repeal of s. 59

The effect of new section 14A is that the time and manner of payment of a pecuniary sum is to be determined under new Part 9 Division 3 (Enforcement of Pecuniary Sums) and not by individual courts at the time of making an order requiring a defendant to pay a pecuniary sum.

However, under current section 13 (which remains) a court must not make an order requiring the defendant to pay a pecuniary sum if the court is satisfied that the means of the defendant, so far as they are known to the court, are such that the defendant would be unable to comply with the order or compliance with the order would unduly prejudice the welfare of dependants of the defendant (and in such a case the court may, if it thinks fit, order the payment of a lesser amount).

This section is amended to provide that, in considering whether the defendant would be able to comply with the order, the court should have regard to the fact that (under the new scheme) defendants may enter into arrangements for an extension of time to pay pecuniary sums or for payment by instalments.

Current section 14 also remains. That section provides that a court must give preference to compensation if it considers that compensation and a fine or other pecuniary sum should be imposed but the defendant has insufficient means to pay both.

Other references in the Act to a court varying the time or manner of payment or to consideration of the defendant's means are consequently removed.

Clause 16: Amendment of s. 47—Special provisions relating to community service

This amendment reduces the minimum number of hours for which community service may be imposed on adults from 40 hours to 16 hours.

Clause 17: Amendment of s. 50A—Variation of community service order

Section 50A currently contemplates that a person sentenced to community service, the Minister for Correctional Services or an appropriate officer may apply to the court for variation of a community service order. The amendment removes the role of appropriate officers.

Clause 21: Insertion of s. 56A—Appointment of authorised officers

New section 56A provides for the State Courts Administrator to appoint staff of the State Courts Administration Council as authorised officers. The appointment may be conditional. (Authorised officers are given various powers under the new Part 9 Division 3).

Clause 24: Substitution of Division 3 of Part 9

Part 9 deals with enforcement of sentence and Division 3 with enforcement of pecuniary sums. The Division is substituted and sets out the details of the new scheme.

SUBDIVISION 1—PRELIMINARY

60. Interpretation

New section 60 contains definitions necessary for the Division. The definitions of the Court and the Registrar reflect the fact that the Division will apply in respect of both youths and adults who default in paying a pecuniary sum. Any proceedings under the new Division against youths will be dealt with in the Youth Court system.

The term "debtor" is used for the person liable to pay the pecuniary sum.

61. Pecuniary sum is payable within 28 days

New section 61 provides that all pecuniary sums imposed by order of a court are payable within 28 days. This will include enforcement orders flowing from failure to pay an expiation fee.

62. Payment of pecuniary sum to the Manager

New section 62 requires payment of all pecuniary sums (including compensation) to the Manager or an agent appointed by the Manager for the purpose.

The section sets out how any amount received by the Manager is to be applied. The order of application is as follows:

- CIC levies;
- court ordered compensation or restitution;
- costs to a party;
- other money payable by order of the court to the complainant;
- as directed by a special Act (if any);
- to Treasury.

The new section takes the place of Part 4 Division 5A of the *Summary Procedure Act 1921* and current section 59A of the *Criminal Law (Sentencing) Act 1988.*

63. Payment by credit card, etc.

Payment of pecuniary sums by credit card, charge card or debit card is contemplated.

64. Arrangements may be made as to manner and time of payment

New section 64 provides for extension of time to pay or payment by instalments, according to an arrangement entered into between a debtor and an authorised officer. An arrangement may also allow for direct debit or make other provisions about the manner and time of payment of a pecuniary sum.

Authorised officers are directed to prefer arrangements for instalments of reasonable amounts over an extension of time to pay if the debtor is able to pay without the debtor or his or her dependants suffering hardship.

An arrangement is terminated if the debtor fails to comply with it and the failure endures for 14 days. A penalty enforcement order could then be imposed, although it would also be possible for a further arrangement to be agreed.

65. Reminder notice

If no arrangement about payment is entered into, a reminder notice must be sent to the debtor allowing the debtor a further 14 days to pay. A reminder fee will be added to the pecuniary sum.

66. Investigation of debtor's financial position

New section 66 provides an authorised officer with power to issue a summons to the debtor (or to any other person who may be able to assist with an investigation of the debtor's ability to pay) to appear for examination before an authorised officer or to produce relevant documents.

An investigation of the defendant's ability to pay is required before a garnishee order can be made or before the matter can be remitted to court for further consideration. In other circumstances the holding of a formal investigation under this section is discretionary.

The new section provides an authorised officer with the ability to issue a warrant for the arrest of a person who fails to appear in response to a summons. On arrest by an authorised officer the investigation must proceed as soon as practicable and the authorised officer must, in the meantime, cause the person to be kept in safe custody if necessary.

67. Publication of names of debtors who cannot be found

New section 67 provides authorised officers with a tool for attempting to locate a debtor—a notice may be published in a newspaper circulating generally throughout the State and, if the authorised officer thinks fit, other newspapers, seeking information as to the debtor's whereabouts.

However, such a notice cannot relate to a debtor who was a youth at the time of the relevant offence or to a debtor in relation to whom a suppression order forbidding publication of the debtor's name is in force.

Such a notice is limited in contents to the debtor's actual name and any assumed name, last known and recent addresses and date of birth.

68. Charge on land

New section 68 provides authorised officers with a mechanism for securing payment of a pecuniary sum by registering a charge on land in appropriate cases. The charge does not give rise to a power of sale.

SUBDIVISION 2—PROCEDURAL MATTERS

69. Time at which enforcement action can be taken

Under new section 69 an authorised officer may make such penalty enforcement order or orders in relation to a debtor as appear likely to result in full or substantial satisfaction of the due amount if the amount remains outstanding after the reminder notice period and no arrangement for payment is in force.

The following are penalty enforcement orders that may be imposed:

- an order suspending a debtor's driver's licence for a period of 60 days;
- an order restricting a debtor from transacting any business with the Registrar of Motor Vehicles;
- an order for sale of the debtor's land or personal property to satisfy a pecuniary sum (such an order cannot be made against a youth unless the offence in question was an expiable offence arising out of the driving or parking of a motor vehicle by the youth when the youth was of or over 16 years of age);
- in the case of a youth who does not, in the opinion of the authorised officer, have, and is not likely within a reasonable time to have, the means to satisfy a pecuniary sum without the youth or his or her dependants suffering hardship—a community service order;
- a garnishee order (such an order can only be made by an authorised officer who is a Registrar). Garnishee orders cannot be made against youths except where the offence is an expiable vehicle related offence committed when 16 or more years old.

New section 69 includes statements about the priority that should be given to the different types of orders. In the first instance, priority is to be given to an order for suspension of a driver's licence or for a restriction on transacting business with the Registrar of Motor Vehicles. Priority is to be given to an order for sale of property over a garnishee order.

In addition, the section provides that an order for sale of property, a garnishee order or community service order cannot be made while a penalty enforcement order for suspension of the debtor's driver's licence is in force.

70. Aggregation of pecuniary sums for the purposes of enforcement

This section allows for aggregation of any number of pecuniary sums owed by a debtor for the purposes of enforcement.

70A. Penalty enforcement orders may be made in absence of debtor

This section allows a penalty enforcement order to be made in the absence of, and without prior notice, to the debtor.

70B. Authorised officer may be assisted by others in certain circumstances

This section contemplates an authorised person being assisted by others, including police officers, in the exercise of certain functions.

70C. Cost of penalty enforcement orders

This section provides that fees fixed by regulation in connection with a penalty enforcement order are to be added to and form part of the amount in respect of which the order was made. Consequently, the fees are enforceable in the same manner as the original sum.

70D. Cancellation of penalty enforcement orders

This section requires a penalty enforcement order to be cancelled if—

- the debtor enters into an arrangement for payment;
- the pecuniary sum is paid in full; or
- the debtor's case is remitted to Court (see Subdivision 4).

It also contemplates cancellation in such other circumstances as an authorised officer considers just.

SUBDIVISION 3—PENALTY ENFORCEMENT ORDERS

70E. Suspension of driver's licence

This section authorises a penalty enforcement order suspending a debtor's driver's licence for a period of 60 days.

The order can only be made if the debtor is not currently disqualified from holding or obtaining a licence for a period that still has 60 days or more to run. If there is less than 60 days to run in a current disqualification, an order can be made topping up the period to 60 days.

A copy of the order must be served on the debtor personally or by post and is to take effect 14 days from the day of service.

The new section contains a special penalty regime for the offence of driving while a licence is suspended by a penalty enforcement order. Under the *Motor Vehicles Act 1959* the maximum penalty for driving while disqualified is 2 years imprisonment. Under the new scheme the penalty is a maximum fine of $2 500 or disqualification from holding or obtaining a driver's licence for a period not exceeding 6 months or cancellation of driver's licence and such a disqualification. As a result of consequential amendments to the *Motor Vehicles Act 1959*, cancellation as a penalty means that when the person obtains a driver's licence again it will be on probationary conditions.

The new section also provides an evidentiary aid in connection with prosecution of such an offence—an allegation in a complaint that the order was served personally or posted on a specified day is, in the absence of proof to the contrary, proof of the facts so alleged.

70F. Restriction on transacting business with the Registrar of Motor Vehicles

This section authorises a penalty enforcement order restricting a debtor from transacting any business with the Registrar of Motor Vehicles.

A copy of the order is to be served on the debtor personally or by post. The order takes effect on service and continues until cancelled.

If such an order is made, the only applications made by or on behalf of the debtor that the Registrar of Motor Vehicles will process are applications to transfer registration of a motor vehicle of which the debtor is a registered owner or to renew registration of a vehicle of which the debtor is a joint registered owner. Applications such as issue or renewal of a driver's licence or new registrations will not be processed.

70G. Seizure and sale of land or personal property

This section authorises a penalty enforcement order for sale of the debtor's land or personal property to satisfy a pecuniary sum. However, personal property that could not be taken in proceedings against the debtor under the laws of bankruptcy (as modified by regulations) and land that constitutes the debtor's principal place of residence cannot be sold. In addition, land can only be sold if the amount owed exceeds $10 000.

The order carries with it power to enter land, seize and retain property and sell property as set out in subsection (2). The sale cannot proceed until 14 days have elapsed (see subsection (10)) and must, in the first instance, be by public auction (see subsection (14)).

The section allows an authorised officer to exercise powers under an order for sale in the absence of, and without prior notice to, the debtor. If property is seized, a copy of the order for sale and a notice listing the property seized must be given to the debtor or to a person over 16 apparently in charge of the premises or left in a conspicuous place on the land or premises.

The section contemplates that property seized for sale may be left in the debtor's possession in appropriate cases and provides offences related to dealing or interfering with such property contrary to the order.

A debtor or any other person may give a written notice to the Manager alleging that seized property is not liable to seizure and sale under the section. In that event, the sale cannot proceed until the matter has been determined by the Court on application of an authorised officer.

70H. Garnishee order

This section authorises the Registrar to make a garnishee order against a debtor, *i.e.*, that money owing or accruing to a debtor from a third person, or money of the debtor in a bank account or otherwise in the hands of a third person, be attached to satisfy the pecuniary sum.

A garnishee order can only be made if there has been a formal investigation into the financial means of the debtor and the Registrar is satisfied that execution of the order will not cause the debtor or the debtor's dependants to suffer hardship.

A copy of the order is to be served personally or by post on the debtor and the garnishee.

The section makes it an offence for an employer to treat an employee adversely because of a garnishee order.

SUBDIVISION 4—RECONSIDERATION BY COURT WHERE DEBTOR HAS NO MEANS TO PAY

70I. Court may remit or reduce pecuniary sum or make substituted orders

The Magistrate's Court (or Youth Court in the case of a debtor who is a youth) may reconsider a matter under this Subdivision—

- if remitted to it by the Registrar after an investigation of the debtor's means has been carried out (or on other evidence) and the Registrar is satisfied that the debtor does not have, and is not likely within a reasonable time to have, the means to satisfy the pecuniary sum without the debtor or his or her dependants suffering hardship;
- if there are other proceedings under the Part in which the debtor appears before it (*e.g.* an appeal) and the Court is similarly satisfied that the debtor is without means.

On reconsideration, the Court may—

- remit or reduce the pecuniary sum; or
- revoke the order imposing the pecuniary sum and—
    - make an order for community service; or
    - disqualify the debtor from holding or obtaining a drive's licence for a period not exceeding 6 months; or
    - cancel the debtor's driver's licence and disqualify the debtor from obtaining such a licence for a period not exceeding 6 months (because of the amendments to the *Motor Vehicles Act* this will result in a probationary licence when the debtor next seeks a licence); or
- confirm the order that imposed the pecuniary sum.

In making an order for community service, the Court is directed to take into account the amount (if any) by which the original pecuniary sum has been reduced by the debtor.

SUBDIVISION 5—REMISSION OF LEVIES WHERE DEBTOR HAS NO MEANS TO PAY

70J. CIC levies to be remitted if unenforceable

If the Registrar, an authorised officer or the Court determines under the Division that the debtor does not have, and is not likely within a reasonable time to have, the means to satisfy a pecuniary sum that consists wholly or partly of CIC levies, the levies are to be remitted. (If other amounts are outstanding, the Court would then determine under Subdivision 4 whether those amounts should also be remitted or whether the debtor should perform community service (in the case of a youth) or be disqualified from holding or obtaining a driver's licence for a period.)

It should be remembered that any amount actually paid by the debtor is applied first to the payment of CIC levies.

SUBDIVISION 6—ENFORCEMENT AGAINST YOUTHS

70K. Enforcement against youths

New section 70K applies the Division to youths subject to two modifications:

- an additional penalty enforcement order is available against youths, namely, a community service order in accordance with new section 70L;
- an order for sale of property or a garnishee order cannot be made in respect of a youth unless the offence in question was an expiable offence arising out of the driving or parking of a motor vehicle by the youth when the youth was of or over 16 years of age.

70L. Community service orders

An authorised officer may make a community service order in respect of a youth under new section 70L if satisfied that the youth does not have, and is not likely within a reasonable time to have, the means to satisfy a pecuniary sum without the debtor or his or her dependants suffering hardship.

The rate at which a pecuniary sum is to be worked off is 8 hours for each $100 owed. The period over which community service is to be performed must not exceed 18 months.

An authorised officer is given power to cancel the remaining hours of community service under an order if satisfied that there has been substantial compliance with the order, that there is no apparent intention on the debtor's part to evade the obligations under the order and that sufficient reason exists for exercising the power to cancel.

SUBDIVISION 7—RIGHTS OF REVIEW AND APPEAL

70M. Review

Under new section 70M a debtor may ask the Registrar to review a decision to make a penalty enforcement order against the debtor by an authorised officer who is not a Registrar.

While a review takes place, the penalty enforcement order is suspended.

The Registrar may confirm the decision or quash the decision and make some other penalty enforcement order against the debtor or, if satisfied that the debtor does not have, and is not likely within a reasonable time to have, the means to satisfy the pecuniary sum without the debtor or the debtor's dependants suffering hardship, remit the matter to the Court for reconsideration.

70N. Appeal

New section 70N provides for an appeal against the decision of a Registrar on a review or the decision of a Registrar to make a garnishee order or to make any other penalty enforcement order while acting as an authorised officer. The appeal is to the Magistrates Court or the Youth Court, as the case may require.

While an appeal is heard, the decision appealed against is suspended.

The Court may confirm the decision or quash the decision and substitute any decision that could have been made in the first instance.

A decision of the Court is not subject to appeal.

Clause 25: Amendment of s. 71—Community service orders may be enforced by imprisonment

Section 71 provides for enforcement of an order of a court requiring community service by imprisonment. This clause contains consequential amendments—

- to extend the application of section 71 to cover community service orders against youths made by authorised officers under the new scheme; and
- to ensure that home detention is available in the case of youths.

Clause 26: Insertion of s. 71B—Registrar may exercise jurisdiction under this Division

The new section 71B replaces the current section 72 to the extent that is necessary under the new scheme. The clause continues the provision that, subject to rules of court or the regulations, the powers of a court in relation to enforcement of community service orders and other orders of a non-pecuniary nature are exercisable by a Registrar. The decision of the Registrar is subject to review by the court.

Clause 27: Substitution of s. 72

This clause inserts new provisions dealing with machinery matters related to authorised officers—identity cards, an offence of hindering an authorised officer or assistant and the immunity of authorised officers and assistants.

Clause 28: Amendment of s. 74—Evidentiary

Clause 29: Amendment of s. 75—Regulations

These clauses alter references to appropriate officer to authorised officer in consequence of the new scheme.

PART 6 AMENDMENT OF EXPIATION OF OFFENCES ACT 1996

Clause 30: Amendment of s. 4—Interpretation

A definition of the Manager, Penalty Management is inserted for the purposes of the new scheme.

Clause 31: Amendment of s. 6—Expiation notices

This amendment shortens the expiation period in all cases to 28 days. (Currently, the period is 30 days if the expiation fee is less than $50 and 60 days if the expiation fee is $50 or more.)

Clause 32: Amendment of s. 7—Payment by card

This amendment extends the reference to payment of expiation fees by credit or debit card to payment by charge card.

Clause 33: Amendment of s. 9—Options in case of hardship

These amendments alter the options available to a Registrar in a case of hardship. Currently a debtor may apply to pay an expiation fee in instalments or to work it off by community service. Under the new scheme the options available are instalments or an extension of time to pay (up to 6 months). Community service is not to be available at this stage. The new provisions indicate that payment by instalment is to be preferred to an extension of time to pay.

Clause 34: Amendment of s. 13—Enforcement procedures

Clause 35: Amendment of s. 14—Enforcement orders are not subject to appeal but may be reviewed

These amendments are consequential to the removal of community service as a hardship option.

