LEGISLATIVE COUNCIL

Thursday 13 August 1998

The PRESIDENT (Hon. J.C. Irwin) took the Chair at 11 a.m. and read prayers.

POLICE BILL

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

As to Amendment No. 2:

The House of Assembly no longer insist on its disagreement.

As to Amendment No. 3:

The Legislative Council amend its amendment by leaving out 'paragraphs (c) and (d)' and inserting 'paragraph (d)'

and the House of Assembly agree thereto.

As to Amendment No. 4:

The House of Assembly no longer insist on its disagreement.

As to Amendment No. 5:

The Legislative Council no longer insist on its amendment.

As to Amendment No. 6:

The House of Assembly no longer insist on its disagreement.

As to Amendment No. 7:

The Legislative Council amend its amendment by leaving out proposed new subclause (5)

and the House of Assembly agree thereto.

As to Amendments Nos 8 to 11:

The House of Assembly no longer insist on its disagreement.

As to Amendment No. 12:

The Legislative Council amend its amendment by leaving out proposed new subclause (3) and inserting:

(3) The term of an appointment under this section may not be extended so that it exceeds five years and a person may not be reappointed under this section so that the terms in aggregate exceed five years.

and the House of Assembly agree thereto.

As to Amendment No. 13:

The Legislative Council no longer insist on its amendment but make the following alternative amendment:

Page 11, lines 21 and 22 (clause 27)—Leave out subclause (1) and insert:

(1) Subject to this section, a person's appointment to a position in SA Police will be on probation for a period determined by the Commissioner not exceeding—

(a) in the case of a person who, immediately before appointment, was not a member of SA Police—two years; or

(b) in any other case—one year.

and the House of Assembly agree thereto.

As to Amendment No. 14:

The Legislative Council no longer insist on its amendment but make the following alternative amendment:

Page 11, lines 34 and 35 (clause 27)—Leave out 'two years' and insert:

the maximum period allowed in relation to the person under subsection (1)

and the House of Assembly agree thereto.

As to Amendment No. 15:

The Legislative Council no longer insist on its amendment.

As to Amendments Nos 16 and 17:

The Legislative Council no longer insist on its amendments but make the following alternative amendment:

Page 12, lines 17 to 22 (clause 29)—Leave out 'must not resign or relinquish official duties unless the member—'and all words in lines 18 to 22 and insert:

may resign by not less than 14 days notice in writing to the Commissioner (unless notice of a shorter period is accepted by the Commissioner).

(2) A member of SA Police (other than the Commissioner, the Deputy Commissioner or an Assistant Commissioner) must not relinquish official duties unless the member—

(a) is expressly authorised in writing by the Commissioner to do so; or

(b) is incapacitated by physical or mental disability or illness from performing official duties.

Maximum penalty: $1 250 or three months imprisonment.

and the House of Assembly agree thereto.

As to Amendments Nos 18 and 19:

The Legislative Council no longer insist on its amendments but make the following alternative amendment:

Page 14, lines 11 to 16 (clause 35)—Leave out 'must not resign or relinquish official duties unless the police cadet—' and all words in lines 12 to 16 and insert:

may resign by not less than 14 days notice in writing to the Commissioner (unless notice of a shorter period is accepted by the Commissioner).

(2) A police cadet must not relinquish official duties unless the police cadet—

(a) is expressly authorised in writing by the Commissioner to do so; or

(b) is incapacitated by physical or mental disability or illness from performing official duties.

Maximum penalty: $1 250 or three months imprisonment. and the House of Assembly agree thereto.

As to Amendment No. 20:

The Legislative Council no longer insist on its amendment but make the following alternative amendment:

Page 18, line 5 (clause 42)—After 'seniority' insert:

or, without the member's consent, relocation to a place beyond reasonable commuting distance from the member's current place of employment

and the House of Assembly agree thereto.

As to Amendment No. 21:

The Legislative Council no longer insist on its amendment but make the following alternative amendment:

Page 18 (clause 43)—After line 24 insert the following:

(3a) The member to whom an application for review under this section must be made—

(a) must be the occupant of a position specified in the regulations or determined according to factors specified in the regulations;

(b) must not be selected according to the discretion of the Commissioner or any other person;

(c) must not have been involved in the informal inquiry or investigations leading up to the informal inquiry.

and the House of Assembly agree thereto.

As to Amendment No. 22:

The Legislative Council amend its amendment by leaving out 'permanent' and inserting 'for an indefinite period'

and the House of Assembly agree thereto.

As to Amendments Nos 23 to 25:

The House of Assembly no longer insist on its disagreement.

As to Amendments Nos 28 and 29:

The House of Assembly no longer insist on its disagreement.

As to Amendments Nos 30 and 31:

The House of Assembly no longer insist on its disagreement and the Legislative Council make the following additional amendment:

Page 23 (clause 53)—Before line 22 insert the following:

(2) In proceedings on an application for a review of a selection decision under this Division—

(a) no evidence may be given or submissions made as to the qualifications or merits of an applicant for the position other than by a party to the proceedings or representative of a party to the proceedings; and

(b) no documentary material may be produced as evidence of the qualifications or merits of an applicant for the position other than material that was made available to the panel of persons who made the selection decision.

and the House of Assembly agree thereto.

As to Amendment No. 32:

The Legislative Council amend its amendment by inserting after proposed new section 54 the following:

(2) The Tribunal must hear and determine an application for a review of a selection decision under this Division within the period prescribed by regulation.

and the House of Assembly agree thereto.

As to Amendment No. 33:

The Legislative Council no longer insist on its amendment.

As to Amendment No. 34:

The Legislative Council no longer insist on its amendment but make the following alternative amendment:

Page 25—After line 2, insert new clause as follows:

Appointment and promotion procedures

60A. Members of SA Police, police cadets and police medical officers must be appointed and promoted in accordance with the procedures prescribed by the regulations.

and the House of Assembly agree thereto.

As to Amendment No. 35:

The Legislative Council amend its amendment by leaving out 'two' and inserting 'three'.

and the House of Assembly agree thereto.

Consideration in Committee of the recommendations of the conference.

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

That the recommendations of the conference be agreed to.

I will deal with each of the amendments briefly to give a picture to the Committee of the agreement which had been reached. The Government started with a Bill which it believed would enable the structures and management processes of SA Police to be brought significantly up to date and to provide a flexible management regime in which the Commissioner, as the Chief Executive Officer of SA Police, would have a wide range of responsibilities and duties in the management of SA Police.

The Opposition started from the point of, in effect, not wanting to make changes to the existing legislation. Accordingly, in the consideration of the Bill it had not offered amendments but relied upon the amendments moved by the Hon. Mr Gilfillan. As the record will show, the Government did not agree with the amendments moved by the Hon. Mr Gilfillan, but it recognised that, in the context of negotiation and discussion at the stage of a deadlock, compromise must be reached if the legislation is to be passed in some form or another. Of course, the judgment which Government must make is whether, at the end of the day after all the negotiations at the deadlock stage have been completed, the Bill is a significant improvement on existing legislation or whether only minor progress has been achieved, in which case it would then become a question of whether the Bill should be laid aside or adopted.

With respect to the outcome of the deadlock conference, what we now have from the Parliament, on the one hand, is a Bill that is a significant improvement upon the present Police Act in that it gives the Commissioner powers to manage SA Police. On the other hand, in the Government's view this Bill does not go far enough to provide flexibility of management. Notwithstanding that, somewhat reluctantly in relation to some amendments the Government is prepared to agree with the outcome of the conference.

Only one other point needs to be made. The Government took the view that in respect of a number of issues there was no reason at all to depart from some of the management methods and procedures which had previously been negotiated at the deadlock conference on the Public Sector Management Act. Notwithstanding that outcome, the Government was not able to persuade the conference that we should go down that path completely, as the Government wished. As a result, some of the processes and provisions provided in this Bill will differ from the public sector management provisions. I should put clearly on the record that, because changes from those processes have been made in respect of the management of police, that should not be regarded as a basis for seeking to wind back in any way the provisions of the Public Sector Management Act.

Having said that, I think it would be helpful if I were to deal with each of the amendments. Amendment No. 2 relates to the directions which may be given to the Commissioner. I have already at length in the debate on the Bill identified the rationale which motivated the Government to propose that the Bill provide that the Minister must table a copy of any direction given to the Commissioner in relation to the enforcement of a law or law enforcement methods, policies, priorities or resources. However, as a result of this amendment, any direction to the Commissioner in whatever respect must now be tabled. That I think will create some difficulties from time to time, more particularly in the interpretation of what is a direction. That is something which we will have to work through in practice. For example, in relation to the management of the budget or the provision of information about the budget or even to require answers to questions raised in Parliament within a particular time frame, the question arises whether those requests or even requirements are categorised as directions. The Government would strenuously argue that they are not, but that is something that we will now have to work out in practice.

Amendment No. 3 relates to clause 11 in respect of general or special orders. The issue of particular concern to the Hon. Mr Gilfillan and the Opposition was that orders may make provision concerning the requirements or qualifications for appointments or promotion, and appointment and promotion processes. As a result of the negotiations and discussions, general orders may still be made in relation to the requirements or qualifications for appointment or promotion, but appointment and promotion processes will now be dealt with in regulations.

That was the theme of the negotiated outcome that, where qualifications for appointment or promotion were involved, general orders may cover those, recognising that general orders are freely available to anybody who wishes to have access to them but, where it comes to appointment and promotion processes, the regulations will embody those. They will then be the subject of parliamentary scrutiny. The argument is that, if one had to put in regulations the requirements or qualifications for appointment or promotion which relate to every particular position or rank, it would become a cumbersome bureaucratic process, which might require amendment on many occasions. On the other hand, in relation to appointment and promotion processes, the Government believes that we can accommodate those in regulations because there will be a consistency of approach.

Amendment No. 4 relates to clause 13. The Government was prepared to concede that the Commissioner's performance standards should be consistent with the aims and requirements of the Act. We believe that the words which are to be retained in accordance with the Legislative Council amendment are superfluous—that is what the law already is—but we were not going to make a big issue of that.

Amendment No. 5 relates to clause 16 and the question of with whom the contracts of the Deputy Commissioner and assistant commissioners may be. The Government wished to ensure that those contracts were with the Commissioner, and that is now to be the position. The amendment made by the Legislative Council provided that they should be with the Premier. The Government took the view that that was inconsistent with a model which required the Commissioner to take responsibility for the officers whom he appointed and also was inconsistent with the provisions of the Public Sector Management Act in relation to the appointment of executive officers by chief executive officers of administrative units.

Amendment No. 6 relates to performance measures. The amendment of the Legislative Council provides that those performance standards for the Deputy Commissioner and Assistant Commissioners should be published in the *Gazette*.

The Government resisted that, but we concede that there is no great difficulty for the performance standards of those senior officers to be published in the *Gazette*, and that will now be the position.

Amendment No. 7 again relates to clause 16. The amendment that was proposed by the Legislative Council provided that, if immediately before a person appointed to be an Assistant Commissioner held a position in SA Police, at the end of the contract of appointment as Assistant Commissioner that person would be entitled to return to a position at the same rank as his or her former appointment. If someone came in fresh from outside to that position, there was also a requirement, according to the Legislative Council amendment, that that person should have a fall back position within SA Police. The Government resisted that vigorously. As a result, the compromise is that Assistant Commissioners will have a fall back position where they were appointed from within SA Police but, if they were not, there will be no fall back provision.

Amendment No. 8 is relatively minor. Amendment No. 9 allows the Commissioner not only to divide the ranks into more ranks but also to consolidate ranks, and the Government does not object to that. Amendment No. 10 relates to clause 23, which deals with the vexed question of term appointments. The Government was always of the view that term appointments were an important improvement to the current legislation because they would enable the Commissioner to bring in from outside those with special expertise not available in the SA Police to perform a task within SA Police. We believed that it was important to provide that flexibility across SA Police. As a result of the amendments and the negotiated outcome, the Commissioner will still be able to appoint from outside SA Police to positions where special skills that are not available in SA Police are required, but the total period of appointment under contract may be for no more than a total of five years.