Clause 36: Amendment of s. 16—Expiation notices may be withdrawn

Currently section 16(3) provides that an expiation notice cannot be withdrawn for the purposes of prosecuting the alleged offender for an offence after 90 days from the date of the notice. This period is reduced to 60 days in light of the shorter expiation period under the new scheme.

Clause 37: Insertion of s. 18A—Exercise of Registrar's powers

New section 18A allows the Manager, Penalty Management to direct that powers vested in a Registrar under the Act be exercisable by a person who is an authorised officer under the *Criminal Law (Sentencing) Act*.

PART 7 AMENDMENT OF THE MAGISTRATES COURT ACT 1991

Clause 38: Amendment of s. 12—Administrative and ancillary staff

The amendment adds the Manager, Penalty Management to the list of the Court's administrative and ancillary staff.

Clause 39: Insertion of s. 13A—Functions of Manager, Penalty Management

New section 13A provides that the Manager is responsible to the Principal Registrar for the administration of the new enforcement scheme and requires the Manager to submit an annual report that is to form part of the annual report furnished by the State Courts Administration Council to the Attorney-General.

PART 8 AMENDMENT OF THE MOTOR VEHICLES ACT 1959

Clause 40: Amendment of s. 81A—Provisional licences

The amendment adds cancellation of licence under the *Criminal Law (Sentencing) Act* as a circumstance that results in the former holder of the licence obtaining, on application for a new licence, a provisional licence only.

Clause 41: Amendment of s. 139D—Confidentiality

This clause allows the Registrar of Motor Vehicles to give information to authorised officers for the purposes of tracing debtors and making penalty enforcement orders under the new scheme.

Clause 42: Amendment of s. 139E—Protection from civil liability

The amendment extends the immunity of the Registrar of Motor Vehicles to responsibilities under other Acts as well as the *Motor Vehicles Act 1959*.

PART 9 AMENDMENT OF THE SUMMARY PROCEDURE ACT 1921

Clause 43: Amendment of s. 62B—Powers of court on written plea of guilty

This amendment is consequential to the insertion of new section 14A in the *Criminal Law (Sentencing) Act* which provides that the time and manner of payment of a pecuniary sum is to be determined under new Part 9 Division 3 of that Act and not by individual courts at the time of making an order requiring a defendant to pay a pecuniary sum.

Clause 44: Repeal of Part 4 Division 5A

This Division dealt with payment of fines and other pecuniary sums—a matter dealt with in the new scheme in Part 9 Division 3 of the *Criminal Law (Sentencing) Act*.

SCHEDULE TRANSITIONAL PROVISIONS

The Schedule contains transitional provisions in relation to the new scheme. With the following exceptions, all orders imposing pecuniary sums will be enforceable under the new scheme, no matter when the order was made.

Warrants of commitment for default in payment of a pecuniary sum are to be cancelled if the debtor has not started serving the period of imprisonment to which the warrant relates and payment of the amount outstanding is to be enforced under the new scheme.

Similarly orders for community service, detention or home detention against a youth for default in payment of a pecuniary sum are to be cancelled if the youth has not performed any hours of community service or started serving detention or home detention.

However, if an undertaking to do community service on the basis of hardship has been entered into or community service ordered on the basis of hardship under the old expiation scheme, the undertaking or order is to continue whether or not any hours of community service have actually been performed by the debtor.

An order suspending a driver's licence will continue in force if it has been in force for less than 60 days and will be taken to be an order for suspension under the new scheme. Any order that has endured for more than 60 days is automatically cancelled and the outstanding amount becomes enforceable under the new scheme.

An order suspending registration of a motor vehicle under the existing scheme will continue in operation as if it were a penalty enforcement order under the new scheme restricting the transaction of business with the Registrar of Motor Vehicles.

If a court or court officer made an order as to the time or manner of payment of a pecuniary sum, that order continues in force by virtue of new section 14A of the *Criminal Law (Sentencing) Act*. Clause 8 of the transitional provisions provides for the enforcement of those pecuniary sums under the new scheme in the event of default of payment.

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

ELECTORAL (ABOLITION OF COMPULSORY VOTING) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 4 June. Page 858.)

The Hon. CARMEL ZOLLO: One Nation's inroads in the Queensland election has strengthened my views that now more than ever there should be a moral and legal obligation on all citizens to exercise their hard-won right to vote at every election. Compulsory voting allows every citizen to decide whether to vote for a particular person or Party or to vote for no-one at all, and does not leave the process, for example, to people motivated by whipped-up self-interest or populist doctrine that is often lacking in substance. In other words, it provides real choice for all citizens.

It has recently been suggested by a local journalist that the protest vote could be virtually eliminated by having voluntary voting. According to this view, disillusioned voters would best express their feelings by just not turning up to vote. Queensland One Nation voters apparently are all disillusioned protest voters who would have shown their contempt of politicians by simply not turning up to vote if it had not been compulsory to do so. If only it were so easy!

Compulsory voting already allows voters to express a protest vote by simply attending, having their name crossed off the roll and placing the blank ballot paper in the box. Queensland, in a sense, also allows further expressions of protests by its optional preferential voting system, whereby one could vote for a minor Party or Independent candidate and preferences would eventually be exhausted if not expressed all the way to the top two candidates. However, history and experience in other countries show that it is not only just disillusioned people who are likely to stay away.

Are we to believe that 60 per cent of people in the USA are so disillusioned by the political process that they refuse to vote? It is certainly an incredible number of people. A large number of complex factors would be involved as to what motivates people to vote or not to vote where it is not compulsory to do so. The mix of those factors may vary from country to country. No doubt apathy and disillusionment are major factors, but more importantly, however, it is that large numbers of voters become marginalised by political Parties targeting only the people most likely to vote.

For the fourth time since 1993, the Attorney-General has introduced a Bill to abolish compulsory voting in South Australia. Along with the rest of my colleagues on this side of the Chamber, I will oppose the legislation because I believe that it invariably ensures that only those people interested in the political processes or cajoled by political Parties would turn up to vote, rather than the majority who would be affected by the outcome of the elections.

The recent Constitutional Convention vote which saw just under 40 per cent of electors bothering to vote—and it must be remembered that it was a relatively convenient postal ballot—is a prime example of what voluntary voting is likely to mean in practice. The ballot was the brainchild of Senator Nick Minchin, the champion of the voluntary voting system, and proved once and for all what a sham voluntary voting would be for the democratic process. Despite Senator Minchin's best efforts to encourage people to vote only above the line by making the below-the-line process incredibly complicated, a sizeable number of people still voted for individual candidates, which shows that people want that choice.

Although our present system requires people to attend a polling booth, it does not force people to vote. One can simply attend a booth and have one's name crossed off, and that is preferable to the low participation rate that occurs with voluntary voting. I suggest to the Attorney-General that the reason that the majority of the 17 000 people who did not vote without a reasonable excuse at the last election did not do so had little to do with their being passionate about their democratic right and a great deal to do with apathy. The 17 000 people equates to approximately 1.7 per cent of eligible voters, which is a very small proportion.

The amount of money that is expended on administrative costs and fine defaulters is given as a legitimate excuse for abolishing compulsory voting. This cost is only a small part of the overall cost of elections. In any case, the question should therefore be: what price does one place on democracy? More importantly, I am sure that the overwhelming majority of the more than 95 per cent of people who did vote did not do so because they were terrified of being fined because it was compulsory to vote. They voted for the most part because it is a civic duty and part of the democratic process, even if there is a legal requirement in the Electoral Act to do so. This is an important point.

Democratic communities do not function because of compulsion but because of cooperation and a sense of community and civil responsibility. Yes, we have our myriad laws, which regulate virtually every aspect of our society including the obligation to vote, but it is not compulsion which makes it work, otherwise we would need the proverbial police presence on every corner. I would like to use the analogy of the Adelaide City Council erecting a 'Keep off the grass' sign in order to preserve a piece of lawn. In our community, 95 per cent of people would respect that sign, not because of the threat of sanctions, but because of our civic pride. There would not be any lawn if thousands of people walked on it. It would probably have little impact if a few people ignored the sign, but occasionally council inspectors would question people walking across the lawn. If they did not have a legitimate reason for doing so or if they kept doing it, the council would issue an expiation notice.

Unlike the Liberal Party, which is not completely united federally or in other States on this issue, the Labor Party has always had a strong history of supporting compulsory voting. It is not for reasons of pragmatism on this issue that we disagree with the Government.

The Hon. L.H. Davis: Come on!

The Hon. CARMEL ZOLLO: That is very true. The divisions in the Liberal Party concerning voluntary voting were demonstrated as recently as a month or so ago by *Advertiser* guest columnist, the Federal member for Kingston, who pointed to the low voter turnout at voluntary local government elections; the very glaring example that western society's largest democracy, the United States, the President of which is elected by less than a quarter of citizens; and the temptation for political Parties to direct their policies to those more likely to vote, to target the middle aged and middle class, whilst the old and young will not be forgotten but could find themselves being of less priority.

Generally I would not have much in common philosophically with members of the other side of politics, but on this occasion the member Hindmarsh and I are at one when she wrote:

> Those who advocate voluntary voting should remember that compulsory voting has served us well. Despite the growing gap between the rich and the poor, it has kept us together as a cohesive society and has kept at bay special interest groups who would seek to control the political process and the politicians.

Even more telling comments come from the Victorian Liberal Party's October 1997 one hundred and twenty sixth State Council held in Shepparton. The *Australian* reported that 90 per cent of the 500 strong delegates carried a motion which labelled the concept of voluntary voting a 'disaster' for democracy. The example I mentioned earlier of voluntary voting at the Constitutional Convention was also brought to the attention of delegates. The immediate past President of the Victorian branch of the Liberal Party said that compulsory voting was a fundamental part of the nation's political culture and heritage. He believed that the majority of Liberal members recognised that it should be strongly upheld. He further stated:

> Compulsory voting is part of our inheritance; it says to us that things are important and that it is important to consider your vote and to consider your attitude to Government and the conduct of national and State affairs.

Needless to say that this immediate past President of the Liberal Party disagrees with Senator Minchin's philosophy. In reference to the South Australian election, the past President said:

> Senator Minchin I think might best occupy himself attending to a few issues that appear to need sorting out in his own State.

This article appeared in the *Australian* on 13 October 1997 and, regrettably for South Australia, the problems of the Liberal Party divisions in this State continue to make the media pages. Although there are minor differences between Federal and State voting systems they do have a common electoral role. Given that the Federal Government does not appear to have any intention of changing the current system, one can imagine the voter confusion if one had a voluntary system and the other a compulsory system. I believe, as many other members have said before me, that compulsory voting is both a long tradition and a hallmark of democracy in Australia.

We insist on many other duties in society, such as paying our taxes, jury duty, compulsory education, being subpoenaed, etc. Given the average age of members of this Council, I am sure that we all agree that, in historical terms, 1973 was but a short time ago. At that time the Liberal Party was still fighting to ensure that voters for the Legislative Council needed to be property franchisees. Voluntary voting could produce the same unrepresentative results as did the composition of this Council prior to the reforms by the Dunstan Government. I mentioned earlier that I believe compulsory voting is now more important than ever given the inroads of the One Nation Party.

The Minister's second reading explanation includes only a few small (in terms of population) European countries and some Latin American States as having compulsory voting—perhaps trying to give the impression that it applies only in a few small insignificant countries. In fact, we share compulsory voting with approximately 29 other democracies in the world. Significantly, Greece, which invented democracy thousands of years ago, has compulsory voting. One of the nations that did not share this philosophy of compulsory voting but now does is Italy.

I suspect that Italy has learnt lessons from the past when nationalistic, well organised, undemocratic minorities were able to take over the Italian Parliament and travel down the road of fascism and dictatorship. A former member of this Council, the Hon. Mario Feleppa, who experienced the post-

war era, spoke on this matter before his retirement during an earlier attempt at this Bill. Post the Second World War, Italy found that it had instability in its system and, in seeking to stabilise its process of democracy, one initiative it took was to introduce compulsory voting to ensure that there was a proper reflection of the majority will of the people.

Any democracy that has a system where the majority of its citizens cast a vote is better than having only 50 per cent or 40 per cent doing so. If the governing Party does not deliver, the sentiments of the people can be made known at the ballot box when they next present themselves. There is no doubt in my mind that voluntary voting increases the likelihood of inducements and undue influences being offered to voters to get them to vote. I believe—

The Hon. L.H. Davis: Are you going to tell us what countries have compulsory voting?

The Hon. CARMEL ZOLLO: I do not have them in front of me but I can provide that information if the honourable member so wishes.

The Hon. L.H. Davis interjecting:

The Hon. CARMEL ZOLLO: I said 29 countries. It is more than one hand.

The Hon. T.G. Roberts: It is a big hand.

The Hon. CARMEL ZOLLO: It is a very big hand.

An honourable member interjecting:

The Hon. CARMEL ZOLLO: There are.

The Hon. L.H. Davis: Give us the 29; I'll be very interested.

The Hon. CARMEL ZOLLO: I did look it up; there are 29. I believe it is important for Parties to concentrate on what they can offer to the electorate, rather than how to induce voters to get them to the polls. As a woman, I must also point out that the proud history of this State in introducing the franchise for women in 1894 is in jeopardy because, if the Government is successful in this legislation, it could reduce the number of people who would play a part in the community life of the State. I regret to say that, in 1998, there are still women in our society in South Australia who may not be given the opportunity to vote if it is not considered essential for them to do so.

I believe it is important to reiterate another important point in relation to voluntary voting, a point made by other previous speakers to this legislation, in particular the member for Spence in the other place. He pointed out that the practice of targeting voters (using the United States as a good example) leads to the poor, the pensioners and the young, especially those voting for the first time, to either get wiped off or to never make the database.

The Hon. L.H. Davis interjecting:

The Hon. CARMEL ZOLLO: It took 18 years for the Labor Party to get back in power in the UK. Politicians will work out who is not likely to vote and hone in those likely to vote. I believe this Bill is about Liberal self-interest in that they think they may gain a small advantage and help their chances at the next election. Asking people to attend a polling booth in South Australia for a few minutes on one day every four years to defend their democracy and make their views known, I believe, is not an undue imposition. If we want to assist electors to participate more effectively in the political process, we should simplify the voting systems, make them compatible in all jurisdictions and make Parliament more relevant.

This Parliament has already made its views known on this Bill on a number of previous occasions. There is no overwhelming community demand for this legislation. The Government should concentrate its efforts on the number one priority: jobs. This Bill will not create one extra job. If anything, it may lead to the loss of one or two jobs. I believe that any monetary savings are illusory anyway. Given funding at the Federal level and in some States and tax deductions for political donations, it probably means that more public funds are expended in getting the vote out instead of concentrating on policies.

For a democracy to be a democracy it means majority rule and the expression of opinion by the majority of its electors. Compulsory voting has served and does serve our democracy well. I will conclude my remarks with a quote from Sir Robert Menzies, which I am sure will warm the hearts of members opposite. The quote is accredited to him and reported in New York in 1960. Sir Robert said:

> In 1948 I shared with thousands the gift of false prophecy. I was satisfied Tom Dewey would win the US presidency; which goes to show what extraordinary results can happen in a country like the United States so backward as not to have compulsory voting.

I urge members to vote against the second reading.

The Hon. Caroline Schaefer: How long ago was this?

The Hon. CARMEL ZOLLO: He said that in 1960.

The Hon. M.J. ELLIOTT: This is the fourth time the Attorney-General has brought a Bill before the South Australian Parliament seeking to end compulsory attendance at polling booths, although the Bill was entitled 'Abolition of Compulsory Voting'. In effect, at this stage we have compulsory attendance at a polling booth. We try to give advice to rapists that 'No' means 'No', but the Attorney-General does not seem to understand that sort of advice, so we will have to explain it to him again.

The Hon. L.H. Davis: We don't have a mandate here to keep the bastards honest?

The Hon. M.J. ELLIOTT: Yes, you have a mandate and so do we.

The Hon. L.H. Davis interjecting:

The Hon. M.J. ELLIOTT: Yes, that is right. Every Parliament—

The Hon. L.H. Davis: That is wonderful. You have rewritten history. You are going to keep the bastards honest.

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

The Hon. L.H. Davis interjecting:

The ACTING PRESIDENT: The Hon. Mr Davis will come to order and cease interjecting.

The Hon. M.J. ELLIOTT: Mandates are something that each member of Parliament holds both individually as well as being collectively held within the Parliament. The Government does have a mandate. Its members have a mandate to support this Bill.

The Hon. L.H. Davis interjecting:

The Hon. M.J. ELLIOTT: If we voted for this Bill, then we would be voting against what we told the electors we supported, and that would be dishonest.

The Hon. L.H. Davis interjecting:

The ACTING PRESIDENT: Order!

The Hon. M.J. ELLIOTT: Mr President, I would ask you to—

The Hon. L.H. Davis interjecting:

The ACTING PRESIDENT: Order, Mr Davis! I have just previously asked you to come to order. I do not intend to keep repeating myself with monotonous tedium. I ask you to listen to what the speaker on his feet has to say. The cacophony of sound is so great that I can scarcely hear him. I would ask honourable members to cease interjecting.

The Hon. M.J. ELLIOTT: The question of mandate was raised. I was prepared to address it, but of course he of little brain won't shut up long enough to actually hear the answer.

The Hon. A.J. REDFORD: Mr President, I rise on a point of order. I know that the honourable member was not referring to me but he was referring to one of my colleagues, and I would ask him to withdraw.

The ACTING PRESIDENT: Order! Did you say that he didn't refer to you but you knew he was referring to you?

The Hon. A.J. REDFORD: He was not referring to me but he was referring to one of my colleagues.

Members interjecting:

The ACTING PRESIDENT: Order! I did not hear precisely what the Hon. Mr Elliott said. If he has reflected in his view on another honourable member, he should withdraw it.

The Hon. M.J. ELLIOTT: On the question of mandate, I said before—

The Hon. A.J. REDFORD: Mr President, I rise on a point of order. He referred to the Hon. Legh Davis as having little intellect. I ask him to withdraw that.

The ACTING PRESIDENT: As having what?

The Hon. A.J. REDFORD: Little intellect. 'Ye of little brain', I am sorry. I ask him to withdraw that.

The ACTING PRESIDENT: Order! The Hon. Mr Elliott, did you say that?

The Hon. M.J. ELLIOTT: I did not make any direct reference to Mr Davis or to any other member.

The ACTING PRESIDENT: Did you say that the Hon. Mr Davis had little intellect?

The Hon. M.J. ELLIOTT: I did not say—

The Hon. A.J. Redford interjecting:

The Hon. M.J. ELLIOTT: No, I did not say that Mr Davis had a small brain.

The ACTING PRESIDENT: Order! There is no point of order. The Hon. Mr Elliott.

The Hon. M.J. ELLIOTT: The question of mandate was raised repeatedly by way of interjection, and I was prepared to address the issue. I said that members of the Government did stand on that platform and, as such, had a mandate to support that issue. I also made the point that members of other Parties had other policies and they had a mandate to their voters to take that line. It is something the Liberal Party do not seem to understand on the matter of ETSA, where three of the Parties in this place—I do not think Mr Xenophon had a policy on it at all—who had a policy and received between them, after preferences, about 96 per cent of the vote, all had a mandate to oppose the sale of ETSA. That was the starting point there, too. But if we tried to keep the Government honest on that one, some would suggest we were doing the wrong thing. The Government is suggesting not only should the Government be able to break its promise, but we should break ours as well.

In relation to the issue of voluntary voting, the Democrat policy was quite clear, as was that of both the Liberals and Labor. The Democrats have not been convinced to change their position. The Attorney-General says that compulsion may be seen as being incompatible with a fair and democratic society. The reality is that implementation of voluntary voting would actually be the death knell of participatory and representative democracy.

Members interjecting:

The ACTING PRESIDENT: Order! Interjections are just becoming out of hand at the moment. The matter is of some considerable importance to all members, I would assume, on either side of the Chamber. I would ask you to give the speaker the opportunity to be heard. If honourable members wish to say something that runs contrary to what the honourable member is saying, they will have their opportunity to speak later in the debate. The Hon. Mr Elliott.

The Hon. A.J. Redford interjecting:

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

The Hon. M.J. ELLIOTT: Participating in a democracy involves rights as well as responsibilities, something the Liberals talk about when it is convenient and forget when it is convenient. Voting is one of the most important elements of our Australian democracy. Participating in the election process by presenting yourself at a polling booth is a basic responsibility. There is no compulsion to mark the ballot paper. It is one of several responsibilities of citizens, just like having to pay taxes. It is not a matter of choice, it is something we do, except for those who hire smart lawyers to try to avoid some of it.

The Hon. R.R. Roberts interjecting:

The ACTING PRESIDENT: Order!

The Hon. M.J. ELLIOTT: We must, as the Attorney-General is quite aware, go on jury duty—

The Hon. T.G. Roberts interjecting:

The ACTING PRESIDENT: And the Hon. Mr T. Roberts!

The Hon. M.J. ELLIOTT: —and we must wear seat belts. The electoral roll is used to compile the jury duty list. People who do not show up for this jury responsibility face fines of up to $1 000, three months gaol or a $150 expiation fee.

The Hon. L.H. Davis interjecting:

The ACTING PRESIDENT: Order, the Hon. Mr Davis!

The Hon. M.J. ELLIOTT: I do not hear the Attorney-General suggesting in this place that we should get rid of compulsory jury duty, something far more onerous than a requirement to show up at a polling booth.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: Those exemptions have been narrowed down quite significantly as well, and you supported that. You know that the exemptions are quite narrow and, effectively, they are exemptions in relation to voting as well, and you are quite aware of that. Just as there are rights and responsibilities—and jury duty is a responsibility—voting is another of those responsibilities in a genuine participatory democracy.

The Liberal Party is happy to make laws which create responsibilities for members of our society. Parliaments generally have supported compulsion; for instance, the compulsory wearing of helmets when riding a bicycle; the compulsory wearing of seat belts—there are many responsibilities placed on people. Voting seems to be the most basic and most obvious of all of those. The Attorney-General's own Party quite happily required people to attend Vietnam: no qualms about that.

Has the inconsistency got something to do with their own belief that voluntary voting might perhaps support the Conservative Parties? The Attorney-General says arguments that voluntary voting favour the Liberal Party have no substance, although that does not seem to be the view held by the Federal member for Hindmarsh, who wrote in a recent press article:

> While a change to voluntary voting will bring abstainees from every socioeconomic group, those who have less are more likely not to bother. It isn't the wealthier residents of Burnside who will avoid

the polls but the unemployed from Thebarton, Christies Beach and Elizabeth.

That is her view, but I do not think it is even that simple. It will be a matter of who mobilises their particular voters on a particular day. It could be the rabid right, the lunatic left or whatever. The fact is it will be particular groups whoever successfully mobilise their voters who will have a disproportionate say compared to their actual support. That is why I talk about the importance of representative democracy. At the end of the day, you want a Parliament that truly represents all of the people, not those particular people who for whatever reason have been motivated to vote on a particular day.

The reality is that voluntary voting would narrow the political agenda, because the major political Parties would not bother tackling issues which concerned those least likely to vote, such as young people and some of the most disadvantaged in the community. The experience in the United States of America reveals the reality of voluntary voting which is disfranchisement, the increased power of vested interests and Governments who do not need to be responsive to the needs of the entire community.

My own researcher had the opportunity to visit the United States recently as part of a political exchange program, and she came back more convinced than ever that compulsory voting had to stay. She was absolutely shocked at the way the American political process has degenerated. I agree with her 110 per cent. Due to voluntary voting, the United States cannot be seen as a participatory democracy as its political Parties need only pander to the 20 per cent or so of people who vote at the polls.

In 1996 only 49 per cent of voters turned out, and Bill Clinton achieved 50 per cent support of that 49 per cent. This means that only 24.5 per cent of the total electorate supported his candidacy. Of course, in a winner-takes-all system no other candidate really had a chance anyway—there were only ever going to be two—and in fact the real support for Clinton would be less than that. How can anyone believe that the American voting system gives full legitimacy, as distinct from still giving the power, to its leaders when this result indicates that President Clinton can only legitimately claim the support of one quarter of the American people? Such a narrow vote disfranchises sectors of the community and leaves them without full and proper representation.

Compulsory voting in South Australia ensures that all South Australians participate in the election of the Government. This not only fully legitimises the election and mandate of a Government but ensures that the ballot box has told the Government just where voter sentiment lies. It therefore has to listen and remain accountable to all sectors of the community. Voluntary voting can be highly elitist and selective. It can and in practice does exclude large sectors of the population. When fewer people vote it is easier for specific interest groups to control the Parliament and, through it, to control our laws. The Democrats are committed to compulsory voting because of this reality. The tenth objective of the Australian Democrats seeks:

> To decentralise power, to oppose its concentration in the hands of sectional groups, and to ensure that the power of large groups or bureaucracies is not allowed to override the interests of individuals or smaller groups.

Compulsory voting is an important way of helping us gain this objective. The National Party also realises that compulsory voting enhances democracy. Its voting policy remains one of compulsion. And the cost of voluntary voting?

The Hon. A.J. Redford interjecting:

The Hon. M.J. ELLIOTT: No, it's not policy. At a time when the Government is willing to spend millions of taxpayers' dollars on political propaganda to promote the sale of our public utilities, the Attorney-General is complaining about spending $155 000, excluding court and Crown Law costs, to pursue non-voters at the 1997 State election. Compulsory voting keeps our democracy strong—

The Hon. L.H. Davis interjecting:

The ACTING PRESIDENT: Order! The Hon. Mr Davis knows that we are dealing with an issue which centres on non-compulsory voting. Not only is he out of order by interjecting, his interjections are also out of order in their form. The Hon. Mr Elliott.

The Hon. M.J. ELLIOTT: Compulsory voting keeps our democracy strong, and living in a democracy has a price, and that is, compulsory attendance at the polls. Instead of flogging a dead horse, why does not the Attorney-General pursue his election promises to increase the accountability of this Parliament and to ensure open and honest government. I have not spoken at length on this occasion, since this is the fourth time, and I have only covered a few of the issues because I do not really think that at this stage it deserves further time.

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

STATUES AMENDMENT (MOTOR ACCIDENTS) BILL

Adjourned debate on second reading.

(Continued from 4 June. Page 863.)

The Hon. A.J. REDFORD: First, I declare an interest. It might save the Hon. Ron Roberts phone calls. I am a consultant to a firm, Scales & Partners, and they act in matters involving motor vehicle accidents and third party injury claims. If the Hon. Ron Roberts wants any more details, I would be happy to provide them. I am somewhat uncomfortable with some of the provisions in this Bill. I make that comment in no sense criticising the Treasurer or the Government because the Government is faced with a difficult position with increasing costs associated with this scheme and has sought to undertake a balancing act.

I personally have received complaints from the hire car industry and from the taxi industry which say that the increases in premiums are excessive and anti-business. Those bodies have indicated their view that the benefits for people injured in motor vehicle accidents should be further reduced in the interest of their industries. On the other hand, I have noted and received significant information from the legal profession expressing substantial concern about the proposed changes.

I note that the Treasurer is not totally committed to what is before the Parliament and that he is undertaking a negotiating process, and I congratulate him in that regard. I note that this legislation is not part of the budget: although it was announced at the time of the budget it is a discrete fund and has no budgetary impact. I also note that the Australian Labor Party has yet to consider the legislation and it is not clear what position it will take. Normally I would wait for its position to become clear before I make a contribution but, unfortunately, I will be away for the next two sitting weeks and I may not have the opportunity to contribute unless I do so today.

This legislation will pose a great challenge to the member for Elder, Mr Conlon, who I know strongly opposes it. Those of us on this side of politics who watch the internal machinations of the Australian Labor Party with some interest will look upon this as a severe test of Mr Conlon's ability to carry the numbers in the Caucus. I look forward to reading about that with a great deal of interest.

I know that the Law Society is having meetings. I note that it has had meetings with Ms Pickles and Messrs Foley, Atkinson and Holloway; and I note that it has also had meetings with Messrs Elliott and Gilfillan. I have not been approached to have a meeting with the Law Society, and I am not sure whether the Hon. Nick Xenophon has been approached, but there is, on the face of it, some sort of partisan approach in the way it seeks to influence members of Parliament. The aim of this Bill is to seek approval—

The Hon. P. Holloway: Did you get a letter from them?

The Hon. A.J. REDFORD: No, I didn't get a letter from them. I knew about it because, as a member of that body, I read it in its monthly magazine. That is the only way I knew about it.

The Hon. Carolyn Pickles interjecting:

The Hon. A.J. REDFORD: I would be delighted to receive a copy. In terms of lobbying, as a group it is probably one of the worst I have been confronted with since I have been a member of the Parliament, and that is some source of disappointment to me. It is important to note that the aims of the legislation are to reduce the extent of a rise in compulsory third party premiums. It has been suggested that without this legislation the rise would be of the order of 13 per cent, and that with this legislation it will be capped at 8 per cent.

I note that it is proposed, first, to introduce a cap of $2 million; secondly, to change the threshold requirements in relation to non-economic loss; thirdly, to increase the reduction in damages where people are not wearing seat belts or helmets, or are under the influence of or affected by alcohol; fourthly, to allow better control of medical costs; and, finally, to reduce loss of consortium damages to a specified amount.

The first comment I wish to make relates to clause 6, which provides that an insurer is not liable for aggravated damages or exemplary or punitive damages. I wholeheartedly support that provision. I note that it only restricts a claim against an insurer for aggravated or exemplary damages and does not prevent a plaintiff, if he or she wants to seek aggravated or exemplary damages, from proceeding against the driver of the other vehicle personally. I support that position. I do have a question for the Treasurer on this clause. How much does the Motor Accident Commission expect to save as a consequence of the introduction of this clause?

The second issue I wish to deal with is the effect of a drink driving conviction, which is set out in clause 8 of the Bill and also referred to in clause 12. Clause 8 provides that the finding of a court in proceedings for an offence for a prescribed concentration of alcohol will be treated as determinative of an issue in a claim by an insurer to recover moneys, and will also be determinative in relation to a reduction in damages awards. I do have some minor concerns with that, particularly as a consequence of the effect of section 47G of the Road Traffic Act. That is a fairly draconian section which prevents defendants who are charged with drink driving offences from raising certain defences. It is an artificial section and, in some cases, can lead to unjustified convictions with very little remedy available to accused people.

I appreciate that a policy element is emanating from this Parliament in relation to that, but to visit that on claimants in this way may lead to unfairness, albeit in very few cases. I do note that section 47GA does obviate against section 47G, but there are still cases where people can be convicted of drink driving and yet they are not in the general sense guilty of that offence, simply because of the way in which section 47G prevents them from raising any defence against such a charge.

The next item I want to deal with relates to medical service costs, which are set out in clause 11 of the Bill. I congratulate the Government on this. I note that it is seeking to limit the amount of charges that the medical profession can apply to the same as that contained within the Workers Rehabilitation and Compensation Act. However, it is my experience with the compulsory third party insurer that in some cases it gets some of its medical services at substantially less cost than WorkCover manages to secure. I use the example of the arrangement between the compulsory third party insurer and the Royal Adelaide Hospital, where a substantial discount is given to the Motor Accident Commission because of its prompt payment. As I understand it, although I may be wrong, it pays a significantly lower sum than that paid by WorkCover for hospital beds.

The part of this Bill about which I am delighted is the provision which says that a person who provides a prescribed service to an injured person, charging in excess of the prescribed scale, is guilty of an offence. Some elements of the medical profession could only be described as marauding in the way in which they charge for some of these matters. I well recall some 18 months ago being involved in a case where we had arranged to call a psychiatrist to give evidence. Two days before the psychiatrist was due to give evidence—and we told the psychiatrist that the evidence would take at most 30 minutes—we received a bill for $900. That caused some consternation on my part and that of my client, and we refused to pay that amount and offered what we thought was eminently generous—$250.

That did not satisfy the psychiatrist, who sued my client, although technically I had engaged the service, and my client successfully defended the matter. The psychiatrist then appealed to the District Court seeking the $900 and lost that appeal. I take great delight in knowing that, if it should happen again, that psychiatrist may well be the subject of a prosecution.

The issue that has caused the most consternation in relation to this legislation is the six month threshold, which is an increase from the current provision, which provides a seven day threshold. Under the current legislation, one must show that one's life has been significantly impaired for a period of seven days before one can make a claim for non-economic loss, that is, loss for pain and suffering and various other non-financial heads of damage.

Under the existing legislation, that has not caused a great problem because even in minor motor vehicle accidents it is not that difficult for people to show that they did have a significant impairment for seven days. Usually, a doctor's certificate and absence from work for seven days is sufficient. But six months is a different matter. I could well understand situations where people would break their legs and recover within that period of six months and not be entitled to one shilling for non-economic loss. The six month period is inordinately harsh.

When I received a briefing on this I also noted that the financial threshold is some $1 400. If one incurs $1 400 worth of medical expenses until 1 January 1999, then one can

claim non-economic loss and, after that, one must incur some $2 500 of medical expenses. That may be much easier to prove than the six month threshold. I expressed my concern to the Motor Accident Commission that, effectively, what it is seeking to do is bring in a regime that will encourage people to incur $1 400 worth of medical expenses up until the end of this year and thereafter, if the accident happens next year, to incur $2 500 worth.

I can see a major economic recovery for the physiotherapy industry, because in my experience it is not difficult to get a doctor to send you to a physiotherapist, and you can go and see one regularly on a weekly basis, run up your $2 500 and then make your non-economic loss claim.

It seems to me that the savings suggested to occur as a consequence of this six month threshold period may well be illusory, because you will see a massive increase in physiotherapy and other medical treatment costs by people who are seeking to reach that threshold.

The Hon. P. Holloway interjecting:

The Hon. A.J. REDFORD: The honourable member interjects. I am not sure, looking at the WorkCover schedules; they are not unreasonable. They are certainly not as mean as the Medicare schedules. In any event, I have some real concerns about the six month threshold. I believe that it will cut out a lot of genuine people and, in terms of public interest, it will encourage people not to rehabilitate themselves quickly.

One of the greatest difficulties I had with clients when I acted in this area was when people asked how they could maximise their claim. As a lawyer—and I expect that most lawyers would do the same as I did—I would tell them that they were better off getting well and that they were never going to be completely compensated under any scheme. But there is always that element of claimant who will say that they do not care what it takes, they want to maximise their claim. In my view, what we are really doing there is seeking to encourage people to take six months off instead of two or three months. That is not good public policy, and I believe that we will see costs arise in other areas.

I will be most grateful if the Treasurer can give me some indication as to precisely how much he expects the Motor Accident Commission to save as a consequence of this six month rule. I have been given some information which would indicate that the savings may be far in excess of that which the Treasurer has indicated in his contribution today.