In addition, there is a provision that the conditions of the Act may not be modified or excluded by a contract even though the Government argued very strongly that there are parts of the Bill which basically are inconsistent with a contractual appointment and which may create difficulties when negotiating a contract, such as the issue of grievance appeals, appeals on transfer, and so on, all of which, in the Government's very strong view, are inconsistent with an appointment under contract. The contract includes all the terms and conditions of appointment which are known to the applicant at the time the applicant accepts the contractual commitment. But that is not to be and, unfortunately, the Government will have to work out how it manages to ensure that there is no inconsistency between any contract and any terms and conditions of the Bill.

Amendment No. 12 again deals with the terms of a contractual appointment and I have already dealt with that issue. Amendment No. 13 deals with the period for probationary appointment. We now have an amendment which the Government believes is consistent with present practice and which is a practice that has not been the subject of any complaint, that is, that a person who is appointed to a position in SAPOL will be on probation for a period determined by the Commissioner: in the case of a person who, immediately before appointment, was not a member of SAPOL it is two years, and that may well apply to persons such as cadets, or persons who were brought in from outside and appointed to SAPOL; or in any other case it is one year, and the Government is quite relaxed about that.

Amendment No. 14 is again consistent with the matter to which I have just referred. Amendment No. 15 deals with the performance standards of all the ranks. The Government argued strenuously against having to publish them in the *Government Gazette* on the basis that there will have to be performance standards for each and every one of the 3 000 or more members of SA Police. That would become a bureaucratic nightmare and, in any event, we could see no useful purpose being served by it. As a result, whilst we have performance standards having to be published for the Commissioner, the Deputy Commissioner and Assistant Commissioners, for other ranks that will no longer be required.

Amendments Nos 16 and 17 deal with clause 29, which relates to resignation without leave. Quite properly questions were raised about the penalty which is imposed upon someone who does not resign in accordance with the Act. The Government proposed that we should distinguish between resignation and the relinquishment of official duties, and the conference agreed with that. A person may resign by not less than 14 days notice in writing to the Commissioner unless notice of a shorter period is accepted by the Commissioner. No penal sanction is attached to that, and that is how it should be.

The second is a provision that a member of SAPOL must not relinquish official duties unless the member is expressly authorised in writing by the Commissioner to do so, or is incapacitated by physical or mental disability or illness from performing official duties. It is the relinquishment of official duties in respect of which the penalties are maintained. Amendments Nos 18 and 19 relate to cadets, or at least medical officers and others, and the same provisions apply in that respect.

Amendment No. 20 deals with the penalties which may be imposed for minor misconduct. The Commissioner is not able to impose a penalty of a transfer for more than four months, but the penalty may not involve a reduction in rank or seniority. The amendment that was moved was also to insert 'or relocation to a place so distant as to unduly disrupt the member's family life'. The Government took the view that that was vague and incapable of easy definition. As a result, we now have an amendment with which the Government agrees and which relates to a provision that a transfer cannot be made without the member's consent 'to a place beyond reasonable commuting distance from the member's current place of employment'. That picks up the issue that the Hon. Mr Gilfillan was anxious to have enshrined in this clause.

Amendment No. 21 sought to ensure that, where there was a review of an informal inquiry under clause 43, the person selected to undertake that task should be chosen, according to the amendment, in a non-discretionary way. At the conference, we were able to flesh that out and discover that it meant by a process which did not enable selective choice of the person who would conduct the review but some criteria which would enable the appointment to be made by objective standards. The amendment that we have now agreed reflects that arrangement.

Amendment No. 22, which is a tidying up provision, is an amendment to clause 47, and again the Hon. Mr Gilfillan wanted to ensure that, where a transfer power was exercised by the Commissioner, the transfer may be permanent or for a specified term. We have now clarified that to relate to a period which is indefinite rather than permanent.

Regarding amendments Nos 23, 24 and 25, relating also to the power to transfer, there is the question to which I have referred earlier, and that is how the processes should be identified—by general orders or in regulation. As a result of the negotiations, they will be provided for in regulations. Amendments Nos 28 and 29 both deal with the same issue and the amendments now propose that a regulation should govern the provisions of clauses 51 and 52.

Amendments Nos 30 and 31 relate to clause 53. Now that we have provisions for selection on the basis of merit, the Government wished to ensure that, as much as it was possible to do so, there was a much clearer focus of the basis upon which a merit-based appeal might be taken. It was agreed in the conference that we should try to get away from the long periods which it takes for those merit appeals presently to be completed (something between nine months and two years in some cases), and we debated that at length during the Committee consideration of the Bill. We wanted also to ensure that some onus was placed upon the tribunal to deal with the matters quickly and also that it was not a hearing *de novo* but a hearing based on the information which was available to the selection panel. As a result, we have an amendment now which is agreed and which provides:

(2) In proceedings on an application for a review of a selection decision under this Division—

(a) no evidence may be given or submissions made as to the qualifications or merits of an applicant for the position other than by a party to the proceedings or representative of a party to the proceedings; and

(b) no documentary material may be produced as evidence of the qualifications or merits of an applicant for the position other than material that was made available to the panel of persons who made the selection decision.

I would suggest that is a significant improvement not only on what was in the Bill but also on what is in the present Act, because the last thing we want—and I think the last thing that officers who have applied for positions want—is to find that their position is challenged and they are kept waiting on a hook not knowing for a long period of time what their future will be. Of course, when you pit officer against officer in relation to a merits review, it creates significant animosity in the work force and, in addition, it creates problems in the sense that the reviewer or the tribunal is, in effect, second guessing the requirements for the task and who may be best equipped for that task. In the Government's view that is inappropriate, recognising that merits reviews are no longer provided for in the Public Sector Management Act, and the Government argued very strongly that police should be treated no differently in relation to merits review than the tens of thousands of public servants covered by the Public Sector Management Act.

Amendment No. 32 is consequential. Amendment No. 33 is no longer insisted upon and that is, again, consequential. Amendment No. 34 is, again, a consequential amendment to the decision to put process issues into regulations. In relation to amendment No. 35, the period for which there may be suspension without pay has been extended from two months to three months. Under the present Act there is no restriction and the Government has argued very strenuously there should not be any restriction or, if there is, it should not relate to situations in which an officer is charged with an offence for which imprisonment is a penalty. We were not successful in our argument.

On those matters in respect of which we did not agree, as a Government we have conceded on the basis that there are a significant number of matters in this Bill which streamline processes, give the Commissioner more flexibility and generally make for a much better way in which SA Police will be managed by the Commissioner, putting responsibility back onto the Commissioner and, in the Government's view, that is where appropriately it would be as the Chief Executive Officer of SA Police.

I am sorry that it has taken a little longer than I expected to run through those amendments. It may be that that has helped members opposite because they will not now have to relate to each of the amendments, although I expect they will also wish to make some comments on some of the principles. But, I cannot control what they will say, and in that event I have done my best, even though it has taken longer than I expected. I commend the agreement of the conference to members of the Legislative Council.

The Hon. P. HOLLOWAY: I support the recommendations of the conference. As the Attorney-General has addressed the particular clauses in some detail, I will not go through that sort of detail. However, I wish to make a few comments to give an Opposition perspective on how we saw the results of the conference.

The Opposition had concern about two core issues when this Bill was first presented, the first of which was the issue of contracts. Under the original Bill the Police Commissioner would have been able to place all police officers above the rank of senior constable and above—some 1 500 police officers—on contracts. Members on this side of the Chamber are well aware of the history of employment contracts in this country and we regarded that as an issue of fundamental opposition and something we believed police officers in this State should not have to face. This was our first core issue.

The other issue on which the Opposition wished to see major amendments to the Bill related to some limitations on the power of the Police Commissioner to transfer, appoint or promote police officers. As a result of the conference, we have essentially achieved the objectives in relation to contracts because the Police Commissioner can now appoint officers on contract where special skills are not available in the force and there are some limitations, as the Attorney pointed out, on the terms of those appointments. In other words, the powers of the Police Commissioner to put his force on contract are greatly restricted to those few special cases.

As to the limitation of transfer and promotion powers, during the Committee stage of the Bill the Government did water down some of the provisions and with the amendments moved by the Hon. Ian Gilfillan we were able to go further so that, as a result of the conference, we believe we have essentially achieved our objectives of protecting the conditions of South Australian police officers on matters relating to promotion and appointment. Along the way at the conference there were changes and concessions made to particular details to enable the operation of the police force to be more practical. I make the point that the Opposition believes that these essential objectives in getting rid of the more odious features of the Bill have been achieved.

In conclusion, it is important that the South Australia Police understand that Parliament recognises the special role that police officers play in our community and at least we in Opposition are prepared to support their role in the community, their employment and basic working conditions, which is what this Bill is all about. I am pleased to say that essentially we have achieved that. In doing that I thank the Police Association for the responsible campaign it ran

throughout this issue. I also thank the Hon. Ian Gilfillan, who moved many of the amendments in this place which ultimately made for a much better Bill. Also, I thank my colleagues in another place, particularly Pat Conlon, the shadow Minister, for largely handling the negotiations on this matter. With those few comments I indicate support for the conference recommendations.

The Hon. IAN GILFILLAN: I indicate satisfaction with the result of the conference. I feel that the process does vindicate the structure of our parliamentary facilities—

The Hon. A.J. Redford: And bicameral system.

The Hon. IAN GILFILLAN: —and bicameral system. It is nice to hear someone from supposedly what is the other side helping me to articulate what I want to say. I appreciate that. It is important to see the result of this process: the two Houses considering the Bill, ostensibly there being disagreement, but then getting together to work through it in a tripartisan, constructive and cooperative way to produce legislation which in my view will enable SA Police to work as effectively as is possible under any legislation with, in the main, goodwill from all parties in terms of the resulting Bill which will then become an Act.

I would like to thank those of my political parliamentary colleagues who were involved in this matter, in particular the Attorney-General and Pat Conlon as the shadow Minister as the two principal people who were involved with Minister Iain Evans. I would also like to thank the others who were involved in the conference. However, the first three members I mentioned were the ones with whom I had most political discussion. I would like to emphasise the cooperative discussions I had with Peter Alexander from the Police Association and Mr Mal Hyde, the Commissioner of Police who, although he may have been disappointed with some of my amendments, retained a courteous and prompt exchange whenever I asked him for information or sought his opinion. I hope for his sake that he finds that the ultimate result still enables him to exercise proper control and efficient management of the force.

As the Attorney rightly observed, he did prevent anyone else from having to be locked into going through point by point. That was done in his usual meticulous way, with a little colour added in on the vigour with which the Government fought certain causes, but those of us who know him well would be stunned if we did not have that ingredient thrown in. It is sort of like pepper and salt—a bit of condiment to go with the debate. I do not think that any of the Parties involved feel desperately disappointed about any aspects of the outcome. That does reflect the fruits of the processes that are available through the institutions that we have in South Australia for legislation to come to this stage.

Had it been arbitrarily treated by one Party in total power, with a peremptory debate in one place, a large portion of the police force would have felt profoundly aggrieved. From time to time intemperate remarks are made criticising this place, so it is important for us to emphasise the many occasions when the process may be a little longer and more cumbersome but it produces a much better result for the people of South Australia. I have pleasure in supporting the recommendations of the conference of managers regarding the Bill.

Motion carried.

VALUATION OF LAND (MISCELLANEOUS) AMENDMENT BILL

Consideration in Committee of the recommendations of the conference.

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

That the recommendations of the conference be agreed to.