I have received a document from Mr Brendan Connell, a solicitor with Tindall Gask Bentley, in which he has set out a preliminary financial analysis of the Motor Accident Commission that he conducted. Mr Connell is known to me personally, and I hold him and his firm in the highest regard. I note, however, that he is not an accountant or an actuary, but he is entitled to look at the facts and to deal with them as he sees them. In the document that he sent to me he said:

1. As at 30 June 1996 the CTP scheme was fully funded and held net assets of $86.8 million.
2. After tax profit to 30 June 1997 was $24 million.
3. MAC does not reach the solvency requirement of the Insurance and Superannuation Commission despite the fact that its solvency level improved during the 1996-97 financial year. It is, in fact, at a much lower level of solvency by comparison with other CTP schemes in Australia. Its lack of solvency is such that during 1997 the fund was not required to pay a dividend to the State Government in contrast to the 1995-96 financial year in which a $10 million dividend was paid. The dividend is paid at the discretion of the Government.
4. Claim frequency (being the number of claims incurred per 1 000 vehicles) reduced in the 1996-97 financial year, despite the number of vehicle registrations increasing by over 30 000.
5. Net earned premium in 1996-97 was a record $191 million, an increase of $22.4 million on the previous record. However, the number of vehicle registrations, excluding farm vehicles, which were for the first time required to be registered for the purposes of CTP insurance, actually dropped in the 1996-97 financial year.
6. South Australian CTP premiums are lower than every State and Territory excepting Western Australia and Tasmania.
7. The total number of claims made in 1996-97 financial year was down 3.4 per cent on the previous year (the lowest since the 1997 amendments). The actual current year claims were down 5.6 per cent by comparison with the previous year.
8. Road fatalities decreased by 21.3 per cent from the previous financial year.
9. Claim frequency has halved since 1985-86 and was the lowest recorded since at least 1984-85. MAC's argument re the discount rate to be used in the decision of *Blake v Norris* has been adjourned by the High Court pending a decision on the same point in an unrelated case. This means that there is still the potential for the High Court to further erode the financial entitlements of claimants by way of common law.
10. The average cost per claim per year was the lowest recorded and has diminished every year since 1990-91.
11. The number of nominal defendant claims as notified has reduced by approximately 25 per cent over the last three years.

I would be delighted if the Treasurer could correct any of the information which Mr Connell has sent to me and which I have just read to the Parliament. The statement that the average cost per claim per year was the lowest recorded and has diminished every year, coupled with, apart from this calendar year, a general reduction in the number of road fatalities, indicates to me that there is not significant pressure on the Motor Accident Commission. I am not saying that there is not; I am just saying that they indicate that, and I would be delighted to hear an explanation in relation to that.

One explanation does spring to mind, and that is that people are not dying in accidents as regularly as they used to, and people kept alive are far more expensive to this scheme than those who die. But I am not sure that that by itself would explain those figures. Mr Connell further said:

The Government has determined to recover the equivalent of a 3.2 per cent increase in CTP premiums by legislative reform. It is not possible to be completely accurate as to the dollar value sought. However, the 1997 premium, including the notified changes for July 1997, was $225 for a private car in the metropolitan area. The number of new registrations for the 1997 financial year was significantly boosted by the addition of some 30 000 farm vehicles due to changes to the Motor Vehicles Act in 1996 which made it compulsory to conditionally register and insure farm vehicles which access public roads. However, from the information contained in the MAC annual report it would appear that in the 1996-97 financial year there were approximately 1.2 million current registrations. As stated above without the addition of the farm vehicles the actual number of vehicle registrations in 1997 was reduced from the previous year.

He then said:

If you assume that the average premium is that of the private car in the metropolitan area at $225 per year—

and it would not be—

then you get a gross recovery of CTP premiums at $270 million for the 1996-97 financial year; 3.2 per cent of that figure is $8 640 000. My briefing indicated to me that the Government was looking to save something in the order of $11 million.

Mr Connell further said (and I must say that this would be my view, although I do not have any scientific evidence):

However, quite clearly, the existing proposed legislative changes are more likely to save $70-$110 million than $7-$11 million. Most significantly they do not represent an erosion or diminution or dissolution of existing common law rights but an abolition.

Can the Treasurer indicate precisely how much he expects to save as a consequence of increasing the threshold? In that regard, I would be grateful if the Treasurer could explain precisely how that amount is calculated and the facts and assumptions made in relation to that calculation. I must say from my own personal experience that the reduction in claims for non-economic loss would reduce dramatically as a consequence of this.

I know that there have been discussions about reducing the threshold from the six months to three months. In that regard, I would also be grateful if the Treasurer could provide me with similar information in relation to a proposed three month threshold. Again, it seems to me that even a three month threshold would have the effect of eliminating probably 90 per cent to 95 per cent of motor vehicle accident claims from any non-economic loss. In that regard, I would be delighted if the Treasurer could provide me with information as to how many claims he anticipates would not be able to claim non-economic loss, as opposed to what has been able to be claimed under the existing law.

The next issue that I want to raise is the provision in relation to future loss, and I know that this arises in response to a recent High Court case. Clause 12(c) proposes to insert a new clause which states:

> in assessing possibilities for the purposes of assessing damages to be awarded for loss of earning capacity, a possibility is not to be taken into account in the injured person's favour unless the injured person satisfies the court that there is at least a 25 per cent likelihood of its occurrence;

I must admit that I have not had the time or the opportunity to consider the High Court case at which this particular provision is directed. However, if one looks at that clause, I have to say as a matter of common sense that it would appear that this may well have the effect of increasing damages awards. I have always understood the law to be that, if one had to prove a fact and something that might occur in the future, one had to prove that on the balance of probabilities. A likelihood of 25 per cent is something that I might put akin to lower than the balance of probabilities.

It is quite fanciful to impose a mathematical figure on a reasoning process that a judge has to undertake in assessing what is likely to happen in the future. What if it is 24 per cent or 26 per cent? It is so artificial as to be incomprehensible. I know that there is legislation in other jurisdictions that seeks to do such things, but I am not sure that this is the way we should go. I am not sure that we can look a judge in the eye and say, 'Well, Your Honour, there is a more or less than a 25 per cent likelihood of this.' How is a judge supposed to weigh that up? In some respects it is the sort of provision that can bring the law, legal process, legal reasoning and jurisprudence into some disrespect. I must say that I do not have a constructive option but I think it is fanciful nonsense. I would be most grateful if the Treasurer could indicate to me how much he believes will be saved as a consequence of this provision and how much would have been saved if this provision had been in force over the last two years.

The next issue that I want to raise is that of drink driving, seat belts and helmets. My concern relates to clause 12(g), which sets out a new section 35A(3). It states:

> If one or more of paragraphs (j), (ja), (jb) or (jc) of subsection (1) apply to the injured person, the reduction or reductions required to be made under that paragraph or those paragraphs in the damages to be awarded must be made after the court makes any other reduction that is based on the injured person's contributory negligence.

If a person is affected by alcohol or is not wearing their seat belt or is not wearing their helmet, there will be a specified reduction, generally 25 per cent or more, in relation to their damages. What I do not quite understand is why that reduction should be imposed on another reduction for contributory negligence that might arise for another reason.

For argument's sake, the general rule of thumb that seems to be applied in courts is that, if you have a motor vehicle accident and it is caused as a consequence of the other party failing to give way to their right, because you did not look out carefully enough and did not drive defensively enough, your damages would be reduced by approximately 25 per cent. If you happen not to be wearing your seat belt, that is arbitrarily reduced again by a total 25 per cent. My problem is that, particularly in relation to seat belts, in some cases the wearing or not wearing of seat belts has little impact on the nature or extent of injuries. If you go through a windscreen because you have not worn your seat belt, I think that your damages ought to be reduced drastically. On the other hand, if you are not wearing a seat belt and you are the victim of a rear end collision and suffer a severe whiplash, I fail to see how the seat belt has anything to do with the consequences or injuries suffered by the person concerned.

It is arbitrary, it is punitive and in some cases I am sure it will visit injustice and unfairness on claimants. In any event, I would be most grateful if the Treasurer could indicate in relation to this provision and the provisions relating to seat belts, helmets, drink driving and riding in the back of utes how much will be saved as a consequence of this provision.

I recently received a document from a rather august body, a body which from time to time has impressed me, although less now, and perhaps because of a change in leadership it has proved a thorn in the side of the Government. I refer to the Australian Plaintiff Lawyers Association.

The Hon. Carolyn Pickles interjecting:

The Hon. A.J. REDFORD: The honourable member interjects. I am not a member of the Australian Plaintiff Lawyers Association but I did ring that organisation and I am most grateful for the promptness, the frankness and the openness with which it provided me with information. If the Law Society wants a model on how to lobby and deal with members of Parliament, I suggest it look no further than the Australian Plaintiff Lawyers Association.

I will not go through all of what it says, but I have taken the trouble of sending a copy to the Treasurer, and I would be most grateful if, when closing the debate, the Treasurer could deal with some of the issues that have been raised. One issue that I will raise today concerns the comparison with other jurisdictions about the maximum entitlement for claims for non-economic loss, and South Australia has the lowest threshold. I am somewhat concerned when the Motor Accident Commission wants to bring in a six month threshold, which is the same as that in New South Wales. That is true, but we have a maximum of $91 800. New South Wales has a maximum of $247 000.

I do not think it is fair for the Motor Accident Commission, when it presents material to members of Parliament seeking a change in the law, to treat members of Parliament by giving them only a quarter of the facts. It may well be that we would have a fairer system if we had a six month threshold with a $247 000 maximum, but a six month threshold in relation to a $91 000 threshold hardly brings us in line with New South Wales.

The Plaintiff Lawyers Association also provided me with information and I was fortunate enough to listen to some

radio talkback in which it was involved. The overwhelming number of calls from general members of the public—and I do not think that the Plaintiff Lawyers Association would have organised this because it is not like the Labor Party—were supportive of the premiums increasing and a retention of the benefits.

I hope that the Treasurer, in his negotiations with the interested parties, takes that into account. Indeed, I would hope that the Treasurer—and I think that this would be taxpayers' money well spent—obtains a transcript of what occurred on talkback radio and look at some of the concerns raised by general members of the public as well as those people who say they are happy to pay the extra $11, $12 or $13 in their premiums to maintain some of these benefits. The Plaintiff Lawyers Association has made a number of assertions about the financial position of the Motor Accident Commission and they are not dissimilar to those raised by Brendan Connell.

I will read into the *Hansard* some of the association's assertions: first, that profits were 20 per cent of premium revenue for 1996-97 and should be about the same for 1997-98 and higher for 1998-99, and it refers to the Cumpston report. I would be delighted if the Treasurer could indicate whether or not that assertion is true or, if it is not true, why it is not true. I would be delighted if the Treasurer could also consider the assertion by the Plaintiff Lawyers Association that the Motor Accident Commission estimates that 83 per cent of all claimants will have no entitlement to damages for pain and suffering because, if that is true, that is concerning to me and certainly—

The Hon. T.G. Cameron: Do you agree with that?

The Hon. A.J. REDFORD: I do not know. How would I know?

The Hon. T.G. Cameron: You will have to make up your mind sooner or later.

The Hon. A.J. REDFORD: The honourable member asked whether I agree with that assertion of fact. I do not know and that is why I am asking the Treasurer

The Hon. M.J. Elliott interjecting:

The Hon. A.J. REDFORD: That is the assertion of the Plaintiff Lawyers Association.

Members interjecting:

The PRESIDENT: Order! Members will allow the honourable member to get on with his speech.

The Hon. A.J. REDFORD: A couple of factual matters have been drawn to my attention by the Plaintiff Lawyers Association and I ask whether the Treasurer will comment on them in his response. The first case to which the association referred was that argued by the Motor Accident Commission that the damages payable to a 35 year old widow with three children should be reduced by 55 per cent because her husband at the time of the accident was not wearing a seat belt. The Plaintiff Lawyers Association suggests that the argument was raised notwithstanding that, at autopsy, no injury causing death could be isolated by the pathologist.

The second case to which it refers is the present case in which an interstate insurer of a vehicle that caused injuries in South Australia is arguing that damages of a quadriplegic farmer should be reduced by 90 per cent because he was not wearing a seat belt when injured. From my own experience I know that people who make claims for injuries as a consequence of a motor vehicle accident are normally subjected to enormous stress. They are not subjected to stress only as a result of the accident, the treatment or the uncertainty of their future. They are also subjected to enormous stress in relation to the compensation system.

These measures concern me in the sense that those victims, and they are victims, will be placed under even greater stress. At the end of the day, compensation schemes—and I think I said this in my contribution on WorkCover—are all about who wears the loss, and the loss in this sort of accident scheme can fall in any one of four places: first, on the taxpayer; secondly, on the person who causes it; thirdly, on an insurance scheme held by its wrongdoer; and, finally, by the victim. It is important to achieve an appropriate balance and I am concerned that we are getting, with this legislation, too far away from compensating a victim and imposing the costs on the community through the taxpayer.

The quadriplegic case to which I just referred is a classic case in point. If the compensation system does not look after him, then the taxpayer will have to and, to some extent, the victim will have to look after themselves, but I am not sure that that is entirely fair. I understand precisely what the Treasurer is trying to do: he is trying to keep down costs, and there would have been a howl from members opposite if he had just whacked it up the extra $11. At least through this process he is making us think clearly about the issue. I hope that when looking at this Bill and when we reach the end of the second reading contributions that adjustments have been made, and that the Treasurer—and I know that he is a thoroughly reasonable and decent human being—will have looked at it, gauged the public opinion, which is to properly compensate people, and that some of these measures will be substantially reduced.

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

APPROPRIATION BILL

Adjourned debate on second reading.

(Continued from 7 July. Page 959.)

The Hon. J.S.L. DAWKINS: I rise to make some comments about the 1997-98 budget in relation to projects in rural and regional areas to which the Government has made significant funding commitments. I will mention only some of these projects but endeavour to present a picture of the range of budget priorities in non-metropolitan areas. I start with the commitment towards the $5.75 million upgrade of the police complex at Mount Gambier. Also in the same portfolio area I mention the $890 000 committed to the upgrade of the Cadell Training Centre; the $100 000 upgrade of the Berri Police Station; and the $193 000 committed to the new ambulance station at Swan Reach.

In the transport area more than $4.6 million will be provided for the sealing of rural arterial roads, including—and the Hon. Caroline Schaefer will be very interested in this—the Kimba-Cleve road, $1.7 million (and that goes with other funding that is not before time on that particular road); the Elliston-Lock road, $.7 million; the Brinkworth-Blyth road, $.4 million; the Snowtown- Magpie Corner road (which is a well known place in South Australia), $.7 million; and the Hawker-Orroroo road (another road which significantly needs continuation of its sealing), $1.1 million.

Overall, $2.1 million has been allocated to the upgrade of the Flinders Ranges tourism roads and $3.1 million to continue the upgrade and sealing of the south coast road on Kangaroo Island. In addition, $1.2 million has been allocated

for the widening and traffic improvements on the Noarlunga-Cape Jervis road and, on the other side of the water, the road from Penneshaw to Kingscote; $4 million has been allocated to jetty upgrades across the State; and almost $2 million has been allocated from the recreational boating facilities levy for establishing, improving and maintaining recreational boating facilities in South Australian coastal and inland waters.

A further $.9 million has been allocated to the Millbrook Reservoir bridge replacement and $400 000 for the upgrading of the notorious S bend at Yacka. In addition, I am pleased to note the further development of the community passenger networks in regional South Australia.

In the area of primary industries, much of the funding goes right across the whole of the regional areas in South Australia. However, I might highlight just a few. I refer to the commencement of a four year $25 million targeted exploration initiative to acquire state of the art information focused on the Gawler Craton and Musgrave Block; the continuation of the farmed seafood initiative to support the development of the aquaculture industry; and an investigation into the feasibility of storing surplus reclaimed water from the Bolivar sewage treatment works in an aquifer beneath the Northern Adelaide Plains. One that I know that you, Mr President, will be interested in, and any member who has ever bred livestock, is the commitment to achieve an Ovine Johne's disease protected zone status for the South Australian sheep flock as well as the implementation of a lice program.

In the area of human services, I am pleased to comment on the new Housing Trust houses at Wallaroo at a cost of $340 000 and an expenditure of $770 000 at Mount Barker. In addition, significant Housing Trust renovation projects will be undertaken at Berri, Murray Bridge, Port Lincoln, Port Pirie, Whyalla, Port Augusta and in the South-East. The Kangaroo Island Hospital Stage 2 has had $2 million extended towards it this financial year. In addition, the South Coast District Hospital redevelopment has been allocated $1.4 million, and $2.3 million for Stage 3 of the Port Lincoln Hospital. The Mount Barker Day Surgery and Community Health Centre has been allocated $860 000 in the budget.

In the area of the Department of Education and Children's Services, I am pleased to note a capital works allocation at the Jamestown school of $100 000, whilst $2.7 million has been allocated to the Spencer Institute of TAFE at Kadina, and $800 000 to the Clare High School. Also in the Far North of the State, the Amata Anangu school has been allocated $200 000.

In the area of Government Enterprises, the Government has budgeted $3.5 million for the plantation of 2 460 hectares of forest in the Lower South-East. The Government has also committed to the establishment of 200 hectares of demonstration trial forest as part of a salinity management program in the Upper South-East, and this is being developed in cooperation with the Commonwealth Government and local primary producers.

With respect to energy, the expansion of BHP at Whyalla will include the installation of a new transformer and switch gear at a cost of $2.56 million. I also noted the expenditure on new mining equipment at Leigh Creek at a cost of $7.4 million. The reinforcement of a power supply line to customers in the Coonawarra wine district is also noted at a cost of $955 000.