This conference was by no means as difficult as the conference on the Police Bill, but we have a satisfactory outcome. Concern raised by the majority in the Legislative Council was that the original Bill sought to remove the security of tenure given to the Valuer-General. The Government did not believe that it was necessary to have that security of tenure for an officer such as the Valuer-General.

On the other hand, the original proposition from the majority in the Legislative Council was that the status quo should be maintained, and that is a very secure position which required a resolution of both Houses of Parliament for the Valuer-General to be removed. The Government argued strongly that there was no basis upon which the Valuer-General could be put into the same category as the Auditor-General, the Electoral Commissioner or the Ombudsman and that we ought to move back from that very significant level of protection.

Finally, at the conference it was agreed that the Valuer-General should be appointed for five years, that the Valuer-General should be a person who had practised as a land valuer for a period, whether continuous or in aggregate, of at least five years and that, importantly, there ought to be a principle enshrined in the legislation that the Valuer-General will, in valuing any land or performing any statutory function as Valuer-General, exercise an independent judgment and not be subject to direction from any person. That may have some significance in relation, for example, to the new emergency services levy where issues about land use might have to be determined by the Valuer-General. The Government now supports the agreement of the conference, believing that it is a satisfactory outcome.

The Hon. P. HOLLOWAY: I indicate the Opposition's support for the recommendations of the conference on the Bill. The Opposition had two concerns with this Bill, the first of which was the question of the independence of the Valuer-General. Previously, the independence of the Valuer-General's decisions had been assured by virtue of the fact that the Valuer-General had been appointed until retirement, and that very independence of his position guaranteed the independence of his decisions. With the Government proposing to place the Valuer-General on contract, we were concerned about what that would mean to the independence of his or her decisions.

The other concern related to an appointment that the Government may make under a contract to that particular position. We were concerned that the person should not be appointed for any political or other reasons but that the person should be suitable for the position. As a result of the conference, essentially those conditions have been met. As the Attorney-General said, there will now be a special clause in the Bill that will guarantee the independence of any decision that the Valuer-General makes. Nobody will be able to direct him or her on that decision. While the contract will still stand, it will now be for a period of five years. Previously, it could have been for a period of not less than five years, and, in my view, that would have again placed the Valuer-

General in a position where the shortness of his tenure could possibly have been used to influence his decisions.

Under the amendments, the term of the Valuer-General will now be five years and, in addition, on appointment to that position the Valuer-General will have to have at least five years' experience working as a valuer. We believe that the combination of those amendments improves the Bill from the way in which it came into this place and addresses our major concerns, namely, that the decisions of the Valuer-General will now be guaranteed to be independent and, further, that any appointment of the Valuer-General should be sufficient to ensure that the person is qualified for the position. The Opposition supports the recommendations of the conference.

The Hon. CARMEL ZOLLO: The conference on this Bill was my first conference as a new member, and I appreciated the opportunity to be part of what was a very conciliatory conference. My colleague the Hon. Paul Holloway has already stated that the main concern regarding the independence of the Valuer-General was able to be taken into consideration by inserting section 6A, which now provides:

> The Valuer-General will, in valuing any land or performing any statutory function as Valuer-General, exercise an independent judgment and not be subject to direction from any person.

It is important for such a position to be independent and to be seen to be independent. The Attorney-General has already commented that the work the Valuer-General does is critical to many functions of Government and the community, in that the values of properties on an annual basis affects the rate of taxes raised by the State Government and local government. Such values obviously are also used as the main indicator in property sales and purchases which further affects our economy. It was also appropriate, as in other senior level positions, to prescribe the qualifications and experience required by a public servant occupying such an important position.

The amendment under clause 5 dealing with the length of tenure of five years for the Valuer-General also met with the consensus of the conference. The conference proved to be very constructive, and I can only hope that any future conferences in which I might take part will be just as conciliatory.

Motion carried.

ELECTRICITY CORPORATIONS (RESTRUCTURING AND DISPOSAL) BILL

Adjourned debate on second reading.

(Continued from 12 August. Page 1368.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): I oppose the second reading of this Bill. There has been much hype and speculation about the future of ETSA and Optima Energy. However, I would like to draw attention to the single most important issue or question I have asked myself and the public must ask themselves: will South Australians be better or worse off if ETSA is sold? For me, having witnessed this Government botch up many Government enterprises, including the privatisation of SA Water, the answer is very clear: South Australians cannot afford to allow this Government to take them down another foolish path of privatisation.

The Hon. L.H. Davis interjecting:

The Hon. CAROLYN PICKLES: I will get to you later. The Government's motivation is about sacrificing a long-term benefit for a short-term gain. In fact, my reasons for opposing the sale were summed up perfectly by the Premier when he advised the Estimates Committee on 17 June 1997 as follows:

> No Government, current or future, would deny the revenue flow. I simply ask the question, 'Why on earth would you simply sell something when the revenue flow from that sale—that is, the debt reduction and the interest saved—did not equate to the revenue flow out of the sector on an annual basis?' That is just not logical. One has to look only at the budget sheet to see what the industry is generating for us now.

Fundamentally, the Opposition believes that ETSA and Optima should remain South Australian owned because it benefits the State financially. The large and growing income stream from ETSA is likely to be larger than the savings made in interest payments if all the sale proceeds went to debt reduction. It is this income stream that builds hospitals and schools.

I also take this opportunity today to remind the Government of the promise and commitment that the Premier and the then infrastructure Minister made to the public during the State election. The Liberal Government, with a much larger majority, repeatedly stated before the election that it had no intention of selling off ETSA. And why would it? The privatisation of SA Water has been a total scam, resulting in consumers paying, on average, 25 per cent more—

The Hon. L.H. Davis interjecting:

The Hon. CAROLYN PICKLES: They are still paying more—25 per cent more—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. L.H. Davis: You can't even get your terms right. You can you hope to understand it when you don't get your terms right? The assets are still owned by the Government. Don't you understand that?

The PRESIDENT: Order!

The Hon. CAROLYN PICKLES: The privatisation of SA Water has been a total scam, resulting in consumers paying an average 25 per cent more for their water.

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. CAROLYN PICKLES: On top of that, their money is going to foreign interests. But why would the Government be motivated just before an election to tell the public one thing and then tell them another after the election? It would only do that if it feared the consequences of telling the public the truth—and it was right. Even despite the Government's deception about ETSA during the election, it still had a near death experience at the ballot box. On every occasion before the election that Labor was able to show, through leaks from the highest levels of ETSA and the Government, that John Olsen was planning the privatisation of ETSA, we were called liars. In response, and on many separate occasions, the Premier stated publicly:

> The Government is not considering, nor ever will be considering, privatising either in full or in part the Electricity Trust of South Australia.

These comments were made over two years ago, in April 1996. However, the Premier was quick to reaffirm that sentiment in the middle of the election campaign last September, when he said:

> We are not pursuing a privatisation course with ETSA.However, we now know differently. Why was ETSA commissioning merchant bank Schroders to advise on the advantages and disadvantages of public and private ownership if there were no plans to change the ownership status of ETSA? Why did Mr Janes and the Premier meet

with Schroders' consultants in Sydney on 6 June 1997 if it was not about planning the privatisation of ETSA? Why did the Premier decide not to inform ETSA executives of the Government's policy position, which was to maintain ETSA in public hands? Was it because the Premier's public policy statements did not reflect the truth? As my colleague the Leader of the Opposition (Mike Rann) has highlighted, there was a conspiracy to deceive South Australians by the Premier and the Liberal Government.

I could go on for hours highlighting inconsistent statements made by the Premier and his Ministers at the time—the untruths he told journalists and then his involvement in actively progressing privatisation plans. Putting that aside, the Government has given a number of bizarre and illogical reasons to justify the sale of ETSA and Optima Energy. First of all, the public was told that the Government had no choice because of National Competition Policy—'It is not our fault, they are making us do it.' Then we were told that we should—

The Hon. L.H. Davis interjecting:

The Hon. CAROLYN PICKLES: As I said, I will get to you, you little dilettante, later. Then we were told that we should sell it anyway, because it will fetch a good price and only decline in value in the future—a proposition tantamount to saying that international investors are stupid. Finally, we were told that we need to sell it in order to reduce our State debt. That argument is totally one-sided, and fails to take account of the real net worth of ETSA and Optima to the people of South Australia.

However, let us turn to the Auditor-General's Report which, according to the Premier, is responsible for ultimately changing his mind and convincing him of the need to dispose of ETSA and Optima, given the risk arising from entering the national electricity market. Again, any scrutiny of the Premier's comments reveal a litany of untruths. The Premier claims that he did not see the Auditor-General's Report until it was tabled in Parliament last December. However, the Auditor-General told the Economic and Finance Committee that he provided briefings to no fewer than seven agencies on this matter in July 1997, three months before the State election. Despite the Auditor-General's statement, the Premier continues to deny any knowledge of the report prior to December.

Tied up in this issue is the $97 million write-down, which the then Deputy Premier claims he only knew about in December. This was supposed to be yet another illustration of the need to sell ETSA that only came to light after the election. It was, in fact, just another illustration of the dishonesty of the Olsen Liberal Government. The write-down had nothing to do with the national electricity market (NEM) and everything to do with John Olsen signing off on a contract that disadvantaged South Australia. The write-down was known about well before the last election.

An examination of events as exposed by Mr Clive Armour revealed that the member for Bragg (Mr Graham Ingerson), his Parliamentary Secretary and member for Coles (Mrs Joan Hall) and his staff were provided with a draft copy of ETSA's Annual Report which included full details of the $97 million write-down back in August. The member for Coles (Mrs Joan Hall) maintains the same line, which is that she never saw the annual report or any information regarding the write-down until after the election. How convenient!

The facts speak for themselves. Senior members of the Olsen Liberal Government had prior knowledge and in fact progressed plans to privatise ETSA well before the October 1997 election campaign. They also knew about the write-down, but when does the truth matter with the Government? We have already seen the former Deputy Premier (Mr Graham Ingerson) fail to resign following a vote finding him guilty of misleading Parliament, and a Premier who failed to act against his disgraced Deputy Premier. He only went when he was pushed. Who can believe a word this Government says? This is not to mention the 1 200 FOI—

The Hon. L.H. Davis interjecting:

The Hon. CAROLYN PICKLES: Well, he did not go with any honour. Not to mention—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. CAROLYN PICKLES: He went with no honour.

The Hon. L.H. Davis interjecting:

The Hon. CAROLYN PICKLES: He does not know the meaning of the word, and neither do you. Not to mention the 1 200 FOI documents suppressed by this Government. I would like now to raise some simple issues which are vital in determining the pros and cons of selling ETSA. Early on in the debate, these questions were put to the Treasurer by my colleagues in another place. At what price was the ETSA sale budget positive, negative or neutral? The Government will not tell us. In the event of a power blackout or an Ash Wednesday bushfire, would the Government remain responsible for the liability? The Government's assurances are not to be believed. This Bill provides the Treasurer and the Government with significant discretion in accepting liabilities on behalf of the Crown after the sale.

The other excuse the Government has given is that ETSA and Optima's earnings will fall over coming years as a result of the State's entry into the national electricity market. The Premier is clearly overestimating the risks associated with the NEM. Whoever supplies the electricity, everyone must use ETSA's poles and wires. In fact, a number of documents leaked to the Opposition reveal projected increases in ETSA profits, returns on assets and, importantly, returns to the Government regardless of the national electricity market.

Studies undertaken by Professor John Quiggin, one of Australia's pre-eminent economists—

The Hon. L.H. Davis interjecting:

The Hon. CAROLYN PICKLES: —show that ETSA can remain highly profitable under the national electricity market. Well, I will send him your comments that you think he is a joke. The same applies to Optima, and another leaked document reveals that it, too, stands to increase its profitability in a national electricity market. Professor Quiggin has been maligned by this economically illiterate Treasurer, but the so-called replies to his analysis provided by Treasury are chilling for their superficiality and the incompetence of their analysis. Compare the detail and rigour of his analysis with the shallow puff pieces of Cliff Walsh, a man who parades as an independent commentator but who is in the direct and doubtless generous pay of the Premier and the Treasurer.

Before closing, I cannot resist giving a response to the comments made by the Hon. Legh Davis in this place on 6 August. In his speech, the Hon. Mr Davis confirmed what many have thought of him for a very long time, that he is a dilettante, with no understanding of or interest in the policy issues. He is a flake, and he is out of his depth on virtually every policy issue of significance. If this is his idea of policy substance, heaven help him. Throughout his speech he complains about the inefficiency of our power industry and cites authorities as flawed and as compromised as the Industry Commission. Throughout his speech, he tries to say that the only route to efficiency is private ownership. That is

in clear contradiction of all the evidence from around the world: that it is not private or public ownership that are inherently efficient but that it is how the organisations are structured and managed that primarily determines how efficient they are. He has the audacity to claim that the former Government used ETSA as 'a milch cow' when the most we took out of ETSA in dividends was $50 million compared with $700 million ripped out of ETSA in 1996-97. He has also misled the Council about Labor's record on privatisation. The fact—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. CAROLYN PICKLES: —is that this proposed sale, like the sale of Telstra, is fundamentally different from the sale of the Commonwealth Bank and that there is now a diverse range of financial products and services on the market. However much the National Competition Commission claims that it is creating a competitive electricity market, the reality is that most of the power industry consists of a natural monopoly, there is only one set of poles and wires, and that monopoly is best held by the Government, that is, the taxpayer, to ensure reliability of supply—

The PRESIDENT: Order! I warn the television crew in the gallery that they should only ever film a member who is on their feet. Otherwise they will have to be removed.

The Hon. CAROLYN PICKLES: That monopoly is best held by the Government, that is, the taxpayer, to ensure reliability of supply and prevent exploitation of the consumer by large foreign owned private firms. The hapless Legh Davis, who has spent many years trying for a ministry and every time has been overlooked and who could not organise his own election to the Lower House, unwittingly told the Council that prices would rise and consumer interests would suffer under privatisation. He said that the Government is torn between maximising profits and various social obligations. There is no such dilemma in private industry between social obligation and profit maximisation, because all that those companies care about is profit maximisation and not their obligation to society. In fact, Australian company law requires directors—

The Hon. L.H. Davis interjecting:

The Hon. CAROLYN PICKLES: Why don't you just go and take a valium! Australian company law requires directors of private companies to have primary regard to only one thing: maximising returns to shareholders. The logic of Legh Davis's drivel on this matter is that any profitable public enterprise which provides essential services to the public should be sold. 'Full stop! Full stop! Full stop!'—to quote the former Deputy Premier.

The Hon. L.H. Davis: Are you sure you're quite finished with that point?

The Hon. CAROLYN PICKLES: Not yet. It gets worse. The Hon. Legh Davis has drunk a tory cocktail of irrationality, ignorance and hubris. He says:

> So you have a situation where South Australia, according to the Labor Party and the Australian Democrats, should soldier on with power in public hands competing against powerful private sector interests with deep pockets and with tenacity and a determination to increase their share of the market.

What does this mean, and of just what is he attempting to persuade us? He has said that the private companies are too powerful for us to maintain ownership of ETSA and Optima. That is not true but, if it were, does 'the member for bow ties' seriously expect us to believe that those companies will not exercise such power to the detriment of South Australia and its consumers and that, once they actually own our power companies and despite all the assurances about regulation—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. CAROLYN PICKLES: —no-one can stop them from doing exactly what they want to do? The honourable member would have us believe that these companies will act like Vikings towards South Australia unless we sell them the family silver but that they will act like scholars and gentlemen if we do. Poor old Legh! The Hon. Mr Davis goes on to quote Keith Orchison, head of the Electricity Supply Association of Australia. The Hon. Mr Davis—

The Hon. L.H. Davis interjecting:

The Hon. CAROLYN PICKLES: Well, let's have a vote on it and see where we all stand. The Hon. Mr Davis said:

> That is not a politician talking, that is the well respected Keith Orchison of ESAA.

Members interjecting:

The PRESIDENT: Order! I am getting very close to naming or at least warning someone.

The Hon. CAROLYN PICKLES: Mr Orchison may be a fine fellow, but he is even less of an independent voice on power privatisation than Mr Cliff Walsh. He heads an organisation of which the main private electricity companies are his members. The Hon. Mr Davis also makes the claim that our competition payments are at risk unless we privatise. The COAG national competition policy agreement reached in 1995 states unambiguously that it is not an excuse for privatisation. Finally, in relation to his comments regarding the New South Wales Labor Government, the Premier and Treasurer in that State are being completely open and transparent and are trying to change policy through democratic Party mechanisms, which is more than I can say for the dishonest South Australian Liberals.

The sale of ETSA is a bad policy which, if successful, will leave South Australians reeling for many years. I remind the Premier that it was his Party that made ETSA what it is today: a profitable, public enterprise. I urge members to think carefully. Not a single member of the South Australian Parliament—not Liberal, Labor, Democrat, Independent or No Pokies—has a mandate to approve the sale of ETSA, South Australia's second largest business organisation, headquartered here.

My final point is about courage—or, should I say, lack of it. The Government lacks the courage to put this matter to the second reading vote. That is incredible, especially given the Premier's commitment on Tuesday night that he will press on full speed with his ETSA sale plans. But it would not be a surprise if the Premier lacked the courage to put this legislation to the Council at this time. After all, this is a Government and a Premier who lacked the courage to put the plans to sell ETSA to the people before the last election. They lacked the courage to tell the truth. The Liberals lack the courage to fight a referendum on the ETSA sale. Courage is being elected on a platform—on a policy—and sticking to that policy. I urge them—

The Hon. Diana Laidlaw interjecting:

The Hon. CAROLYN PICKLES: Well, you cannot say that you are pretty holy.

Members interjecting:

The Hon. CAROLYN PICKLES: You lied before the election, you lied during the election and you lied after it. I urge the Government to put this matter to a vote, because we all know and South Australians out there now know that

actions speak louder than words—or, should I say, long, meaningless speeches and public grandstanding. If the Government is serious about debt reduction, it can start by putting its million-dollar consultants on notice by putting the ETSA sale to the vote. We can all sit here and proselytise, but for once let us have some leadership from the Government. It is a Government that lied to the people about its intentions not to sell ETSA and then, in a mark of great contempt and disrespect, patronised the people by telling them that it has to be sold for their own good, knowing full well that South Australians are not in favour of the sale of ETSA and Optima. The Opposition opposes the sale of ETSA and Optima. I oppose the second reading of the Bill.

The Hon. IAN GILFILLAN: I rise to oppose the second reading of this Bill. The issue appears to be in two not totally detached but separate arenas. The first is the ideological approach to selling a publicly owned asset. It is important for the Democrats to express clearly that we have no fixed ideological position that we have to retain public enterprises or public utilities in public ownership. Our motives are that we want to retain those utilities and services that are essential for what we regard as the proper and efficient running of the community in the control of the elected representatives of the community.

As we approached this issue, none of us had a fixed party dictate to say, 'You will oppose the sale of ETSA because we are opposed philosophically to selling public utilities', nor were we locked into a position to get excited, to feel the adrenalin pump, at the thought of privatising yet another public asset. We were able, both as a Party and as individuals, to make an assessment on the merits of the situation as we saw it.

I would like to commend my colleague the Hon. Sandra Kanck, who has been the butt of what I regard as quite cheap shots. Nobody in my experience (which has been over several years) has spent as much time diligently researching the background of any issue as I have observed Sandra do in this case. She is probably one of the leading lay authorities on the implementation of NEMMCO, the effect of the competition policy and the administration of power utilities right across Australia.

Those who so frequently and so inanely target Sandra do so from a basis of ignorance. They are attacking someone who has dared to express a point of view with which they disagree. I do not regard that as constructive debate, therefore I discount it entirely. The appreciation that I want to show to Sandra is that the analysis upon which the Democrats have been able to base their position on this issue has been the most comprehensive accumulation of fact by any political Party in this Parliament, and I thank Sandra very much for that, as should the people of South Australia.

The other area we must address as essentially as the ideological impact is the economic impact of decisions made by this Parliament as far as the benefits, the costs, the advantages and the disadvantages to the economy of South Australia are concerned. It is with that in mind that, after having had the benefit of extensive briefings from Sandra and relying on her and her advisers' judgment in various matters, I had discussions with some friends of mine in the business community. It is not my intention to name them: I think that that is an unfair identification, but let me assure members that both the men I am talking about are unchallenged leaders in the commercial-industrial world of South Australia.

Both of them had publicly advocated the sale of ETSA, so I took the opportunity to have some informal time with them, because I trusted that, if they were advocating the sale of ETSA, they would have had the same comprehensive background data upon which to make their judgment as in the administration of their businesses. Both those men admitted to me after some few minutes of conversation that they did not know; they did not have the data. And they both undertook to arrange circumstances in which I could have a briefing with them or with their representatives so that they could get up to speed with the data to which they would normally have required access before making a decision. Yet, both of them had fired off immediately with this invocation that we should sell ETSA. And that is unfortunately the flavour of so much of the debate we are currently hearing. The business community has jumped in holus-bolus with the catchcry: 'Sell ETSA. It is the salvation of the State.'

The Hon. A.J. Redford: They are wrong, are they?

The Hon. IAN GILFILLAN: They were not all that right in the 1980s. Before we take them as the gurus of which way the representatives of the people should go, do we take every word as being totally disinterested, totally dispassionate—

The Hon. L.H. Davis interjecting:

The Hon. IAN GILFILLAN: —totally well researched? It is a pity that the Hon. Legh Davis does not listen so that he gets some idea of the background to this. I am not particularly interested in the name calling and point scoring in this debate: I am more interested in getting to the data that we must have before we can make responsible decisions on how to deal with the issue. The procedure then progressed past this.

Members would be interested to reflect on the following: the point I make *en passant* is that members of the business community are getting a lot of prominence in the print media with the sort of imprimatur that they have spoken *ex cathedra*, and what they say is absolutely right. It is interesting that one such businessman, Robert de Crespigny—although he initially said, 'Sell ETSA—

The Hon. Diana Laidlaw interjecting:

The Hon. IAN GILFILLAN: I am reading from the newspaper. There was an interjection from the Minister, who is not staying to listen to the rest of the discussion, but she can read it in the *Hansard*. Robert de Crespigny is quoted in the media and that is why he has been named. The Government seems to be more intent on point scoring and nit-picking than listening to the substance of the debate. Therefore—

Members interjecting:

The Hon. IAN GILFILLAN: If we are to approach this issue seriously, is the constructive approach helped by inane and persistent interjections? I would ask you, Sir, to ask that question of yourself, because there seems to be a great tolerance to this sort of spearing of what we are charged with—a meaningful and constructive debate. That is what I and, I am sure, many of my colleagues have attempted to do.

In relation to this search for knowledge, both acquaintances of mine undertook to find the data. The first acquaintance arranged for one of his staff to meet with me to go further in order to obtain the data so that we could share it. I found, after proceeding down that track, that this particular business person was *persona non-grata* and was not privy to material that would have been made available to me. So, that stopped that particular initiative. The other acquaintance undertook to obtain data that I considered was essential for a reasonable analysis of this issue, that is, the detached and objective projections of the income of ETSA-Optima, the potential for debt retirement and the consequences of that. That acquaint-

ance did not get back to me for several days, but when he did he said that he was astonished by how long it had taken to get the material, and he would have assumed that that material would be immediately forthcoming.