In regard to water provision, it is important to note the Build Own Operate Transfer (BOOT) provision of water filtration to a range of South Australian communities, many of them being towns situated on the Murray River, but also many other communities in the Adelaide Hills, the Barossa Valley and some areas of the Mid North and Yorke Peninsula, that have and will benefit from their first experience of filtered water. I would also mention the commitment to the country water quality improvement program and the impact it will have in communities such as Melrose, Glossop, Kingston-on-Murray, Robe, Bordertown and Penola. I also mention the considerable commitment to the Hawker airstrip of $1.5 million, and the development at Arkaba Station of $500 000.

I commend these and many other initiatives and ongoing projects undertaken by the Government in this budget. These amount to a significant boost to country South Australia, in addition to today's announcement by the Federal Government of a major upgrade of mobile phone communications incorporating both analogue and digital services in rural and regional Australia.

The Hon. P. HOLLOWAY: I wish to make a few comments about the 1998 budget. Then I will refer to some specific matters in the primary industries area. First, the 1998 budget really is a confession by this Government that its promises before the election on 11 October 1997 were grossly dishonest. We were told by this Government before the election and, indeed, immediately after the election, that everything was rosy, that this Government had addressed the debt problem, and we were now in a position where we would have sustained budget surpluses, and that all the problems were behind us—so they said. Of course, as we have now seen with this budget, that was completely wrong. The Government was not honest with us before the budget, just as it was not honest with us when it told us it would not sell the Electricity Trust of South Australia (ETSA).

Even when this Parliament first gathered together after the election, back in December last year, the Treasurer told us the current budget was on track to achieve the small surplus. Well, we have certainly got that, but if we look at the future, the only way the surpluses will be maintained that we were told were all in the bag will be with massive taxation increases, and this budget is full of those. I refer not just to the increases in stamp duty and other taxes on insurance in particular that are being imposed in this budget, but also we have the prospect of a property tax being introduced on all property. We have this new tax base, called mobile property—in other words, our cars and vehicles will have an additional impost imposed on them into the future. Really, the 1998 budget is just confirmation that the Government was quite dishonest before the last election.

I would like to make a few comments in relation to the new budget accounting measures, this new accrual accounting system introduced. It has all the hallmarks of being produced by a group of management consultants. It is full of jargon and devoid of substance. To give an example from the primary industries area, there are a series of what are called Key Result Areas (KRAs) within primary industries, which is the new way we are supposed to measure the Government's performance in particular areas.

There are really absolutely no specific and tangible measures by which we can measure this Government's performance. Certainly it is early days. This is the first year of the new accrual accounting system, but I do not think we can have much confidence, judged on what we have seen in this budget, that we will be provided with much more information into the future. There is no doubt that the current budget is far less transparent and provides far less informa-

tion than we have received in the past, and that is to be regretted.

I would like to draw a comparison with the Victorian budget. If we take primary industries, for example, the Victorian budget has a series of measurements by which that Government's performance can be assessed. For example, taking Agricultural Industries, in Grains Industry Development, Quality, it measures the amount of contestable dollars won from Commonwealth industry sources and contains targets for those in both dollar and percentage terms. There is the growth in the value of horticultural exports, with a 5 per cent target set for that; and the increase in exports of value-added horticultural products. For Wool Industry Development, it measures the amount of contestable dollars won from Commonwealth industry sources and sets targets for that. There are targets set for the number of reviews in specific industries, and so on. One can go right through the budget and see dozens, probably hundreds, of different performance targets set within the Natural Resources and Environment Department, which includes primary industry alone.

Instead, within our budget, we have just a handful of measures that are very vague in their expression. One which was mentioned during the Estimates Committees and which comes under Primary Industries is that 'PIRSA will measure its success by the ratio of non-State Government to State Government investment in research and development in Primary Industries and Resources'. So, the success will be measured by the ratio of non-State Government to State Government investment. The problem there is that if you just keep reducing the State Government contribution the ratio will get higher and, presumably, that will be a better performance—hardly a satisfactory way of measuring the performance of Government.

One can only hope that in future budgets there is far more detailed, far more specifics and far more useful targets set by which we can measure the performance of the Government in each of its portfolio areas. One of the more amusing measures that is set as an example of how we should measure the Government's performance under accrual accounting is given for the Environment Department—that is, the number of koalas that will be sterilised. That is one of only a couple of measures within that department by which we can measure its output—scarcely a satisfactory way to assess any department I would have thought. In terms of budget presentation I think that we can look forward to much better in the future.

I wish to refer to some of the difficulties in getting information from the budget. One of the issues that has been raised in some detail in this Parliament since the budget is what impact the sale of the Electricity Trust will have on it. I raised that question in this place and asked exactly where the impact of the ETSA sale was referred to in the budget. The Treasurer told me that it was in table 2.5 of the Budget Statement. Hidden away in a note in very small print at the bottom of the table it states:

> Above estimates are net of any premium on asset sales.

This table headed 'Reconciliation Statement—Underlying Deficit, Non Commercial Sector' is interesting in that the bottom line shows that the 1998-99 budget surplus is predicted to be $4 million; in 1999-00, $2 million; and in 2000-01, $3 million—and this is supposed to be net of any premium on asset sales.

Unfortunately, right next to it is table 2.4, 'Non Commercial Sector—(Excludes Net Proceeds of the Sale of Government Businesses).' Here we get exactly the same underlying surpluses predicted—1998-99, $4 million; 1999-00, $2 million; 2000-01, $3 million; and 2001-02, $4 million—excluding the net proceeds of the sale of Government businesses. The other table is supposedly net of any premium on asset sales. One could hardly argue that this budget is particularly transparent in any way, shape or form.

The Hon. T.G. Roberts: You get the figure and work backwards.

The Hon. P. HOLLOWAY: I think that is about the way it is. The great failing of this budget is its lack of economic growth and of action to be taken by this Government to stimulate economic growth and therefore employment. Looking through the entire budget I can see only two measures which I would congratulate the Government on in helping to assist economic growth in any way; they are both in the area of Primary Industries, which I shadow, so I am pleased to recognise those two measures. The first is the expiration initiative, and I am pleased that the Government has decided to increase expenditure in that area.

That program—the South Australian Exploration Initiative—was introduced by Frank Blevins in 1992 when he was the Minister and has been extremely successful in stimulating mineral exploration within this State. I was highly critical of the former Treasurer when he cut back this program in the 1997 budget, and I am pleased to see that the Government has restored it. The other measure which is fairly minor in terms of expenditure is the tax exemption for horticultural exports, which I welcome. They are the only two measures where one could say that the Government is spending money within its budget in a manner which has some prospect of increasing economic growth and, therefore, future employment. Unfortunately, most of the other measures in this budget are about increasing taxation and other things which are more likely to reduce economic growth and employment within this State. It has to be recognised that it is the great failing of the 1998 Liberal budget.

This Government has been in office now approaching five years—it will be five years at the end of this year—and the tragedy of that is that its policies have tended to depress the economy. If one looks at the statistics contained in the Budget Statement one can see how badly economic growth in this State has performed compared with the national average, and even with the projections. A very depressing picture is given by the projected economic growth for this State over coming years.

If one looks at the key economic assumptions in table 4.2 of the Budget Statement one can see that the projected growth out to the year 2000-01 is well below the Australian average in all cases. That can only mean one thing—that employment growth in this State will continue to be behind that of the rest of the country. I think that that is a rather sad indictment on this budget.

In the past almost five years of the Liberal Government one of the unfortunate features we have seen has been an increasing loss in head offices within this State. One of the issues that perhaps has not been given sufficient attention is the impact that Government offices have in this State. Unfortunately, we have lost most of our private sector head offices and we are now losing our Government head offices. We have to understand that when we privatise or outsource our Government services we are losing the head offices of many of those businesses to interstate.

Indeed, many of the service industries that supply those head offices go with them. As well as losing the high level employment, we also tend to lose much of the service

industry work and consultancy work that goes with that. In terms of consultancy work, what we seem to be getting is the displacement of some of that permanent work with short-term interstate consultancies, and that is a very unfortunate thing.

The other general economic comment I want to make before I go onto some specific primary industries issues relates to debt reduction. I pointed out in a previous debate that under this Government we have now had asset sales of something between $2 billion and $3 billion, but the debt reduction, up until the previous budget, had been only $1 billion. One of the unfortunate things is that, with all the promises this Government makes of asset sales, it has not flowed through into significant debt reduction in this State.

The Hon. M.J. Elliott interjecting:

The Hon. P. HOLLOWAY: Much of it goes on separation packages. I think that probably $1 billion has gone on separation packages that many people have taken, much of which has been exported to Queensland or Western Australia. A myth that this Government is trying to create for itself is that it makes hard decisions. How difficult is it to put up a 'for sale' sign, particularly when you are paying someone tens of billions of dollars to put up the sign? That is really what is happening in many respects with the asset sales. It is not particularly hard to hire some of these very expensive consultants to go out and prepare a plan to sell all your assets. That is not a hard decision. It is not particularly hard to do; in fact, it is very easy. What will be hard in the future is picking up the pieces and trying to ensure some continuity of employment in this State when all those assets are gone.

At this stage, I wish to make some comments in relation to the pilchard fishery. During a short address the other day when we were considering the aquaculture report of the ERD Committee, I tabled a number of documents in relation to the pilchard fishery and noted that I wished to speak on that matter during this debate. The pilchard fishery and its management by this Government has been of great concern to me over the past 12 months.

The commercial pilchard fishery commenced as an experimental fishery in 1991 with a 16 month trial. This was extended in July 1992, and in September 1993 the Pilchard Working Party was established to make recommendations relating to the development of the fishery. The first recommendations of that group were that the total allowable catch for 1994-95 would be 3 500 tonnes, to be reviewed annually, and that pilchard fishers would be required to purchase marine scale fishery licences.

In total at that time 14 participants entered the pilchard fishery: seven from the marine scale fishery and seven who were sponsored by the Tuna Boat Owners Association of Australia. Around the same time as that first Pilchard Working Party meeting in September 1993, a deal was signed by Dean Brown and Dale Baker on behalf of the then Liberal Opposition and the Tuna Boat Owners Association of Australia. This memorandum of understanding, or MOU as it is more commonly known, committed a future Liberal Government to approving a quota of 6 000 tonnes per annum of pilchards to be caught by tuna farmers for their farms. It is one of a number of MOUs, I might say, such as those with IBM and the Wilpena Pound chalet, that have had a somewhat chequered history under this Government.

But after the 1993 election the Tuna Boat Owners Association went to the then Minister for Primary Industries (Dale Baker) to shore up its position and recommended to the Minister that the total allowable catch for 1994-95 should be the 6 000 tonnes as provided for in the MOU but that, in a mood of compromise, 3 500 tonnes be allocated to the current 14 participants—remembering that seven of those were already tuna boat owners—and that the remaining 2 500 tonnes be allocated to tuna farmers, with individual allocations to be decided in consultation with the Tuna Boat Owners Association.

The then Minister (Dale Baker) decided, on the advice of his department, to approve a quota of 3 500 tonnes of pilchards in South Australian waters, with 2 500 tonnes to be taken from Commonwealth waters, once the management of the offshore pilchard fishery was transferred to the State Government. That was then under negotiation. Minister Baker stated at the time:

> I wish to confirm that it is the intention of this Government when possible to honour the agreement.

That was a letter sent to the Tuna Boat Owners Association on 21 February 1994. However, it transpired that negotiations between the State and Commonwealth Governments on this so-called OCS, or Commonwealth-State Offshore Agreement, to transfer management of the fishery to the State became somewhat stalled. Indeed, it took several years before that matter was finally successfully negotiated. Not unnaturally, the Tuna Boat Owners Association was annoyed by the delay.

Further correspondence between the Government and the association confirms, again and again, that the MOU would be honoured when possible. By 1995 the tuna boat owners were becoming increasingly frustrated. In a letter to the Minister, dated 23 October 1995, the association stated:

> Note that we have been trying to get this introduced since the commitment was made almost two years ago. You had agreed to it some time ago. It is not reasonable to wait one day longer than is required.

It is important to remember that this agreement was totally against the objectives of the Fisheries Act, section 20 of which requires any decision relating to fisheries to have as its principal objectives:

> (a) ensuring, through proper conservation, preservation and fisheries management measures, that the living resources of the waters to which this Act applies are not endangered or overexploited; and
> (b) achieving the optimum utilisation and equitable distribution of those resources.

The MOU did not take into account these measures. As the fishery developed, the total allowable catch was based on SARDI investigations of pilchard biomass and predictions of pilchard population, and the TAC (total allowable catch) was equally distributed amongst the 14 participants in accordance with the objectives of the Fisheries Act.

Meanwhile, the Tuna Boat Owners Association continued to remind the Government of its promise to it, and even made recommendations to the Government on the matter of lease tenure for tuna farms, stating:

> Any option which is more than simple cost recovery would clearly breach the MOU.

That is in a letter dated 17 December 1995. As a digression, it is interesting to note that the ERD Committee on aquaculture makes some comment on lease fees for tuna farms, and I wonder whether it was aware that the MOU had been invoked as part of the reason for—

The Hon. M.J. Elliott: It was a political agreement.

The Hon. P. HOLLOWAY: That is what I am getting at. I wonder whether it is aware that the MOU was behind the political decisions that have determined the lease fees for aquaculture ventures. It is obvious that this MOU is an extremely important document to the Tuna Boat Owners

Association, and it felt that it had the power to intervene in matters relating to the tuna fishery on the basis of this MOU.

In another letter relating to the lease issue, dated 16 January 1996, the association states:

> We have clearly delivered, and there is no reason for the Government to break its simple but solemn promise.

Again, the tuna boat owners tried to intervene in relation to the lease issue, using much stronger language than before, as follows:

> Any option considering cost recovery, such as an up front fee for the lease of the site or any annual fee based on turnover, would clearly breach the MOU. The industry has more than delivered on its commitments under the MOU. We expect the Government to do the same.

That was in a letter dated 19 January 1996. The Minister for Transport (Hon. Diana Laidlaw) was then dragged into this messy business, as was the State President of the Liberal Party (Martin Cameron) and then Premier Dean Brown, who wrote to the tuna boat owners promising that the MOU would be honoured by the Government. That correspondence is in the documents that I tabled in this Parliament previously.

It was around this time that the Hon. Rob Kerin, now South Australia's Deputy Premier, became Minister for Primary Industries. I noted with interest his comment during the Estimates Committee, when he was questioned on this issue, because he stated that the MOU had no place in the management of fisheries from the time he became Minister, that he consistently said that this was the case and that any correspondence to any party relating to the MOU made this clear. If only that was the case! Indeed, if the statement had been made by the Minister earlier in the peace that the MOU had no place, then the history of this matter might have been markedly different and much more acceptable in its ultimate outcome.

However, in spite of the Minister's assertions that he had no interest in the MOU, which I will further consider later, the MOU continued to play a large part in correspondence between the Minister and the Tuna Boat Owners Association, between the Minister and his department, between the Minister and the Premier and between the Minister and the Marine Scale Pilchard Fishermen's Association. This correspondence continues today. On 31 July 1996 the Minister's Chief of Staff sent a memo to the Premier's Chief Political Adviser stating:

> I understand my Minister has discussed this issue with the Premier at least briefly and I would appreciate it if we could discuss the potential difficulties surrounding the MOU commitment and the opposition to the MOU from industry sectors and our department.

That does not sound to me like an unequivocal undertaking to ignore the MOU, a position the Minister told us in the Estimates two weeks ago that he consistently took.

Also at this time the Minister sought a Crown Law opinion on the MOU. It is clear that the advice was that the agreement was not legally binding. However, the fact that the Minister felt the need to seek Crown Law advice on this matter is a clear indication that its position within the management of the fishery was substantial.

The memorandum of understanding has been bitterly opposed by most of the original pilchard fishers who fear for their livelihood because of the terms of the MOU. Looking at the MOU in its strictest terms, if it is followed, I think the tuna boat owners would have the power to increase their access to the pilchard fishery by catching feed for their own farms. The tuna boat owners have substantial market power. At this stage the only outlet for the pilchards that are caught is the tuna farms. It is a monopsony (to use the technical term) where there is just one purchaser for a good, and clearly the original pilchard fishermen have greatly reduced market power within this fishing industry. To increase the power of the Tuna Boat Owners Association in that market clearly would greatly disadvantage them. Basically, the MOU, if it was implemented, would give the Tuna Boat Owners Association a huge gift in terms of granting them a slice of the pilchard fishery—2 500 tonnes is worth many millions of dollars in terms of the value of the catch—and asked for virtually nothing in return.

The Marine Scale Pilchard Fishermen's Association was alarmed by the possibility of the MOU being honoured by the Government, and it wrote many letters attempting to make its position clear to the Minister. In spite of the Minister's retrospective assurances that he never intended to honour the MOU, the Tuna Boat Owners Association continued to believe that it would be allocated its 2 500 tonne quota as agreed earlier. In a letter to the Director of Fisheries, the association stated:

> We will not accept any other outcome except that this 2 500 tonne allocation be honoured. This has been made clear by us in numerous correspondence with the Government, including the Premier and the previous and current Minister for Primary Industries.
>
> They have also made it clear that it will be honoured. . . Anyone claiming that they were not aware of the agreement is nonsense. . . everyone, including the department, the Government and the pilchard quota holders were aware of it from day one.

That letter was dated 2 September 1996. While the Minister tells us he never stated that he would honour the MOU, the Tuna Boat Owners Association held a different opinion. Not long after the foregoing letter was written, the Tuna Boat Owners Association again wrote to the Minister on 24 October 1996, stating:

> Honouring the MOU has always been an article of faith to the tuna industry. It has resulted in us doing things we might not be able to normally commercially justify.