We did follow on from that and I am pleased to say that I do have a copy of that material with me. I will come back to it in a short time because I found both the details and the briefings—and I did not have extensive briefings—very informative and useful. It is also important to realise that not only is there the direct economic impact, that is, the impact on Treasury, but there is an impact on what is, to a larger part, my natural electorate, and that is rural South Australia. One letter from the South Australian Farmers Federation reflects, to a large extent, the feelings of a lot of rural South Australians. This letter is from Jeff Arney, Chairman of the SAFF Grains Council, and must be read in the context of the grain industry. Amongst an analysis of the domestic market and other matters regarding the grain industry, Mr Arney says:

> As an industry, we have been forced to undertake the reviews under competition policy guidelines. Competition policy is an ideology gone berserk. Australia is reforming for change's sake, not for reasoned reform, and all political Parties should take heed of the lack of support for such reform and the effect it is having on our regional communities.

Right or wrong, that is an indication of how strongly this issue is felt with concern in rural South Australia. Another observation from the rural aspect which I cite for the record is from a person who is a member of the Farmers Federation and who lives at Bordertown. He contacted me about the dog fence, so he had no reason to approach me either for or against the sale of ETSA. He told me that he and a neighbour and friend who lives just over the border in Victoria are profoundly concerned because the Victorian farmer has experienced a dramatic increase in breakdown problems since the power utilities were privatised.

This farmer was used to breakdowns and black-outs of about an hour as a maximum extension. Breakdowns have now extended to five hours to the point where many farmers are considering purchasing their own generating equipment so that they can have reliable power. As he pointed out to me, it is often not the question of cost but rather reliability because, as anyone who has had experience on the land would know, it can be very expensive and very inconvenient if the power cuts out in the middle of shearing, milking or other functions for which farmers need power.

The Hon. M.J. Elliott: Freezers.

The Hon. IAN GILFILLAN: Yes, there are many things such as freezers, as the Hon. Mike Elliott interjects. The question whether ETSA will be better off sold and so-called privatised or retained in semi-government hands is an interesting one to analyse in the data that came to me in the briefings. As the next stage of the briefing process, I had a discussion first with a representative of Morgan Stanley, who was very generous with his time and went through in some detail what he saw as the effects of the sale or the non-sale. I do not intend to go through all that data. However, he provided to me material to which my earlier acquaintance had access and which he was told he was allowed to show people but he was not allowed to let them have a copy.

However, Morgan Stanley was a little freer in its dispersal of this critical material and I now have a copy in my hand. I do not find it particularly dangerous one way or another. It certainly does not give me a great thirst to rush off to the media, wave it and say, 'Look what I've got!' For the first time that I have seen, it contains a set of figures that have been objectively and reliably put together. They may be deficient in certain aspects, but I do not blame that on the compilers. It comes out under the code of Morgan Stanley and it is titled 'South Australian Electricity Privatisation—Historical and Projected Cash Flows for ETSA and Optima'. I will make this document available to anyone who wants to have a closer look at it after I have concluded my speech.

The projections for 1999 to 2002 are company internal budgets, and they show a total of what we would somewhat simplistically call profit, as follows: 1999, $302 million; 2000, $330 million; 2001, $359 million; and 2002, $369 million. That is neatly reflected with the possible interest saved if the proceeds of sale were $5 billion and the interest rate was 7 per cent. It is interesting to see that on those projections the State, although being better off by $48 million and $20 million respectively for the years 1999 and 2000, would be worse off by $9 million and $19 million respectively in the years 2001 and 2002.

The next series of figures are projections on an inflation rate, so they do not have the credibility of having been worked through by the company internal budget, but they are indicative. The indicative flow from those is that we would eventually move through an increasing advantage by retention rather than sale to the year 2008, when by this chart we would be $78 million a year better off. I believe it is important to infuse into those figures some reflections which could easily diminish the optimistic or rosy side of the economics of retention.

An honourable member interjecting:

The Hon. IAN GILFILLAN: Risk is a factor that will come in and is calculated, whether we retain or we sell. I found the briefing from a senior executive in ETSA, again, refreshingly open and informative. It is important to indicate that the top executives of ETSA apparently wrote a letter, but he quite freely said that they favour selling: that they favour privatising. But, the other side of that—

The Hon. L.H. Davis: Do you ignore that?

The Hon. IAN GILFILLAN: No, I do not ignore anything that anyone whom I respect says to me. Other people fall out of that category. This particular executive did not accept that the corporatised ETSA would not be able to continue as a vital and efficient entity but, on balance, they believe that it would be a better proposal to sell. But, it was not a diametrically black and white picture. These points were made to me, and I do not pretend this is a detailed analysis: they expect to have a 40 per cent loss of sale, and in these figures they allow for those processes to be budgeted in. They indicated that the projections past the year 2003 do not include the projected loss of domestic contestable market, say 20 per cent, which means that the figures I previously quoted could, quite properly, be looked at as being optimistic. But, he also says that what is lost in SA will be made up in interstate business. They are optimistic that they can pick up 3 per cent to 4 per cent of interstate business.

The Hon. A.J. Redford interjecting:

The Hon. IAN GILFILLAN: Well, they are trading already. Whatever the Hon. Angus Redford may feel about it, he has lost the game, because they are doing it already and they are doing it modestly—

The Hon. L.H. Davis: And losing money.

The Hon. IAN GILFILLAN: The interjection thrown from the other side is that they are losing money. All I can say to the Council is that this briefing from a very senior person in ETSA indicated that that was a profitable activity

and that they expected to be able to compensate for loss in South Australia.

The Hon. A.J. Redford interjecting:

The Hon. IAN GILFILLAN: It is not my judgment. I am not giving members my judgment. I would not trust my judgment: I am not competent. However, the Government benches seem to be filled with people who have expertise in this matter, but they have to prove their credentials. The ETSA people at the briefing said to me that they had improved their productivity dramatically in the past 3½ years. They have had a 30 per cent productivity improvement, and they expect that they can have a 10 per cent to 20 per cent productivity improvement in the next two years. It has been at the cost of jobs—there has been a dramatic loss from 6 000 to 2 000 (that is ETSA-Optima combined)—and the ETSA figure should still be less. Management of ETSA would intend to reduce, perhaps, 15 per cent to 20 per cent. They recognise that other competitive aspects will come in; new development infrastructure could be contractible out of ETSA, but they hope to hold that as their own. Even if another outsourced entity puts in the infrastructure, they hope to hold that as part of their infrastructure. However, they concede that another distributing company could come in, but it would be on very small pickings.

Other risks were very clearly put forward by Morgan Stanley, and I found them interesting and significant arguments which should be considered. They argue that(and these are more or less code words; I will not go into the explanation of them, but experts in the Government will understand immediately what I am talking about) 'step up', that is, the step up of the voltage, could cost the revenue $7 million to $10 million; 'by-pass', which is co-generation that would avoid using ETSA or Optima power, $12 million to $15 million; expansion, $15 million to $30 million; and retail, $30 million to $40 million. However, the ETSA executives, when shown these figures, had a much more sanguine view of what the effect would be, so obviously there are different points of view. Also, it is important to take on board that Morgan Stanley, sincere and articulate though they may be, do have a particular interest that will suit their profitability at the end of the day, and I, and anyone else, having discussions with them would be foolish not to acknowledge their base position.

The Hon. M.J. Elliott interjecting:

The Hon. IAN GILFILLAN: Well, they get paid more for however much more the sale is. That is their business. Why should one disparage them for that—and I do not think the Hon. Mike Elliott is? However, it means that you do not take at face value every piece of information that someone who will benefit from an end result will put up in support of the argument.

There is put forward an impetuous rush to sell, as if it is either 'sell now or destroy the asset, because it will not be there any more'. My feeling is that the people who are likely to come up with the $5 billion, $6 billion or whatever, will be just as alert to virtually all of the hazards being put to us as reasons why we should sell ETSA, because it is going to be an entity of diminishing return and, in fact, disaster faces electricity entities in the long-term market. If that is the case, who will put up the money to buy ETSA? There is the psychological and philosophical argument that we will get more drive, initiative and entrepreneurial energy if the enterprise is privately owned, but if we want long term reliable, profitable companies, they will not be the fly-by-night people who say, 'Yes, we can make a quick buck out of this,' or those who are impetuous enough not to have done their sums.

It saddens me that one of the risks we do take is the example of what is already happening in Victoria, where the US group Entergy is selling CitiPower within 18 months. I refer to the interesting article in the *Australian Financial Review* (4 August). Rather than read it to the Council, it might be better to indicate that the article is in that paper and those who want to read it can go into it further. What is clear to me is that the electricity investment of this company is only a relatively small part, the company argues, of its broad overview portfolio.

It means that those who may be part of the purchasing resource in South Australia will not have the long-term commitment to make sure that they provide South Australians with a reliable, high quality reasonably priced power supply. They are in it to make a dollar for their shareholders, so the decisions will be based on that factor. Once we sell, even with the so-called legislative checks and balances, we move the provision of electric power in South Australia into the hands of the profit mongers. The profit mongers are a very important part of our economic engine, but they do not guarantee the social requirement that I believe any Government has to ensure that all its citizens, wherever they are, have access to a reliable, reasonably priced continuous supply of electricity.

I thank the Treasurer for making available to me a display compilation entitled 'South Australian Electricity Privatisation, Risks and the Financial Benefit of the Privatisation of the South Australian Electricity Supply Industry'. It is an interesting document and it puts up persuasive argument, some of which I will go through because not all members may have seen it and I think it is important to be familiar with some of these matters. I will not go through the whole document, although I think the Treasurer might make it available to any member who wants to look at it. As to the South Australian entry into NEM, it states:

> Mandatory requirements: The Independent Economic Regulator, setting prices for distribution company.

That must have an effect on the purchase price of the distribution company. It will not be working as a free marketeer in a free market. A little further on in a couple of these other observations this marries in.

The next page I will refer to is headed, 'Understanding the risks inherent in the new market environment'. Under the heading 'Risk', the paragraph 'Poles and wires: market risk' has the following explanation:

> All new system build-out could be competitively tendered. ETSA recently lost a tender to build the new transmission line for Western Mining Corporation at Roxby Downs.

The paragraph 'Poles and wires: bypass risk' has the following explanation:

> Big customers can drop off the grid via self-generation with lost revenues for ETSA and higher costs for others. As just 27 customers pay 17 per cent of the transmission charges, any drop off can have a significant effect.

The paragraph 'ETSA retail: competition risk' has the following explanation:

> ETSA will lose its current monopoly position as new suppliers compete to sell electricity to homes and businesses. Currently some 20 retailers are fighting for market share in New South Wales and Victoria (approximately 50 per cent of contestable customers have switched).

I point this out because it is important that we take note of what is said and not because I dispute it. This information is

not secret and is not information to which potential purchasers will not be privy. They will all know this.

If we have a dynamic corporatised entity, which will ultimately be publicly owned and which is working in South Australia with the right people and with the right drive for efficiency, they will know it and the potential buyers will know it. Are we to say categorically that the fine tuned, well managed ETSA corporation cannot survive but a private company, which will have paid top dollar, because it will have to be top dollar to create the financial situation that would justify the sale, will be so far behind the eight ball? Who knows that? Who will be able to convince us of those details? They may be able to be presented, but we have not seen them. The fact is that it is only in the past fortnight that this data has become available for me to make an assessment. Some people—for example, the Treasurer—may well have had it for some time. But I think that a lot of this—

The Hon. R.I. Lucas: You asked not to continue the discussions—that they be continued through Sandra.

The Hon. IAN GILFILLAN: I'm not quite sure what you mean, Rob.

The Hon. R.I. Lucas: You said the information wasn't available to you.

The Hon. IAN GILFILLAN: I had no desire to be involved. I was quite content that Sandra was accumulating the background; I had no problem in allowing her to do that.

The Hon. R.I. Lucas interjecting:

The Hon. IAN GILFILLAN: The only point of significance to the interjection that I will pick up is the implication that, at first, I did not want to get the information but, when I did, it was not available; it was very difficult to get.

The Hon. R.I. Lucas: It is only in the past two weeks that that information has become available to you.

The Hon. IAN GILFILLAN: Yes, two or three weeks; that's correct.

The Hon. R.I. Lucas: That's because, prior to that, you'd said not to continue discussions with you, but for me to talk to Sandra.

The Hon. IAN GILFILLAN: The Treasurer says this, yet the document I hold was harder to extract than a wisdom tooth. I do not want to waste the time of this Chamber arguing whether I got a proper briefing at a proper time. All I can say—and members will have to take this on trust—is that I did not have any resistance to finding out the data but I do not have enough staff so that they can trot off and do it all on their own. In the page headed 'New South Wales illustrates the extent of competition risk in generation', the document states:

> As a shareholder, however, the Government has seen the value of its ownership crumble. The New South Wales Auditor-General was recently quoted forecasting the profits of the three New South Wales Government owned generation companies to fall from $222 million in 1996-97 to $106 million in 1997-98 and to $51 million in 1998-99.

How many billions of dollars will come from this sell off? New South Wales is the big threat, and there is the data to support that. How enthusiastic will they be? There is a deteriorating profit factor in the publicly owned New South Wales electricity industry. There are two consequences of that: first, the attraction to buyers is diminishing; and, secondly, the pressure for lifting the prices is going up. I hope a few other members are listening to the substance of what I am saying instead of trying to score petty points across the Chamber. Once the price goes up in the Eastern States—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. IAN GILFILLAN: I wonder whether the Hon. Legh Davis has any projections as to what will happen—

The PRESIDENT: Order! I ask the Hon. Mr Gilfillan to return to his remarks.

The Hon. IAN GILFILLAN: I will not take up the Council's time now, but later the honourable member may care to enlighten me on this matter by giving me an indication of power price projections in New South Wales and Victoria for the next 10 years. We are being persuaded that there will be a flood of cheap power into South Australia and that it will cut out our generation capacity, but on what projection is this based? They are oversupplied now, so it is bargain sales; they are pumping cheap power into South Australia. To base our decision on that is wrong. It is a question not of winning, denying or arguing a debate but of trying to get an accurate assessment upon which to project reliably the economic consequences of retention or sale of ETSA. I think that this is an absolutely essential and important document to read, but one must see the argument that not only will things for ETSA get tougher but the price to be offered is likely to be discounted substantially.

There is another page here with examples in America where privately owned entities have lost money because of the reduced profitability. I am not quite sure about that, except to say that it does show that there are ups and downs in the industry; but the people who make the decision determine that in the long run they can make a profit. They may feel that they will not make a profit if they are not able to charge for power or get a return on the distribution network which matches the return they can get on other investments. The effect of the Regulator in Victoria has already dimmed the enthusiasm of people who would have liked to invest in that area of privatisation.

The Hon. M.J. Elliott: The State Government wants it to go up, though; they are opposed to what the Regulator did.

The Hon. IAN GILFILLAN: Yes. In fact, the document states:

> The case of United Energy illustrates the extent of the regulatory risk. The Victorian Government, in preparing to sell its gas business, sought a ruling from the ACCC and the ORG, the State-based Regulator, that a rate of return of 10.2 per cent was appropriate. The ACCC and the ORG disagreed, and have issued a preliminary ruling suggesting the appropriate rate should be 7 per cent, or 31 per cent lower. Even though it was not directly affected by this ruling, the shares of United Energy, a Victorian electricity distribution and retail company, fell by over 15 per cent because investors fear that a lower rate could apply to United Energy in the future.

That is a very true observation. If I were a potential purchaser, I would take notice of this and wonder, 'What will this ORG do with profit margins in the future?' What might happen is that the ORG would reduce the profit margin and we would finish up with another sale. So, the undertaking will be flogged off to another entity, which will then try to make a dollar. These arguments are not clear cut in terms of saying, 'This is an argument for selling,' because, whatever is the strong argument for selling is also a rebound. It is an argument to say, 'My God, the price of what we might get for this is going down.' I will not go through all this, but there are other factors in this which members would find worth looking at.

But the issue will not go away. One of the cases here suggests that the cost of borrowing for potential buyers has never been better. On one page there are the trading yields on the benchmark 10 year Australian Commonwealth bond. It shows a projection that is virtually going down. Again, the

argument is very interesting, because it is double sided. If there is cheap money for potential buyers, there is cheap money for recycling the loans. The actual cost to the people of South Australia for continuing to roll over some of the debt burden will be lower. If we look at this document, we see that virtually all the points raised bounce both ways. They do not remain as conclusive arguments for sale. They certainly may remain as conclusive arguments for saying, 'Let's look more closely at this thing', and we are all foolish and irresponsible members of Parliament if we do not. Under 'Conclusions' the document states:

> The deregulated electricity market will substantially decrease the reliability of future cash flows from ETSA and Optima.

I do not argue with that. Further:

> This riskiness can be translated into dollars and cents based on standard financial analysis—

and here is a statement—

> In Government hands, ETSA and Optima are worth much less than in private ownership.

That is a difficult statement to take at face value. First, how can one know what ETSA and Optima are worth in Government hands *vis-a-vis* in private ownership, unless we have before us a much more accurate, detailed and objective analysis of valuations, potential returns and costs? The document goes on to list the advantages that international utility companies have and one of the factors listed is 'much more experience in dealing with market risks'. Many of them will have more experience and many of them will make mistakes—and some of them will make good decisions—but the point we have to assess is how deficient in that category is the rapidly upgrading capacity of the new regimes in ETSA and Optima and the other fragmented bits and pieces.

Are we to discount them entirely and say that they do not have any experience in dealing with market risk? I have indicated previously that the ETSA Chief Executive does not believe so. His decision that privatisation is better is a marginal one, but he is very proud of what the current ETSA exercise is doing. The final statement is:

> By selling ETSA and Optima and repaying debt, the Government is trading a risky asset for the certainty of cash and interest cost reductions.

That may be so. We would have to define 'risk' and we would also have to know in quantitative terms how much debt and interest would be retired and dispensed with as a result of a sale.

Finally, there is, somewhat unfortunately, an argument to say that the electricity utilities in Indonesia, the Philippines and Thailand are having trouble selling. To relate that to Australia and use it as an argument to say that ETSA should be sold is a fairly long bow. I suggest that some very substantial factors apply in all three of those countries far more devastating than the problems of running an electricity utility. There are other factors which I believe apply to the downside of selling ETSA and which have to be taken into account when considering what might be the potential return. For example, there is the Cayman Island leasing arrangement; the discount which would have to be calculated on the guarantee to rural and remote consumers; the discount involved with the green factor power availability (as introduced in New South Wales), which, obviously, we, and I think most South Australians, would be very keen to see introduced; and the penalties, which the Treasurer announced last week, where in default the power delivery company would have to sustain certain financial penalties and fines.

The Hon. Sandra Kanck interjecting:

The Hon. IAN GILFILLAN: I thank the honourable member for that warning. I do not need more than two minutes to conclude, because the detail that I have attempted to put to the Council is at least, in some small part, a background of what I feel all of us should have before we make a decision whether or not to sell. Because it is not entirely a financial matter to be determined by the financial criteria, I respect the attitudes of those who feel that it is essential for the people of South Australia to retain ownership of the public utility because that is their belief—that it is something we should retain. We do not have that conviction. We are not locked into the position of 'Never sell a public utility', but, if we make that decision, we want to be assured that the interests of the people of South Australia will be protected in the quality, the assurance, the reliability and the price of such an essential service as power. On that basis, I oppose the second reading of the Bill.

The Hon. A.J. REDFORD: I move:

> That the debate be now adjourned.

The Hon. P. HOLLOWAY: Mr President, I would like to debate the question concerning the time when this Bill will be debated. I believe that the Treasurer should tell us why we are not dealing with it today. Every single member of the Opposition—

The Hon. L.H. Davis: Because it's lunch time; it's 1 o'clock.

The Hon. P. HOLLOWAY: Let us put it on motion.

The PRESIDENT: Order! The honourable member will resume his seat. The question is that the debate be adjourned until a certain day. With that signal from the Opposition, if the Treasurer wants to debate it with the indication that there will be a debate, then I offer him the opportunity to speak now or I will call the Hon. Mr Holloway.

Members interjecting:

The PRESIDENT: Order! Any debate on this matter must be confined to the issue of the time of the adjournment. The question is that the debate be adjourned to the next day of sitting. It is for the Hon. Mr Holloway to decide whether he wants to seek advice or move in some other direction.

The Hon. P. HOLLOWAY: I do not wish to so move, but I believe that the Treasurer owes us an explanation as to why we cannot deal with this issue today. Why not adjourn it on motion and come back this afternoon? Every single member of the Labor Opposition and the Democrats has spoken, as well as the Hon. Nick Xenophon. Any member of the Government who wished to speak has had ample opportunity. Let us deal with it now and get it over and done with.

Motion carried.

[Sitting suspended from 1.2 to 2.15 p.m.]

PAPER TABLED

The following paper was laid on the table:

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

> Review of Passenger Transport Act 1994—June 1998.

PASSENGER TRANSPORT ACT

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I seek leave to make a ministerial

statement in relation to the review of the Passenger Transport Act.

Leave granted.

The Hon. DIANA LAIDLAW: The Passenger Transport Act 1994 established the Passenger Transport Board to plan, regulate and fund land based passenger transport in South Australia. The Passenger Transport Board (PTB) took on the responsibilities of the former Metropolitan Taxi Cab Board, the passenger transport responsibilities of the Office of Transport Policy and Planning, plus that part of the State Transport Authority relating to public transport policy formulation, planning and coordination.

The Act provides that, as Minister for Transport and Urban Planning, I must appoint an independent person or persons to undertake a review of the Act as soon as practicable after 1 January 1998.

For this purpose, on 17 February 1998 I appointed Ms Bronwyn Halliday and Mr Mark Coleman. Together they brought strategic management, finance and investment expertise to the task.

Section 65(1) of the Act requires that the review address:

(a) the work of the board to 1 January 1998

(b) the operation of the Act to 1 January 1998 and the extent to which the objectives of the Act have been attained.

There is also a provision in the Act for the responsible Minister to determine any additional matters considered relevant to the review. I nominated the following:

1. The introduction of competitive tendering and its outcomes in relation to: the cost of the provision of public transport; the effect on patronage; the provision of improved or increased services to the general public; and the service of customer needs.

2. The promotion of public transport and the provision of information to the general public.

3. Accessibility of public transport and the provision of improved access to taxis for people with disabilities.

A wide range of individuals and organisations were consulted during the preparation of the review and 49 interviews were held. A letter explaining the nature of the review was sent to all members of Parliament. Several responded in writing explaining matters raised by constituents. Other members encouraged their constituents to approach the review consultants directly with information.

Overall, the consultants focused on the governance and direction provided by the board from the proclamation of the Act in July 1994 until 1 January 1998—and in doing so addressed the board's activities and processes in conducting its business. (Incidentally, the review does not include a review against competition principles which will be undertaken independently later this year.) I am pleased to report that the general conclusion of the review is that the legislation is working well.

Achievements of the PTB

The review noted that the governance of the board had been 'diligent and prudent'. It also highlights a long list of achievements, including:

1. Initiatives to stabilise public transport patronage.

2. The introduction of new levels of service standards for all modes, including taxis and small passenger vehicles (hire cars).