I would be interested to know just what those things were that were not commercially justified. The department continued to lobby the Minister on the problems of honouring the MOU. One memo from the Director of Fisheries dated 28 October 1996 states:

> Adoption of the MOU would threaten the transparent and consultative process that SA is renowned for and would result in widespread dissent and lobbying from the fishing industry. . . in general.

If the Minister for Primary Industries consistently told his department that the MOU had no place in the management of the fishery, why was his department sending him so many minutes and memos warning about the MOU?

Members interjecting:

The Hon. P. HOLLOWAY: It certainly doesn't. They were extremely strong words from a departmental adviser to a Minister, who says he did not support the MOU. Incidentally, that adviser left soon thereafter. Towards the end of 1996, the stock assessment of the pilchard fishery showed that the population was low. This was around about the time of the pilchard kill, the cause of which is still subject to dispute. While this was disputed by the Tuna Boat Owners Association, the decision was made to continue the status quo for 1997.

So, things were quiet for a while during 1997, but they picked up again close to the State election in October, when it became apparent that the Tuna Boat Owners Association had not forgotten the Government's promise to it. In a letter to the Minister dated 5 September 1997, it stated:

The tuna farmers have received numerous commitments from the Government, including yourself—

this is the current Minister for Primary Industries—

that the commitment to the MOU for 2 500 tonnes will be honoured.

In November 1997, the pilchard fishery working group decided that the total allowable catch for 1998 would be 11 500 tonnes, based on a SARDI investigation that showed pilchard stock had increased markedly. The events of this meeting continue to be a source of controversy, with allegations of intimidation and threats. Indeed, some of these were made during a meeting of the ERD Committee, at which I was present. I am aware that the Environment, Resources and Development Committee of this Parliament is to conduct an investigation into this whole issue in the future, and I look forward to its consideration of the matter.

But the final recommendation, which was accepted by the Minister, was that 2 500 tonnes of the 11 500 tonne total allowable catch be allocated to the Tuna Boat Owners Association of Australia. The Minister has since said that he had no involvement in the decisions of the working group and that he had put alternative arrangements to them which had been rejected. That may well be true, but what the argument ignores is that the Tuna Boat Owners Association has received exactly what it wanted, after lobbying for some years. It also ignores the fact that, in spite of the Minister's stating recently that he had consistently said that the MOU would have no place in the management of fisheries, the reality is that documentation as late as September last year shows that the Tuna Boat Owners Association still had an expectation that the MOU would somehow be honoured by the Government.

Since the allocation was made, the Minister has attempted to defend the decision by stating that it was not his but that of the working group. Further, the decision to allow the Tuna Boat Owners Association to allocate amongst its own members is said also to be a decision of the working group. The Minister failed to explain how and why he allowed this authority to be given to the Tuna Boat Owners Association. This question was put to the Minister during Estimates and my colleague in another place has just received the reply, in which the Minister states:

I have accepted this advice as part of the 1998 management arrangements only. Boats nominated by the ATBOA [Australian Tuna Boat Owners Association] are forwarded to the Director of Fisheries for his consideration. The Director then approves or rejects that advice. There has been no delegation of the powers of the Fisheries Act. . . to the ATBOA.

Unfortunately, there appears to be a nod and a wink. During Estimates when the Minister was asked about how exactly the Tuna Boat Owners Association would divide up this 2 500 tonne quota, he said:

The principles of the allocation within the ATBOA was not my decision but a decision of the pilchard working party. It is up to the ATBOA how it splits it up within guidelines put forward by the pilchard working party.

The point I wish to make about this decision is that, in spite of the chequered and unsavoury history of the MOU—which really is no way to run a fishery—the end result is that this Government has adopted what that MOU said. The Minister has basically abrogated his powers under the Fisheries Act and allowed this particularly influential and wealthy group of fishers to determine allocations within their association. I believe that that is a complete derogation of the Fisheries Act and that it sets an absolutely appalling example for fisheries management in this State.

It is important to look more closely at what the Minister actually said during the Estimates Committees. In relation to the MOU, which is at the heart of this whole controversy, the Minister stated:

I have consistently said that whilst I am the Minister the MOU will have no place in the management of fisheries.

Later, the Minister stated:

I think Brian Jeffriess of the ATBOA mentioned (to the ERD Committee) that the ATBOA gave up on the Minister at a very early stage as far as his adhering at all to the MOU was concerned. It was always made clear by me to everyone that I would not uphold any MOU.

The question is just to whom the Minister made this clear. I have quoted documentation as recently as September last year—four weeks before the last election—that shows that the tuna boat owners still believe that the MOU should be upheld. Letters consistently refer to the Minister at least having regard to the MOU. The pilchard fishery working party was well aware of the MOU and there is no indication at all that the Minister gave it any indication that, as far as he was concerned, the MOU would have no place in fisheries management. I have pointed out how, in many of the documents that I tabled the other day, his own department has consistently recommended against the MOU. So, if the Minister made it clear and it was so obvious, why did all this discussion continue? Why did he seek legal advice and why have the Tuna Boat Owners Association and the other protagonists been consistently writing to the Minister about this issue? If the Minister had made just one public statement that the MOU had no place, that should have been the end of the matter. Unfortunately, he did not.

The new Deputy Premier, who is Minister for Primary Industries, Natural Resources and Regional Development, should fully explain his statements to Parliament in relation to this fishery, given the apparent contradictions in what he said and what has been borne out by correspondence on the matter. There is also the issue that this allocation actually breaches the objectives of the Act in that it does not achieve, as per section 20 of the Act, the equitable distribution of fisheries management resources. The Minister has effectively allowed the Tuna Boat Owners Association to make its own allocation. That in itself may breach the Act, as this delegation must be in writing, and the Minister stated in the correspondence that I read earlier that he had not delegated authority.

However, by allowing the Tuna Boat Owners Association to make its own allocation, the Minister has opened the door to allow other fisheries to do the same. This allocation is not equitable as it gives the opportunity for some members to double-dip, that is, gain more than one quota through this unfair and inequitable distribution. I said earlier that there were 14 original fishermen, of whom seven were members of the Tuna Boat Owners Association. With the extra quotas that have been allocated, at least one of the 14 original pilchard fishermen has received an additional quota. How can this possibly conform with section 20(b) of the Act, which I read out earlier and which states that the allocation of fisheries must be equitable, when one of the 14 is getting more than the other fishermen? Not only do we have a decision which matches exactly an agreement made some years ago between the Government and the Tuna Boat Owners Association but we also have these inequities which potentially breach the Act.

In relation to the Minister's assertion that the MOU had no impact on the 1998 allocation, it is important to restate a

point made earlier. On 24 December 1993 in a letter from the Tuna Boat Owners Association to the then Minister for Primary Industries, the Tuna Boat Owners Association requested that 2 500 tonnes be allocated to the association, with the individual allocations to be decided in consultation with the Tuna Boat Owners Association. In fact, the association has eventually been granted that request. Indeed, the members of that association have been given the power to decide between themselves who should be given an allocation, with the Minister rubber-stamping the decision.

It is interesting that, under a Minister who stated that the MOU would have no place in the management of fisheries, that he had never agreed to it and never would, the Tuna Boat Owners Association has come out with an allocation that is identical to the one that was originally sought under earlier negotiations as a result of the MOU. If anything, it has come out better. The Minister will no doubt continue to deny that the MOU was part of his decision to allocate the additional 2 500 tonnes to the Tuna Boat Owners Association. In stating that the decision to allow the Tuna Boat Owners Association to allocate the quota amongst its members was not his but the working group's, he is not able to show how the authority to allow this type of allocation was delegated by him. The Minister has also not yet shown how this decision does not breach the objectives of the Act to allow an equitable distribution of the resources.

What we have before us in reality is a very powerful organisation pressuring a Government to adhere to an agreement made almost five years earlier with no reference to any objectives in any Act, let alone the Fisheries Act. We also have a Government which, although it has been advised that legally the MOU is not binding, has allocated the quota as agreed at the first possible opportunity. I believe that this deal sets an extremely bad precedent for the fishing industry in South Australia as it shows that the Government can be pressured through negotiation into giving fishery allocations. We know that a great deal of pressure has been placed on the Minister to grant this allocation and, finally in 1998, it has got what it wanted.

In all this episode I do not place any blame on the Tuna Boat Owners Association for this situation. It was simply seeking to gain a good deal for the members of the association, and it was able to do so: that is the association's job. They were effective, and they are an important part of the economy of this State. They are quite entitled to lobby and apply as much pressure as they can to get their way. However, it is the Minister's duty to ensure that the objectives of the Fisheries Act—and, indeed, the objectives of good fisheries management in this State—are upheld, and I believe he has not done so. Contrary to what the Government obviously believes, it has a responsibility to taxpayers. What explanation can the Government give the taxpayers of this State for the free allocation of 2 500 tonnes of pilchards *per annum* that it has granted to the Australian Tuna Boat Owners Association? As I said, this quota is worth many millions of dollars. In the Government papers I tabled the other day on this issue, it was estimated that, if that had gone to public tender, this Government could have raised at least $600 000—and that is a very conservative figure—from the tender of those quotas. The fact that the Government has chosen not to do it means that $600 000 will be denied to schools and hospitals in this State. Instead, the value of these licences has gone to four of the wealthiest people in this State.

These new fishermen, these new entrants to the industry, are not required to have a marine scale fisheries licence. What is so undesirable about this decision is that the Government has now created a two-tiered fishery. Within this fishery there are two sorts of entrants: one group that has to pay the quite expensive fees to get licences; and another group which is not required to get those licences and which got its allocation absolutely free. The handful of individuals who got that licence include some of the wealthiest people in this State, and that is something that the Government will find hard to justify to the taxpayers of this State. There is widespread concern in the fishing industry about the sort of precedent that this decision will set.

The reason I pursued this matter in such great detail—and I apologise to members of the Council for keeping them so long—is that I believe it is extremely important, because the precedent this decision has set must be negated; it must never happen again. The MOU process is entirely inappropriate for the management of fisheries. To that extent, I agree with the Minister for Primary Industries when he says that: it must never happen again. I only regret that the Minister for Primary Industries had not made that clear when he first took up the portfolio two or three years ago. Even more, I wish that the ultimate decision had not reflected the MOU. While the Minister might regret it, it is unfortunate that the ultimate decision exactly mirrors what was guaranteed under that MOU process. Finally, there is no place in fisheries management for a two-tiered fishery, where different participants are treated quite differently. Justice must not only be done but seen to be done, and that is not happening now.

It gives me some comfort that, as a result of this matter being pursued—not just over recent months but in the past by my colleague the Hon. Ron Roberts—we had during the ERD committee hearings, Mr Brian Jeffriess from the ATBOA, saying that he would not want to be part of any process again. We now have the Minister on the public record for the first time saying that he also believes the MOU has no place in the fisheries. Hooray! It took a long time to get to that point. Let us hope that we never again in the fisheries industry see such a preelection deal which has created so many problems for the fishery industry in this State.

I conclude by saying that I see no problem with groups of fishers such as ATBOA lobbying strongly for its industry. It has done nothing more than would be expected of it by its members. This whole exercise of this 1993 preelection deal and the subsequent events over the past four years do this Government and a series of Ministers no credit whatsoever. In my view, many bad decisions have been made by Fisheries Ministers down the years, and that includes some Ministers from my own Party, but none has made a decision anywhere near as bad as this decision.

The Hon. T. CROTHERS secured the adjournment of the debate.

JOINT COMMITTEE ON TRANSPORT SAFETY

Adjourned debate on motion of Hon. Diana Laidlaw:

1. That, in the opinion of this Council, a joint committee be appointed to inquire into and report upon all matters relating to transport safety in the State;
2. That, in the event of the joint committee being appointed, the Legislative Council be represented thereon by three members, of whom two shall form a quorum of Council members necessary to be present at all sittings of the committee;

3. That Joint Standing Order 6 be so far suspended as to entitle the Chairman to vote on every question, but when the votes are equal the Chairman shall have also a casting vote; and

4. That a message be sent to the House of Assembly transmitting the foregoing resolution and requesting its concurrence thereto;

which the Hon. Carolyn Pickles had moved to amend by leaving out paragraph 3.

(Continued from 2 July. Page 940.)

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I thank the Hon. Carolyn Pickles and the Hon. Sandra Kanck for contributing to the debate on this motion. I note that the Hon. Sandra Kanck was a bit lukewarm in her support. Her preference is that this matter be dealt with by a standing committee which, I think, puts out the challenge, quite reasonably so, that the Environment, Resources and Development Committee, which has a transport reference, could consider this the other option. I may have mentioned the Social Development Committee, but that is rather bogged down at the moment with the euthanasia reference, and may be for some time.

I am not committed to a long-term select committee process to address this issue. What I do want—irrespective of the processes of the Parliament—on a joint Legislative Council and House of Assembly basis, is consideration of some of the important issues in road safety. There are plenty of examples around Australia where members of Parliament canvass these issues and bipartisan support is gained. In this area of road safety, taking into account the challenges that we must confront, both legislatively and in terms of enforcement, members of Parliament working together on these matters would be an advantage.

I also think that there are calls from the community at large to see members of Parliament generally approach more issues in such a manner, and I would then, in this sense, highlight to the Hon. Carolyn Pickles that I will be supporting her amendment to delete the chairperson's casting vote. Since moving this motion, I have specifically spoken to the chairs of committees in the New South Wales and Victorian Parliaments, and I have determined that on not one occasion where those committees have been reporting—and they have been established for some years—has a minority or majority report been provided.

That was my concern when drawing up the original terms of reference. I support that amendment. I highlight, too, that, in terms of the composition of the committee, further discussion has taken place since the honourable member spoke. It is still proposed that there be three members from this place—one Government, one Opposition, one Democrat—and from the Lower House two Government members and one Opposition member. That generally reflects the wishes of all members. I have certainly spoken to the Independents in the Lower House who said they do not wish to serve, which does not mean that they do not have an interest. In some references they may well make representations.

The member for Chaffey, Karlene Maywald, specifically said that, in terms of the rural road strategy that is now before the ERD committee of which she is a member, she is participating strongly and has an active interest. An indication not to serve is not an indication of lack of interest. A variety of matters should come before the committee. I am very keen to see the whole issue of driver training fully explored because there is a universal view—and I do not think that it is necessarily all perception or necessarily valid—that Adelaide drivers are the worst in Australia, if not the world.

The Hon. Sandra Kanck interjecting:

The Hon. DIANA LAIDLAW: I think the worst experience I ever had was in Cairo.

Members interjecting:

The Hon. DIANA LAIDLAW: Yes, we all know of places that are worse than Adelaide—

The PRESIDENT: Order! The Minister should stick to the motion.

The Hon. DIANA LAIDLAW: This is useful to the debate. We have to be very confident that, in terms of the perceptions of driving training, we are providing the best, because it has such a marked influence on transport, safety and the road toll in general. The collection of blood is an issue that the Hon. Carolyn Pickles mentioned, and I would support looking at that sort of issue. Community road safety was another issue that the Hon. Carolyn Pickles mentioned. I would be very surprised if the Hon. Sandra Kanck did not have many views on many subjects that she wished to explore and, of course, that would keep us extremely busy as well. I thank all members for their contributions and for their support.

Amendment carried; motion as amended carried.

EDUCATION (GOVERNMENT SCHOOL CLOSURES AND AMALGAMATIONS) AMENDMENT BILL

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

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

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

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

That this Bill be now read a second time.

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

Leave granted.

This Bill makes three amendments to the *Police (Complaints and Disciplinary Proceedings) Act 1985*.

The first amendment is to section 32(1)*(a)*(i)(E). Section 32 provides for the Police Complaints Authority to make an assessment and recommendation in relation to investigations by the internal investigation branch into a complaint about a member of the police force. The Authority is required to notify the Commissioner of his assessment of the conduct of a member of the police force. Section 32 lists alternatives against which the Authority is to make his assessment. Section 32(1)*(a)*(I)(E) provides that the Authority must notify the Commissioner of his or her assessment of whether any conduct of a member of the police force "was otherwise, in all the circumstances, wrong".

The Police Association has long been concerned with the breadth and uncertain meaning of this provision. The Association argues that it is impossible for a member of the police force to know what conduct might be encompassed by the provision.

The other alternatives listed in section 32(1)*(a)*(i) are expressed in broad terms and it is difficult to see what conduct which was intended to be caught by (E) would not be caught under another alternative in the sub-section. In these circumstances there does not seem to be any reason to retain (E) and by deleting it uncertainty will be removed.

The next amendment is to section 39(3) of the Act. Section 39 which deals with charges in respect of breaches of discipline by police. Section 39(3) requires the Police Disciplinary Tribunal to be satisfied beyond reasonable doubt that a member has committed a

breach of discipline before finding a charge proven. The amendment changes the test from proof beyond reasonable doubt to proof on the balance of probabilities. Proof on the balance of probabilities is the usual standard of proof in disciplinary proceedings and is the standard of proof in police disciplinary proceedings in all other jurisdictions in Australia.

The change in the burden of proof in police disciplinary proceedings is necessary to ensure that the disciplinary process is not thwarted because something cannot be proved beyond reasonable doubt. It is acknowledged that the outcome of disciplinary proceedings can be very serious for an officer but it is also a very serious matter for officers who should be disciplined, or even dismissed, to avoid any penalty because a matter cannot be proved beyond reasonable doubt.