3. New services such as the City Loop, Crows Express and Sunday Shoppers.

4. A new accreditation system for drivers and operators.

5. Clear, workable disciplinary procedures for breaches of the Act.

6. The highest level of accessible services in Australia.

7. Big advances in safety such as the NightMoves express bus services that now include a taxi ride home in the price of the ticket, the availability of mobile phones on evening services, and the Hail and Ride bus system that allows passengers to board and alight anywhere after 7 p.m. I should note that all these initiatives are in addition to the safety systems introduced by operators.

8. Improved information including an expanded, refitted customer service centre, new easy to read printed timetables, the Metroguide promotional brochures, bus stop information units and the Infoline.

9. Improved contractual arrangements for the operation of country bus services and new community transport networks in regional areas.

Competitive Tendering

The PTB has now contracted 46 per cent of metropolitan bus services by competitive tendering. All the rest of the public transport system is subject to negotiated contracts with the PTB. The review specifically comments:

> . . . that the PTB's procedure for the letting of contracts has been handled extremely well, with no concerns about probity and with minimal industrial and public disruption.

The review considers this outcome to be a major achievement for the PTB—and this is so, especially when compared with the difficulties and resistance to change experienced in other States.

The Hon. A.J. Redford: It sounds like a good precursor for ETSA, doesn't it?

The Hon. DIANA LAIDLAW: Maybe so. However, the review does record various concerns raised by operators regarding the nature of the contracts which generally are not considered 'adventurous or innovative'. The PTB will now address these matters ranging from the complexity of the documentation to the definition of contract boundaries. The Government, in turn, will expeditiously consider some contractual concerns that stem from provisions in the Act:

1. The requirement that contracts be for not more than 100 vehicles. The review contends that this fleet size provision is an artificial limit of questionable value, noting that both the Western Australian and Victorian Governments limit the percentage of the market that any one operator can have. It is argued that a similar approach in South Australia, such as 40 per cent of the market to any one operator, would lead to at least three operators—with competition promoting greater levels of innovation and customer service.

2. The requirement that limits the length of the contract to five years unless there is ministerial approval for a greater period. The review notes that all operators requested terms of at least seven years with a renewal option for a further seven years in order to maximise service innovation, to enable sufficient time to show commercial viability and to provide sufficient incentives for capital investment.

3. The requirement relating to the remuneration level—that is, to the operators, not to the work force. The review suggests that the current formula emphasising patronage, while most important, limits innovation and the integration of services.

In the context of the Act, the review also notes a long-standing concern from the Bus and Coach Association relating to volunteer drivers and community transport services. The review does not recommend any change to the current arrangements worked out over 18 months of negotia-

tions between the PTB, the Local Government Association, major community based organisations and the Department of Education and Children's Services. Nor does the review propose any change to the legislative arrangements for the operation of taxi and licensed chauffeured vehicles (LCVs). The review commends the initiatives taken by the PTB in partnership with the taxi industry to improve standards of service and safety. It notes the ongoing 'tense relationship' between the taxi industry and the licensed chauffeured vehicle industry—a matter which the PTB and the Government addressed in February this year with new regulations defining the relationship more closely and clearly.

TransAdelaide

As a publicly owned operator of public transport services, TransAdelaide exists at the present time merely as a reference in a Schedule to the Passenger Transport Act. The review considers that TransAdelaide could benefit from the orientation and guidance of a commercial board—and so does the Government. Accordingly, I have now established an advisory board that will report to me on the measures required to aid TransAdelaide to become a robust player in the competitive tendering stakes in the future. It is the PTB's intention that competitive tendering calls resume in the first quarter of next year. The membership of the advisory board is Mr Ron Griffiths, Mr Kevin Benger and Ms Kate Spargo.

Other Matters

The review canvassed a range of issues relating to the responsibilities and performance of the board, and the board now proposes that the following key actions be progressed—and they will be:

1. Development of a strategic plan with a 5 to 10 year timetable, which is communicated to staff and stake holders. (In this context the PTB has recently appointed a Director, Strategic Planning, who will play a major role in overseeing the development of a 10 year investment plan for passenger transport in South Australia.)

2. Preparation of a performance charter or agreement with the Minister which stipulates performance goals and measures.

3. A review of existing arrangements with all industry committees and consumer panels to ensure their effective contribution to policy development.

4. Review of the fare structure for Adelaide Hills services.

Adelaide Hills Fares

The issue of the fares that apply in the Adelaide Hills has a long history. Hills Transit has been responsible for operating bus services in the area under contract to the PTB since 1996. It has inherited a complex, unsatisfactory fare structure. Services to and from Aldgate are embraced within the Metropolitan Public Transport boundary, with fares subsidised by the Government, including a 50 per cent concession pricing policy for pensioners, seniors, the unemployed and tertiary students. All Hills areas beyond Aldgate are deemed to be outside the metropolitan area, so fares attract no Government subsidy. They also are set to generate a commercial return for the operator.

The anomalies in the fare structure applying to the Adelaide Hills are exacerbated by the subsidised fare structure that applies to Gawler and Noarlunga—distances that are far further afield from the GPO than Mount Barker, for instance. The Government also recognises that since 1975, when the current public transport zones were formed, there has been a considerable growth in population in the Mount Barker, Woodside area. For all these reasons, the Government has asked the PTB to explore options for the introduction of an equitable fare system for the Adelaide Hills. This exercise has financial implications for the Government and operational issues for Hills Transit in terms of ticketing systems. I will receive the PTB's options next month. The Government will implement the new fare structure before the start of the 1999 school year.

In conclusion, I wish to thank the consultants who have carried out the review diligently and after taking into account a great deal of consultation with the broader community. I wish to acknowledge the participation of the board and the staff of the Passenger Transport Board and their efforts over the past four years. We have all come a long way over that time from what was a 'greenfields site' in 1994, and I look forward to continued improvement in passenger transport in South Australia.

QUESTION TIME

GOODS AND SERVICES TAX

The Hon. CAROLYN PICKLES (Leader of the Opposition): I seek leave to make a brief explanation before asking the Treasurer a question about the impact of a GST on the Government's capital works program.

Leave granted.

The Hon. CAROLYN PICKLES: On 28 May the Treasurer told the Parliament that this year's capital works program had increased to $1 243 million and said:

> The building and construction industry will again benefit significantly from the increased major works—supporting over 20 000 jobs.

A report in today's *Financial Review* indicates that States are concerned that the tax package may result in the Commonwealth's imposing a GST on State Government purchases. It has been reported widely that the GST will apply to the building industry, and a 10 per cent GST on this year's capital works program could cost $124 million. My questions to the Treasurer are:

1: How many of the 20 000 jobs supported by the Government's capital works program will be lost in the building industry if the Commonwealth takes $124 million GST out of the program?

2. Did the Treasurer or the Government make any submission to the Commonwealth to protect jobs in the building industry from the impact of a GST and, if not, why not?

The Hon. R.I. LUCAS: As I understand it, the answer will be 'None', because the GST according to the paper—and I have no greater detail than that—will not actually start until the year 2000.

Members interjecting:

The PRESIDENT: Order!

The Hon. CAROLYN PICKLES: As a supplementary question, will the Treasurer answer my second question: did he make a submission?

The Hon. R.I. LUCAS: Given the answer to the first question, the second question is inconsequential. The first question related to the impact on jobs in the 1998-99 budget—the 20 000 job estimate figure. Given the answer to the first question, the second question is therefore not applicable.

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Treasurer a question about the impact of a GST on State finances.

Leave granted.

The Hon. P. HOLLOWAY: Today's *Financial Review* carries a report that the tax package will abolish a number of taxes, including stamp duties on non-property transactions and some business transactions, FID and BAD taxes. On Tuesday the Treasurer told the Council that he had not had any detailed discussions with the Commonwealth on the impact of a GST on State Government revenue, such as taxes derived from gambling on the TAB and poker machines, and he confirmed that with his previous answer.

Yesterday the Treasurer could not tell the Council whether South Australia's financial position was protected by any reciprocal agreement with the Commonwealth to provide revenue neutrality following the new taxing arrangements. Will the Treasurer tell the Council what he has done as Treasurer of South Australia to protect the State's funding base following the introduction of a GST,

or has the Treasurer been left out of the equation?

The Hon. R.I. LUCAS: The nature of the discussions that I have had with the Federal Treasurer and the Prime Minister I have outlined to this Chamber on a number of occasions. I am happy to repeat them. We had a general discussion at either a COAG or a Premiers' Conference late last year with the Prime Minister and the Premier. Since then the Premier has had the advantage of some limited but general discussions, as I understand it, with the Prime Minister.

Obviously, some submissions have been made by the State Government on some issues that have been leaked to the news media, particularly in relation to the wine industry, as well as perhaps one or two other areas. However, in relation to actually knowing the detail of the Commonwealth tax package, I know almost as much as, I suspect, the Deputy Leader of the Opposition, and in most cases—

Members interjecting:

The Hon. R.I. LUCAS: Given the extent of the secrecy and the briefing of the Government's own backbench, members of its own Coalition Party room, about which we read in this morning's newspaper—evidently, according to the newspapers, members entered a room at 2 o'clock and emerged again at 10 o'clock and that was the first—

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: Because I was not a member of the Federal Coalition Party room. That is the simple answer to a simple question. I am not in a position to do anything until I am actually given the details of the decision.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: I do not have the power to read the Federal Treasurer's mind.

Members interjecting:

The Hon. R.I. LUCAS: I do not have the power to read the Prime Minister's mind, much as I would like to on occasions. All I can say to the Deputy Leader, as I said on Tuesday and again yesterday is: stay tuned; in little over an hour, an hour and a half or whatever, the Deputy Leader will know the detail of the package and so, too, will I. We can then make submissions on any issue if we have any concerns.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: You cannot make submissions on the basis of not having information.

VILLIERS TRAINING SCHEME

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Treasurer, representing—

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: I think I will ask the question rather than the honourable member.

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Treasurer, representing the Minister for Education, Children's Services and Training, a question about the Villiers training scheme.

Leave granted.

The Hon. T.G. ROBERTS: Yesterday in Matters of Interest I raised some problems associated with a Villiers group training scheme, which is a training scheme designed to train young people in the metropolitan area—

The Hon. Diana Laidlaw interjecting:

The Hon. T.G. ROBERTS: That is dead right. The Minister interjected and said that last month I asked for Government support to get the scheme established, and that is true. This month I am asking that the Government investigate the training scheme to ensure that Villiers gets it right not only with the establishment of its work camp in the South-East but with its training programs.

The Hon. Diana Laidlaw: Fair enough—

The Hon. T.G. ROBERTS: I am not asking the questions to put any extra pressure on Villiers to be prevented from participating in a Commonwealth group training scheme: I would like to see the scheme operating fairly for all concerned, including Orlando, which has commissioned Villiers to carry out the group training scheme. Yesterday I outlined some of the problems experienced by young people, particularly those employed in the metropolitan area, who leave at 2 a.m. to travel by bus to the Lucindale site, as well as some of the difficulties these trainees faced when their contract was prematurely finished.

The contract started on 29 April this year. The first intake included 70 to 80 people; the second intake included a further 70 people. These are approximate numbers relayed to me by a meeting held in my office last week by disaffected young people who were victims of the scheme. I was informed that a figure of $11.50 was promised to the trainees, which is a reasonable amount when compared with some of the figures paid to other employees in the wine industry in this field. If the catering and hostel facilities were adequate, that would be seen industrially as a fair and reasonable payment.

Unfortunately, the contracts were prematurely signed off, and these young people now have no certificate of competency, as was promised at the start of the program. They also have no jobs and I am sure that, when other employers look at their CVs for future jobs, it will not look too good for them because of the way in which some employers discriminate against applicants who have been involved in trainee programs that are prematurely wound up. Given that this is a federally funded scheme that is administered locally in this State, my questions are:

1. What practices and procedures are currently in place to protect trainees and other unemployed people from the sorts of problems that I have outlined?

2. What screening practices and procedures are in place to vet current and future training scheme providers and administrators?