The change in the burden of proof will mean that the Tribunal will have to determine disciplinary charges having regard to the principles set out by the High Court in *Briginshaw v Briginshaw* (1938) 60 C.L.R. 336. In *Briginshaw* the High Court said that a Tribunal, in determining the issues on the balance of probabilities, must determine whether the issues have been proved to the reasonable satisfaction of the Tribunal, bearing in mind the seriousness of the allegations made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding. The *Briginshaw* test is a process to used within the civil standard of proof on the balance of probabilities. The more serious the issue, the more demanding is the process by which reasonable satisfaction is attained.

The third amendment is to section 48(4)*(c)*. Section 48 deals with the divulging of information obtained in the course of the investigation of a complaint. Section 48(4) provides that a 'prescribed officer' is not prevented from divulging or communicating information in proceedings before a court.

This provision was amended in 1996 to provide that it must be in the interests of justice before the court can require the information to be divulged. This change was a result of defence counsel conducting 'fishing expeditions' in the hope of finding something in Police Complaints Authority files that would discredit police witnesses in criminal trials. These "fishing expeditions" are disruptive not only to the Authority and the police but also to the trials of criminal matters when subpoenas are sought as a matter goes to trial.

'Fishing expeditions' have not ceased and the provision is now further amended to require applicants to satisfy the court that there are special reasons requiring the making of an order and the interests of justice cannot be adequately served except by making the order. Where the information in the files is necessary to ensure that justice is done the information will be made available to the defence but only then.

It may be that the need for more amendments to the *Police (Complaints and Disciplinary Proceedings) Act 1985* emerges as a result of the review of the Act presently being undertaken by Mrs Iris Stevens. If this should happen, any amendments can be done either by amendments to this Bill or by a separate Bill.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The measure is to commence on a day to be fixed by proclamation.

Clause 3: Amendment of s. 32—Authority to make assessment and recommendations in relation to investigations by internal investigation branch

An investigation into police conduct under the principal Act results in an assessment by the Police Complaints Authority of whether the conduct of the police officer concerned was at fault in any of a number of ways listed in section 32(1)*(a)*(i). The 'catch-all' that the conduct was wrong in some unspecified way is removed from this provision by the clause as it is considered that the preceding provisions exhaustively list the ways in which police conduct might be viewed as being wrong.

Clause 4: Amendment of s. 39—Charges in respect of breach of discipline

Section 39 of the principal Act currently requires that the Police Disciplinary Tribunal must determine whether a police officer has been guilty of a breach of discipline according to the criminal law burden of beyond reasonable doubt. The clause substitutes for this the non-criminal law burden of the balance of probabilities.

Clause 5: Amendment of s. 48—Secrecy

Section 48 prevents the unauthorised disclosure of information gained through an investigation under the principal Act. The section authorises disclosure of such information in certain specified circumstances, one of which is that a court requires the disclosure in the interests of justice. This ground for disclosure is narrowed by the clause so that the court must be satisfied that there are special reasons for ordering the disclosure and that the interests of justice cannot adequately be served except by the making of such an order.

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

POLICE BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

The present legislation governing the South Australia Police is the Police Act 1952. The structure of that legislation has remained basically untouched over the years. The legislation provides for a rigid management system, it does not reflect human resource management needs or indeed even reflect the changes in the work of the police over the years.

This Bill makes significant changes in the management of South Australia Police, changes which are long overdue and which will give South Australia Police a modern management structure which establishes a basis for performance management. The Bill provides a flexible management system for the deployment and use of all members of South Australia Police. It introduces a professional conduct and disciplinary system to streamline the processing of misconduct issues to allow greater focus to be placed on the investigation and prosecution of serious conduct matters and streamlines promotional appointments and appeals.

The Police Act 1952 and Police Regulations 1982 refer to 'member of the police force', 'police force' and 'force'. There has been a declining use of the word 'force' over recent years. The word 'force' was appropriate when a police force was commissioned to provide the main security force in the colony. A modern police organisation has little in common with military style police forces set up at the turn of the century. This has been recognised within the South Australia Police for some time and the name South Australia Police, or SAPOL, has been used without the word 'force'. South Australia Police is used, for example, on the identification patches worn on police uniforms, internal manuals and police letterhead. This change in the name is now recognised in the legislation.

The changes in the concept of policing are also reflected in clause 5 of the bill which sets out the purposes of South Australia Police. The purpose of the police is presently set out in regulation 7 and has not been changed since 1982. The purposes set out in clause 5 reflect the changing roles and functions of police with particular emphasis on the services provided to the community.

Clauses 6, 7 and 8 deal with the control and management of South Australia Police. Clause 6 provides that the Commissioner is responsible for the control and management of South Australia Police, subject to the directions of the Minister. Clause 7 provides that the Minister may not give directions to the Commissioner in relation to the appointment, assignment, transfer, remuneration, discipline or termination of a particular person. Clause 7 is similar to section 15 of the Public Sector Management Act 1995 which provides a framework within which public servants are engaged and management occurs. Clause 8 provides that any directions the Minister gives to the Commissioner in relation to enforcement of a law or law enforcement methods, policies, priorities and resources must be published in the Gazette and laid before Parliament.

These provisions differ from the existing provisions relating to the control and management of the police force. Section 21 of the Police Act 1952 provides that the Commissioner is subject to directions of the Governor and all directions must be published in the Gazette and laid before Parliament.

It is difficult to see why the Commissioner of Police should not be responsible to the Minister for the management of the South Australia Police in the same way as Public Sector Chief Executives are responsible to their Minsters for the management of their Departments. At the same time the obligation of the police to obey their oath to uphold the law and their independent discretion to

investigate and prosecute breaches of the law must be recognised. However, as the 1970 Royal Commission Report on the September Moratorium Demonstration recognised there may be times where advice and direction on law enforcement are to be expected from the Minister. The Royal Commission said that in such cases there should be no doubt whatever as to the advice or direction tendered. It should therefore be in writing and tabled in Parliament. These amendments are in accordance with the recommendations of the Royal Commission.

The provisions in the present Act providing for the appointment of the Commissioner, Deputy Commissioner and Assistant Commissioners have all recently been updated and are repeated in this Bill. There is, however, one change in the appointment of Assistant Commissioners to which I draw honourable members' attention. Under the present provisions Assistant Commissioners are appointed by the Governor. Under clause 15 the appointments are made by the Commissioner. This is in line with the appointments at a similar executive level under the Public Service Management Act.

The involvement of the Governor in appointments under the Act has been removed in other appointments as well. The Governor will no longer appoint the police medical officers. Police Officers will no longer receive a Commission from the Governor either when they are first promoted to the rank of officer or each time they are promoted as they now do. This change requires that officers are no longer called commissioned officers but just officers. The abolition of commissions within the South Australia Police reflects the position in other jurisdictions in Australia. The current provisions technically allow the Government to control these appointments but the practice now (which has been the practice for many years) is to pass the recommendations of the Commissioner more as a formality than actually interfering in what are management issues within the responsibility of the Commissioner.

Clause 10 of the bill establishes a human resource management philosophy as a basis for all actions concerning human resource management issues. The Commissioner must ensure that management practices are followed with respect to the matters enumerated in clause 10(1) and the personnel management practices enumerated in clause 10(2)

Recent amendments to the Police Act 1952 provided for the appointment of Assistant Commissioners on contractual terms. Provision is now made in clause 23 for the appointment of officers on term appointments. The clause also provides for the appointment of persons who are not members of South Australia Police to the rank of senior constable or above on term appointments.

This provision will give the Commissioner flexibility to identify specific positions which require the direction of specific resources to provide specific outcomes within given parameters.

Where an existing member of South Australia Police is appointed on a term appointment to a position and the conditions of the appointment do not otherwise provide, the person will, on not being reappointed at the end of the term, be entitled to an appointment at the same rank the person held before being first appointed for a term for a specific purpose to a specific position.

Under the existing Act and Regulations appointments of commissioned officers are to a particular position. This is not a feature of this bill and it is intended that promotion to a rank will be based on the generic competencies identified as being common to a particular rank. A promotion to a particular position will only be made when the position has been identified as one of a specialist nature. Clause 47 allows the Commissioner to transfer a member from the member's current position to another position. Appointments to a rank as opposed to a position, together with the ability to transfer a member to another position, will promote organisational efficiency by permitting the commissioner to move officers for organisational efficiency, management development needs and anti corruption strategies. A member aggrieved by a transfer under Clause 47 will be able to have his or her grievance dealt with in accordance with a process specified in general orders. Another provision which provides the Commissioner with flexibility in the deployment of members is clause 50 which removes the right to review the merit of appointees to positions above the rank of inspector. This is not dissimilar from the Public Sector Management Act 1995 provisions relating to executive level appointments.

Clause 24 makes provision for the appointment of community constables. These are the same as what are called police aides under the present Act. Clause 24(2) provides that the Commissioner of Police can give a community constable position and its occupant a title that reflects an area of limitation or other characteristic of the position.

The powers and responsibilities of community constables are set out in Part 4, Division 2 of the Bill.

The present Act and Regulations are very prescriptive in their approach to disciplinary matters. What is needed today is an approach which promotes professional standards being supported by all members of the organisation and which provides for diverse strategies to deal with people not upholding professional standards.

Misconduct and discipline is dealt with in Part 6 of the Bill. Clause 37 provides for a Code of Conduct to be established by regulation. A two tiered disciplinary procedure is provided for. Major misconduct will be dealt with by the Police Disciplinary Tribunal established under the Police (Complaints and Disciplinary Proceedings) Act 1985. Minor misconduct will be dealt through informal inquiry under clause 42. The standard of proof in an informal inquiry for determining that a breach of the Code has been made is proof on the balance of probabilities. A finding on an informal inquiry can be reviewed under clause 43. Action which may taken in relation to a person as a result of a determination of an informal inquiry is set out in clause 42(3).

Criminal behaviour by members of S.A. Police will continue to be dealt with in the criminal justice system. The Commissioner is given the power in Clause 41 to suspend members who are charged with an offence or a breach of the Code. Where a suspension is revoked, the member will be entitled to any remuneration and accrual of rights withheld during the period of suspension.

Clause 46 provides some flexibility for the Commissioner of Police to manage unsatisfactory performance by transferring a member to a position of the same or a lower rank or by terminating the appointment of the member. No appointment can be terminated unless the member has been allowed a period of at least three months to improve his or her performance and a panel of persons has confirmed that the processes and assessments made conformed to the requirements of the provision and were reasonable in the circumstances.

The Police Appeal Board and the Promotions Review Board are replaced by a one person Police Review Tribunal comprising a Judge of the District Court. The Police Appeal Board hears appeals against the termination of the services of a member and the Promotion Review Board, as its name indicates, hears promotion appeals. The proposed single person Review Tribunal is intended to streamline the process and promote consistency in decisions.

This Bill is an important measure with which recognises the role of the police in today's society, which will promote the effective management of South Australia Police and will assist the Commissioner of Police in responding to the needs of the community.

In introducing the Bill now the Government does not intend to pre-empt the enterprise bargaining process which is in train at the moment. The purpose in tabling the Bill now is to give people time to consider it while the Budget process is taking place. If there is agreement between the Police Association and the Commissioner which suggests that changes to the Bill are needed then changes can be made.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for commencement of the measure on a day to be fixed by proclamation.

Clause 3: Interpretation

This clause is an interpretation provision. Among other terms it defines "minor misconduct" as a conduct of a kind agreed or determined to constitute minor misconduct, and set out in a notice tabled before both Houses of Parliament, under section 3 of the *Police (Complaints and Disciplinary Proceedings) Act 1985*.

PART 2

GENERAL

Clause 4: Composition of police

This clause sets out the persons who constitute *South Australia Police* (or *S.A. Police*).

Clause 5: Purpose of police

This clause provides that the purpose of S.A. Police is to reassure and protect the community in relation to crime and disorder by the provision of services to—

- uphold the law; and
- preserve the peace; and
- prevent crime; and
- assist the public in emergency situations; and

- co-ordinate and manage responses to emergencies; and
- regulate road use and prevent vehicle collisions.

Clause 6: Commissioner responsible for control and management of police

This clause provides that the Commissioner of Police is responsible for the control and management of S.A. Police, subject to the other provisions of the measure and any directions of the Minister.

Clause 7: Exclusion of directions in relation to employment of particular persons

No Ministerial direction is, however, to be given in relation to the appointment, transfer, remuneration, discipline or termination of a particular person.

Clause 8: Certain directions to Commissioner to be Gazetted and laid before Parliament

This clause requires the Minister to *Gazette* and table before both Houses of Parliament every direction given to the Commissioner in relation to enforcement of a law or law enforcement methods, policies, priorities or resources. The direction must be *Gazetted* within eight days and tabled within six sitting days of the date of the direction.

Clause 9: Commissioner also responsible for control and management of police cadets and police medical officers

This clause provides that the Commissioner of Police is also responsible for the control and management of police cadets and police medical officers.

Clause 10: General management aims and standards

This clause sets out general management aims and standards of S.A. Police. It requires the Commissioner to ensure that management practices are followed that are directed towards, among other things, the effective, responsive and efficient delivery of services and the full utilisation of the abilities of all personnel. It also requires the Commissioner to ensure, with respect to personal management, that practices are followed under which (among other things) selection processes are based on merit, officers and employees are treated fairly and consistently and there is no unlawful discrimination.

Clause 11: Orders

This clause empowers the Commissioner to give general or special orders concerning the control and management of S.A. Police, police cadets and police medical officers, including orders concerning duties, appointment and promotions. These orders are not subordinate legislation and may be varied or revoked by the Commissioner. The power of the Commissioner to give binding orders or directions is not restricted by this power to make general or special orders or by the contents of any general or special orders.

PART 3

COMMISSIONER, DEPUTY COMMISSIONER AND ASSISTANT COMMISSIONERS

Clause 12: Appointment of Commissioner of Police

This clause empowers the Governor to appoint a Commissioner of Police.

Clause 13: Conditions of Commissioner's appointment

This clause provides that the conditions of appointment of the Commissioner are subject to a contract between the Commissioner and the Premier. That contract must provide, among other things, that the Commissioner is appointed for a term not exceeding five years specified in the contract (and may be reappointed) and must meet performance standards as set from time to time by the Minister. The Commissioner must be notified at least three months prior to the end of his or her term whether he or she is to be reappointed. The reasons for a decision not to reappoint must be laid before Parliament. The remuneration specified in the contract is a charge on the Consolidated Account.

Clause 14: Deputy Commissioner

This clause empowers the Governor to appoint a Deputy Commissioner who is to exercise such of the powers, authorities, duties and functions of the Commissioner as the Commissioner may direct. If the Commissioner is absent from duty or if the office of Commissioner is vacant, the Deputy Commissioner may exercise the Commissioner's powers, authorities, duties and functions.

Clause 15: Assistant Commissioners

This clause empowers the Commissioner to appoint Assistant Commissioners. If the Deputy Commissioner is absent from duty or if the Deputy Commissioner's office is vacant, the powers, authorities, duties and functions of the Deputy Commissioner may be exercised by an Assistant Commissioner nominated by the Commissioner (or if that Assistant Commissioner is absent from duty—by the most senior Assistant Commissioner on duty at the time).

Clause 16: Conditions of appointment of Deputy and Assistant Commissioners

This clause provides that the conditions of appointment of the Deputy Commissioner or an Assistant Commissioner are subject to a contract between the Deputy or Assistant Commissioner and the Commissioner. That contract must provide, among other things, that the Deputy or Assistant Commissioner is appointed for a term not exceeding five years specified in the contract (and can be reappointed) and that the Deputy or Assistant Commissioner is to meet performance standards set by the Commissioner. A decision whether to reappoint must be notified to the Deputy or Assistant Commissioner not less than three months before the end of his or her term.

The contract may provide that an Assistant Commissioner is entitled to another appointment in the police force at the end of his or her term if he or she is not reappointed as Assistant Commissioner. If an Assistant Commissioner is not reappointed and the contract does not provide otherwise, he or she is entitled to be appointed to a position in the police force of the same rank as he or she previously held (if any).

Clause 17: Termination of appointment of Commissioner or Deputy or Assistant Commissioner

This clause empowers the Governor to terminate the appointment of the Commissioner or the Deputy Commissioner and the Commissioner to terminate the appointment of an Assistant Commissioner and sets out the grounds on which such action may be taken. Those grounds include misconduct and failing to carry out duties satisfactorily or to the performance standards specified in the contract of appointment. The reasons for a decision to terminate the appointment of the Commissioner must be tabled in Parliament.

Clause 18: Resignation

Under this clause, the Commissioner or the Deputy Commissioner may resign by not less than three months notice in writing to the Minister and an Assistant Commissioner may resign by not less than three months notice in writing to the Commissioner (unless shorter notice is accepted by the Minister or the Commissioner).

Clause 19: Delegation

This clause empowers the Commissioner to delegate in writing any of his or her powers or functions.

PART 4

OTHER MEMBERS OF S.A. POLICE

DIVISION 1—APPOINTMENT AND RESIGNATION

Clause 20: Appointment of officers

This clause empowers the Commissioner to appoint commanders, superintendents, inspectors and other officers of police.

Clause 21: Appointment of sergeants and constables

This clause empowers the Commissioner to appoint sergeants and constables.

Clause 22: Further division of ranks

This clause would enable the Governor to specify other police ranks by regulation.

Clause 23: Term appointments for certain positions

An appointment of an officer or an appointment from outside S.A. Police to a position of or above the rank of senior constable may, under this clause, be made for a term not exceeding five years and on such conditions as to remuneration or any other matter as the Commissioner considers appropriate. Alternatively, such an appointment may be left to be governed by the provisions of the measure. The conditions of appointment for a term will prevail over inconsistent provisions of the measure relating to conditions of appointment. Provision is made for some other appointment in the event of non-reappointment at the end of a term appointment in the same way as for Assistant Commissioner (*see clause 16*).

Clause 24: Appointment of community police

This clause empowers the Commissioner to appoint community police for the whole or any part of the State. The provision for community police is in place of the provision under the current Act for police aides (who will under transitional provisions contained in Schedule 2 continue as community constables).

Clause 25: Police oath or affirmation

This clause requires members of S.A. Police to make an oath or affirmation on appointment.

Clause 26: Effect of appointment and oath or affirmation

Under this clause a member of S.A. Police is, on appointment and making an oath or affirmation, to be taken to have entered into an agreement to serve in S.A. Police until he or she lawfully ceases to be a member of S.A. Police.

Clause 27: Probationary service

This clause provides that a person's appointment to a position in S.A. Police is initially to be on probation for a period (not exceeding two years) determined by the Commissioner. If an appointment to a promotional position is brought to an end during a period of

probation, the member of S.A. Police concerned reverts to his or her previous rank.

Clause 28: Performance standards for officers

This clause makes it a condition of appointment as an officer below the rank of Assistant Commissioner to meet performance standards set from time to time by the Commissioner.

Clause 29: Resigning without leave

This clause makes it an offence for a member of S.A. Police (other than the Commissioner, the Deputy Commissioner or an Assistant Commissioner) to resign or relinquish official duties unless he or she gives 14 days notice or has the written authority of the Commissioner or is physically or mentally incapacitated. The maximum penalty is a fine of $1 250 or three months imprisonment.

DIVISION 2—SPECIAL PROVISIONS RELATING TO COMMUNITY POLICE

Clause 30: Powers, responsibilities and immunities of community police

This clause provides that a community constable's powers, responsibilities and immunities as a member of S.A. Police force are subject to any limitations imposed by the Commissioner.

Clause 31: Suspension or termination of services of community police

This clause empowers the Commissioner to suspend or terminate the services of a community constable (but not, under this clause, for physical or mental disability or illness without first complying with the requirements of the *Police Superannuation Act 1990*).

Clause 32: Conditions of employment of community police

This clause provides that the conditions of employment of a community constable may be determined by the Commissioner.

PART 5

POLICE CADETS AND POLICE MEDICAL OFFICERS

Clause 33: Police Cadets

This clause empowers the Commissioner to appoint police cadets and provides that they are not members of S.A. Police

Clause 34: Suspension or termination of appointment of trainee constables

This clause empowers the Commissioner to suspend or terminate the services of a police cadet at his or her discretion.

Clause 35: Resigning without leave

This clause makes it an offence for a police cadet to resign or relinquish his or her duties unless he or she has the written authority of the Commissioner or gives 14 days notice or is incapacitated. The maximum penalty is a fine of $1 250 or three months imprisonment.

Clause 36: Police medical officers

This clause empowers the Governor to appoint a legally qualified medical practitioner to be a police medical officer on terms and conditions fixed by the Governor. The duties of a police medical officer are as arranged between the Commissioner and the officer.

PART 6

MISCONDUCT AND DISCIPLINE OF POLICE AND POLICE CADETS

Clause 37: Code of conduct

This clause empowers the Governor to make regulations establishing a Code of Conduct for the maintenance of professional standards by members of S.A. Police and police cadets. The Code may make provision concerning corrupt, improper or discreditable behaviour, conduct towards other police, standards of personal behaviour or dress, and use of official information, among other things.

Clause 38: Report and investigation of breach of Code

This clause requires a member of S.A. Police or police cadet to report suspected breaches of the Code to the Commissioner. If the Commissioner suspects that a breach of the Code has been committed, he or she may cause the matter to be investigated (subject to any determination of the Police Complaints Authority under section 23 of the *Police (Complaints and Disciplinary Proceedings) Act 1985*.

Clause 39: Charge for breach of Code

This clause empowers the Commissioner to charge members of S.A. Police or police cadets with a breach of the Code (in accordance with procedures prescribed by regulation). A person charged can admit or deny the charge within the time and in the manner prescribed by regulation. If the charge is not admitted, it must be heard by the Police Disciplinary Tribunal in accordance with the *Police (Complaints and Disciplinary Proceedings) Act 1985*.

Clause 40: Orders for punishment following offence or charge of breach of Code

This clause empowers the Commissioner to order the punishment of a member of S.A. Police or police cadet for an offence against Australian law or a breach of the Code. The punishments include termination or suspension of the person's services or appointment, reduction in pay, transfer to another position and reduction in seniority.

Clause 41: Suspension where charge of offence or breach of discipline

This clause empowers the Commissioner to suspend a member of the police force or police cadet who is charged with an offence against Australian law or a breach of the Code. The Commissioner can in appropriate cases suspend the person on making a decision to charge the person but before the charge is laid. A suspension under this clause must be revoked by the Commissioner if the person is found not guilty of the offence or breach, or the charge is dismissed or lapses or is withdrawn (if the person is not at that time charged with any other offence).

Clause 42: Minor misconduct

This clause empowers the Commissioner to determine that a suspected breach of the Code involves only minor misconduct and to refer the matter to a member of S.A. Police for an informal inquiry as prescribed by the regulations. This power of the Commissioner is subject to the provisions of the *Police (Complaints and Disciplinary Proceedings) Act 1985*.

The member conducting the inquiry must cause to be determined, on the balance of probabilities, whether there was a breach of the Code and, if there was, may determine what action should be taken for that breach. The accused member or cadet must be given the opportunity to make submissions. A report must be made to the Commissioner on the result of the inquiry and any action to be taken and particulars of those matters must be given to the accused member or cadet.

The most severe action that may be taken in relation to a breach of the Code involving only minor misconduct is the transfer of the member to another position (without reduction in rank or seniority). A member may also be reprimanded, counselled, educated or trained.

No information obtained in relation to the subject matter of the inquiry during the inquiry may be used in proceedings in respect of a breach of the Code before the Police Disciplinary Tribunal (other than proceedings for providing false information to obstruct the inquiry).

Clause 43: Right to apply for review of informal inquiry, etc.

This clause provides for the review of the results of an informal inquiry. The original finding can be challenged on the ground that the accused member or cadet did not commit the breach concerned or there was a serious irregularity in the processes followed. The original punishment ordered can be challenged on the ground that it was not warranted by the nature of the breach or in the circumstances of the case.

The person conducting the review can order a new inquiry (or order that the inquiry be recommenced from a particular stage), affirm or quash any finding or determination reviewed or make a determination that should have been made in the first instance.

A report must be given to the Commissioner and the accused member or cadet.

This right of review excludes a right of appeal under the *Police (Complaints and Disciplinary Proceedings) Act 1985*.

Clause 44: Monitoring of informal inquiries, etc.

This clause requires the Commissioner to cause all informal inquiries into minor misconduct to be monitored and reviewed with a view to maintaining proper and consistent practices.

The Commissioner can intervene in particular cases to order a new inquiry (or the recommencement of the inquiry from a particular stage) or to quash a finding. The Commissioner may also make a determination that no action or less severe action be taken in relation to the member or cadet concerned.

PART 7

TERMINATION AND TRANSFER OF POLICE

Clause 45: Physical or mental disability or illness

This clause provides for the termination of the services of members of S.A. Police (other than those appointed under Part 3) for incapacity due to physical or mental disability or illness.

Clause 46: Unsatisfactory performance

This clause authorises the demotion or termination of the services of a member of S.A. Police (other than a member appointed under Part 3) for unsatisfactory performance. Where a member is not performing his or her duties satisfactorily or to applicable performance standards and it is not practicable to transfer that member to another position of the same rank more suited to his or her capabilities or qualifications, the Commissioner is empowered to transfer the member to a position of a lower rank more suited to the

member's capabilities or qualifications. If that is not practicable the Commissioner can terminate the services of the member.

These powers do not apply if the unsatisfactory performance is due to physical or mental disability or illness, or to the lack of necessary resources or training or other organisational factors beyond the member's control.

No action can be taken under this clause without the member being given an opportunity to improve, and all processes followed and assessments made have to be reviewed by an independent panel.

Clause 47: Power to transfer

This clause empowers the Commissioner to transfer a member of S.A. Police to another position in S.A. Police without conducting selection processes. This power cannot be used to transfer a member to a higher rank (except as authorised under the regulations). It cannot be used to transfer a member to a lower rank (except as authorised elsewhere in the Bill or under the regulations or where the member consents). A member aggrieved by a transfer from a position can apply to have that grievance dealt with in accordance with general orders of the Commissioner, but not in a case where it was a condition of the appointment or transfer to that position that the member would only remain there for a specified period and that period has elapsed.

PART 8
REVIEW OF CERTAIN TERMINATION AND PROMOTION DECISIONS
DIVISION 1—TERMINATION REVIEWS

Clause 48: Right of review

This clause establishes a right to apply to the Police Review Tribunal for a review of a decision to terminate a member's services for physical or mental disability or illness or for unsatisfactory performance or during a period of probation.

Clause 49: Determination of Application

This clause empowers the Police Review Tribunal (which is established under schedule 1) to quash and make recommendations in relation to termination decisions.

DIVISION 2—PROMOTION REVIEWS

Clause 50: Interpretation and application

This clause contains a definition by virtue of which the Division will apply to promotions to every rank from senior constable up to and including inspector ("prescribed promotional positions"). The Division is not to apply in relation to transfers under the measure from one position to another.

Clause 51: Processes for appointment or nomination for prescribed promotional positions

This clause requires the selection processes for appointments or nomination to prescribed promotional positions to be made in accordance with general orders.

Clause 52: Right of review

This clause empowers unsuccessful applicants to apply to the Police Review Tribunal for review of a selection made for appointment or nomination to a prescribed promotional position. An applicant must follow a grievance procedure established by general orders before making an application for review.

Clause 53: Grounds for application for review

This clause sets out the grounds on which a person may apply for a selection decision to be reviewed.

The application must be made on the ground that the selected member is not eligible for appointment to the position, or that the selection processes were affected by nepotism or patronage or were otherwise not based on merit, or that there was some other serious irregularity in the selection process. Application cannot be made merely on the basis that the Tribunal should redetermine the respective merits of the applicant and the selected member.

Clause 54: Determination of application

This clause empowers the Police Review Tribunal to quash the selection decision and order that the selection processes be recommenced from the beginning or some other specified stage. The Tribunal may do so if it is satisfied that there has been some serious irregularity in the selection processes such that it would be unreasonable for the decision to stand.

Clause 55: Determination of question of eligibility for appointment

This clause makes it clear that for the purposes of this Division, a person is not eligible or appointment or nomination to a prescribed promotional position if he or she does not have the qualifications determined by the Commissioner as essential to the position. Determinations by the Commissioner as to the essential or desirable qualifications for a position are, for the purposes of reviews under this Division, binding on the Police Review Tribunal.

PART 9
SPECIAL CONSTABLES

Clause 56: Appointment of special constables

This clause empowers the Commissioner to appoint special constables for the whole or part of the State.

Clause 57: Oath or affirmation by special constables

This clause requires a special constable to make an oath or affirmation on appointment.

Clause 58: Duties and powers of special constables

This clause provides that a special constable has such duties as are imposed by the Commissioner and has the same powers, responsibilities and immunities as a member of S.A. Police subject to any limitation specified in writing by the Commissioner.

Clause 59: Suspension or termination of appointment of special constables

This clause empowers the Commissioner to suspend or terminate the services of a special constable.

Clause 60: Allowances and equipment for special constables

This clause makes provision for the remuneration and equipment of special constables.

PART 10
MISCELLANEOUS

Clause 61: Protection from liability for members of S.A. Police

This clause provides civil immunity for members of S.A. Police in the honest discharge of their duties.

Clause 62: Members subject to duty in or outside State

This clause requires members of S.A. Police to perform duties at any place within or outside the State if so ordered by the Commissioner or some other member with the necessary authority. A member performing duties outside the State is required to obey orders and is subject to the Code of Conduct in the same way as if he or she were within the State.

Clause 63: Divestment or suspension of powers

This clause provides that all powers and authorities vested in a person as a member of S.A. Police are divested if he or she ceases to be a member. The same rule applies during a period of suspension and, unless the Commissioner orders otherwise, during secondment to a position outside S.A. Police.

Clause 64: Duty to deliver up equipment, etc.

This clause requires a person whose services or appointment have been terminated or suspended to immediately deliver up all property belonging to the Crown that was supplied to the person for official purposes. The maximum penalty for failing to do so is a $2 500 fine or six months imprisonment.

A justice can issue a warrant to search for and seize any such property.

Clause 65: False statements in applications for appointment

This clause makes it an offence to make a false statement in connection with an application for appointment under the measure. The maximum penalty is a $2 500 fine or six months imprisonment. It is a defence to prove that the defendant believed on reasonable grounds that the statement was true.

If a person is appointed to S.A. Police or as a police cadet after contravening this clause, the contravention can be dealt with as a breach of the Code (whether the person is prosecuted for the offence or not).

Clause 66: Suspension or revocation of suspension under Act or regulations

This clause provides that any power of the Commissioner suspend a person's services or appointment includes a power to do so with or without pay or with or without accrual of rights. The Commissioner can also determine if the period of suspension is to count as service.

The clause empowers the Commissioner to revoke a suspension at any time. If, during a period of suspension, the person resigns or retires or is dismissed on disciplinary grounds, the person ceases to be entitled to remuneration or accrual of rights for the period of suspension or to count the period as service.

The clause gives the Commissioner an overriding power to order in any event that a person is entitled to all or part of any pay or accrual of rights withheld in consequence of a suspension or that a period of suspension will count as service.

Clause 67: Evidence of appointment

This clause is an evidentiary provision.

Clause 68: Execution of process

This clause requires members of S.A. Police (and their assistants) to execute process for the recovery of fines and recognisances.

Clause 69: Allowances

This clause provides for the payment of allowances to members of S.A. Police and police cadets.

Clause 70: Impersonating police and unlawful possession of police property

This clause makes it an offence to impersonate police (of any country) or a police cadet without lawful excuse. The maximum penalty is a fine of $2 500 or six months imprisonment. This offence does not prevent the wearing of police uniform for the purposes of a theatrical performance or social entertainment.

It is also an offence to have possession of a police uniform or official property without lawful excuse. The maximum penalty is a fine of $2 500 or imprisonment for six months.

Clause 71: Annual reports by Commissioner

This clause requires the Commissioner to make an annual report to the Minister on S.A. Police and its operations. The report must be laid before both Houses of Parliament.

Clause 72: Regulations

This is a regulation making power.

SCHEDULE 1

Police Review Tribunal

This schedule establishes the Police Review Tribunal and makes provision as to its proceedings and powers. The constitution of the Tribunal varies according to whether it is hearing a termination review or a promotion review. The Tribunal is to act according to equity, good conscience and the substantial merits of the case without regard to legal technicalities and forms and is not bound by the rules of evidence.

SCHEDULE 2

Repeal and Transitional Provisions

This schedule repeals the *Police Act 1952* and deals with transitional matters.

SCHEDULE 3

Consequential Amendments

This schedule makes consequential amendments to the *Acts Interpretation Act* and the *Police Superannuation Act*.

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

BARLEY MARKETING (DEREGULATION OF STOCKFEED BARLEY) AMENDMENT BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

The purpose of this amending Bill is to deregulate the domestic, or non-export, stockfeed barley market in South Australia.

The *Barley Marketing Act 1993* was reviewed in 1997 under the National Competition Policy review of Legislative Restrictions on Competition jointly by this Government and the Victorian Government. One of the recommendations of this review was that the domestic stockfeed barley market be deregulated during the 1998/99 season.

Specifically, deregulation of the domestic stockfeed barley market is to be accomplished by amending the current *Barley Marketing Act* to remove the restrictions on—

- who may sell or deliver stockfeed barley;
- who may transport stockfeed barley for sale or delivery;
- who may buy stockfeed barley from a grower.

The effect of this Bill will formalise what is, by and large, already practice, as the Australian Barley Board is not active in enforcing the requirement that persons wishing to purchase barley for stockfeed purposes directly from a grower obtain a permit authorising the person to do so.

The barley harvest in South Australia can begin as early as mid October. Since most stockfeed barley in the State is now marketed through the Australian Barley Board, deregulation of the stockfeed barley market at an early date is critical to avoid confusion during the harvest.

It is intended that deregulation of the stockfeed barley market will take effect from 15 October 1998 in both South Australia and Victoria. The commencement provision included in the Bill will allow this to be co-ordinated.

I commend the Bill to honourable members.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 33—Delivery of barley and oats

Section 33(1) and (2) of the principal Act provide that, subject to the Act, a person must not—

- sell or deliver barley to a person other than the Australian Barley Board (ABB); or
- transport barley which has been sold or delivered to a person other than the ABB or bought in contravention of section 33(4).

It is proposed to insert new paragraph *(da)* in section 33(3) which provides that section 33(1) and (2) do not apply to barley sold to a person who purchases the barley for use in Australia for stockfeed purposes.

The effect of proposed new paragraph *(a)* to be inserted in section 33(4) is that a person must not buy barley from a grower except under a section 43 licence (*ie* a maltster's licence) issued by the ABB or if it is for use in Australia for stockfeed purposes.

New subsection (4a) is proposed to be inserted which provides that a person must not use barley sold for use in Australia for stockfeed purposes for any other purposes.

The other amendments proposed by this clause are consequential.

Clause 4: Amendment of heading to Part 5

Clause 5: Repeal of s. 42

These amendments are consequential.

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

ADJOURNMENT

At 6.1 p.m. the Council adjourned until Tuesday 21 July at 2.15 p.m.