3. Who is responsible for investigating incidents such as these and ensuring that the trainees involved in the scheme

are paid back pay and entitlements owing and receive a certificate of competency and proficiency if these schemes are wound up and that they are transferred to other schemes?

4. Will the Minister ensure that all the people involved in this scheme are given priority in future employment projects of this nature?

5. Will the Minister ensure that the participants are not victimised in any way when applying for future positions?

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

ABORIGINAL BURIAL SITE

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning, representing the Minister for Aboriginal Affairs, a question about an Aboriginal burial site in the Coorong National Park.

Leave granted.

The Hon. SANDRA KANCK: My office has been informed that tourist operators are taking tourists from Goolwa by boat to view Aboriginal remains in the vicinity of Marks Point in the Coorong. I have been informed that these sightseeing excursions are taking place despite objections from the Ngarrindjeri people. By contrast, visitors to the West Terrace Cemetery in search of Percy Grainger's grave site breach no cultural taboos. Colonel Light's burial place in Light Square is a public monument. Tours of historic cemeteries are seen as legitimate revenue-raising activities, but these practices are anathema to Aborigines. It is deeply offensive to them for an Aboriginal burial site to be used as a lure for tourists. For them, these remains are sacred and to profit from them is profane.

I believe that this burial site has been entered in the Register of Aboriginal Sites and Objects under the Aboriginal Heritage Act, section 23 of which makes it an offence to damage, disturb or interfere with any Aboriginal site. At issue is whether tourists interfere with Aboriginal remains by looking at them. If so, section 24 of the Act empowers the Minister to restrict access to the site. Given that the underlying purpose of the Aboriginal Heritage Act is to protect Aboriginal culture and that organised tours to Aboriginal burial sites undermine the values of Aboriginal culture, the Minister may be obliged to use that power. My questions to the Minister are:

1. Has the Department of State Aboriginal Affairs received any complaints concerning tourist operators' activities at the Marks Point burial site?

2. Will the Minister restrict access to the site in accordance with the Aboriginal Heritage Act?

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

REGIONAL DEVELOPMENT

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation prior to asking the Attorney-General, representing the Minister for Primary Industries, Natural Resources and Regional Development, a question relating to regional export assistance.

Leave granted.

The Hon. J.S.L. DAWKINS: I recently became aware of an announcement by the Deputy Prime Minister (Hon. Tim Fischer) in relation to additional export assistance to regional Australia. I understand that regional Australia is about to gain a network of 18 specialised advice and service offices. Half of this network of offices, known as Tradestart, is in place while the remainder will apparently be operational in the near future. Two of these offices are in South Australia, one at Berri and one at Mount Gambier, both centres being at the focus of regions with undoubted further export potential. Can the Minister indicate whether the State Government is providing any assistance in the establishment of these Tradestart offices and say whether these offices will coordinate efforts with the respective regional development boards?

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

FISHING INDUSTRY COUNCIL

The Hon. IAN GILFILLAN: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Primary Industries, a question relating to the South Australian Fishing Industry Council (SAFIC).

Leave granted.

The Hon. IAN GILFILLAN: I have recently been informed about a level of dissatisfaction that exists among South Australian fishers with their peak body, SAFIC. SAFIC exists to represent the fishing industry as a whole, and its membership includes those who are licensed separately to fish for prawns, abalone, tuna, rock lobster and what is generically referred to as marine scale. The marine scale fishers have their own industry body, the Commercial Marine Scale Fish Executive Committee (COMMSEC).

Together they make up 50 per cent or more of the total fishers, yet I understand that they are represented at the SAFIC board level by only one board member out of six. I have been told that SAFIC agreed to fund a particular officer, a so-called extension program, working on behalf of COMMSEC for two years until January 1999 but that recently it rescinded that agreement and ended funding for this position more than a month ago on 30 June.

This is just one of a long list of 24 grievances with SAFIC which has been produced by COMMSEC. I do not intend to give all detail of that, but the document is available to the Minister if he has not seen it already. Suffice to say that the author of this document believes that marine scale fishers are getting a poor deal from the general industry body which purports to represent all fishers. Fishers pay very large licence fees to the Government and a portion of their licence fees are passed on to SAFIC, making it, in effect, a form of compulsory unionism.

However, the situation between COMMSEC and SAFIC has deteriorated to such an extent that COMMSEC is now urging its members to sign forms officially resigning from SAFIC and withdrawing any authority it has to represent them. The legal advice also suggests making an approach to the Supreme Court seeking a judicial review to win approval to withhold payment of the SAFIC component of their licence fees.

At the same time that all this happening, the General Manager of SAFIC, Mrs Lorraine Rosenberg, in a letter to all members—and I have a copy of that letter available—

The Hon. T.G. Cameron: The former member for Kuarna—one and the same?

An honourable member: Yes.

The Hon. T.G. Cameron: Just curious.

The Hon. IAN GILFILLAN: Well, I hope the Hon. Mr Cameron has the information he required. Mrs Lorraine

Rosenberg states in a letter to all members that the SA Rock Lobster Advisory Council and, less vigorously, the prawn sectors are both seeking to disband SAFIC. Additionally, she states that she and her staff have been subjected to written and verbal abuse and threats by 'an influential member of the Australian Fisheries Academy'—not a happy state of affairs, as most members would agree. Will the Minister advise me of the following:

1. Whether he intends to intervene in these wrangles which threaten to tear apart the State's peak fishing industry council?

2. What would be the effect if, as threatened, the marine scale fishers and the rock lobster and prawn fishers all decide to withdraw from SAFIC?

3. Whether, as the legal advice to COMMSEC indicates, it is possible for individual fishers or groups of fishers to resign from SAFIC and have the SAFIC portion of their licence fees withheld from that body?

4. What steps, if any, have been taken to investigate the claims of verbal and written abuse and threats to Mrs Rosenberg and her staff?

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

ETSA, RURAL COSTS

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Treasurer a question about ETSA costs in rural South Australia.

Leave granted.

The Hon. R.R. ROBERTS: Recently, I received correspondence from a constituent of mine who is wishing to build on a property some seven kilometres out of Port Pirie. He made an application to ETSA on 18 January 1997 in relation to the cost of connecting power to his property. He received a quote at the time of $2 720, which would cover the cost of the job consisting of a transformer, all cabling to the boundary and the digging of the trenches. He was advised that he would have to lodge that sum before work could commence. My constituent who is not a rich person was unable to pursue that desire at that time and has just recently applied again in August 1998. He was told that all the same work would be done and that his responsibility to pay up front would also be required, but the cost is now $6 640. To say the least, he is somewhat shocked.

I am advised that he has spoken to a Mr Ellis who said he would recheck the figures on the computer when he returned to his office from Port Lincoln. He has also had a conversation with the Hon. Rob Kerin who told him that there was some restructuring of the management and software systems and pricing when ETSA became a corporation. Although I do not expect the Treasurer to have the details with him right now, can he provide me with a detailed quote and detailed reasons why the quote of 18 January 1997 until August 1998 has more than doubled in cost?

The Hon. R.I. LUCAS: I am happy to get some advice from ETSA management on that issue and, if there is any further detail that the honourable member wants to provide me with, I would be happy to receive it and take up the issue. It highlights one of the issues that the Hon. Mr Cameron raised in his contribution in last night's debate, that is, those States and Territories that will be part of the Australian national market will be increasingly confronted with these difficult issues. In some cases consumers will have to pay costs and we as Governments and Parliaments, who are going to have to govern, whether it is this Government or it happens to be a Labor Government at some stage in the future, will have to confront these problems.

A competitive national market will mean that some of the practices which have occurred in the past will not be able to continue in the future. Whether ETSA is publicly or privately owned, it will have to compete, as the Hon. Mr Cameron very eloquently outlined last night to the Hon. Mr Roberts and all members in this Chamber who took the trouble to listen to his speech.

The Hon. T.G. Roberts: What will happen to regional areas?

The Hon. R.I. LUCAS: It is just not regional areas. I did not say 'regional areas'.

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: No. I did not say 'regional areas'. The Government is saying in its contribution that in terms of small customers, households and small businesses the Government has at least put down a plan to try to protect prices for country customers. It is important that we hear from those who are arguing to oppose the Government's plan, as the Hon. Terry Roberts and, more particularly, his Leader, are.

Members interjecting:

The Hon. R.I. LUCAS: The Hon. Terry Roberts says that he would like to see the subsidies and the old world continue.

Members interjecting:

The Hon. R.I. LUCAS: That is the point. The Hon. Terry Roberts was being quite frank about the second reading getting through and I admire his frankness.

Members interjecting:

The Hon. R.I. LUCAS: It is a frank assessment from a senior front bencher—

Members interjecting:

The Hon. R.I. LUCAS: Exactly. It is a frank assessment from a senior front bencher in the Rann Opposition that the second reading of the Electricity Bill will get through.

Members interjecting:

The PRESIDENT: Order! The Hon. Ron Roberts has asked his question. Why do you not listen to the answer?

The Hon. R.I. LUCAS: By way of interjection the Hon. Terry Roberts said he would like to see the subsidies and, by inference, the old world, continue. A number of members—the Hon. Nick Xenophon, Terry Cameron and others—have highlighted that, whilst we might like the old world and the old ways to continue, the reality is that from 15 November the new world in terms of the electricity market will start. We will no longer have a monopoly in South Australia. Whether or not we own it, we will have 27 competing customers in the retail market in South Australia. The old ways will be changed irrevocably.

The only point I make in my general response to the Hon. Ron Roberts' question, which I will take up, is that we, on behalf of our constituents, regardless of whether we are in government or in opposition, will increasingly be confronted with these difficult issues. We might not like them but we will be confronted with these difficult issues as ETSA management, under current public ownership, will increasingly say, 'We have to compete in the national market with these people from interstate; therefore, we will have to make these sorts of changes to our old ways.' It is wonderful to say, 'No, we don't like that. We shouldn't change it. We should stay with the old ways.' However, we cannot stay with the old ways once the national market starts.

The Hon. T.G. ROBERTS: Does the Government have any proposals to cross-subsidise rural people who find themselves in the circumstances as outlined by the Hon. Ron Roberts?

The Hon. R.I. LUCAS: I am happy to organise a private briefing with one of the senior frontbenchers of the Rann Opposition to talk to him about the Government plans—

The Hon. T.G. Cameron interjecting:

The Hon. R.I. LUCAS: I am happy to do that; I don't want to take up all the time of Question Time, because some members sometimes get frustrated if Ministers—

Members interjecting:

The Hon. R.I. LUCAS: I listen to and I learn from the interjections from the Opposition, about the complaints—

Members interjecting:

The Hon. R.I. LUCAS: Exactly!

Members interjecting:

The Hon. R.I. LUCAS: The Hon. Terry Roberts is obviously acknowledging that it will pass the second reading. Terry Roberts said by way of interjection that it would pass the second reading. The Government has outlined a quite detailed package in relation to households and small business customers in terms of continuing to protect even under the national market. We looked at Victoria and we said, 'No, that is not the way we believe we should structure our electricity industry if we want to protect our rural consumers in South Australia.' Victoria has five distribution companies. It has two substantially in the rural areas and three concentrated in the metropolitan area. It does not have the ability within those cost structures to cross-subsidise between the profitable metropolitan area and the less profitable, more expensive rural areas. We looked at that structure, and some were recommending to us that we should have two or three distribution businesses in South Australia.

One of the reasons why the Hon. Sandra Kanck said, 'Look, we want immediate answers,' and we kept saying to Sandra, 'We have to go to the ACCC and the NCC to argue our case' is that we believe it is in the best interests of rural consumers to have one distribution company and that is the best structure as opposed to a decision that, in the end, we were looking at as an alternative, which was to divide South Australia north and south. Under that model, there would have been more significant differences in price between rural consumers in the north and those in the south, and between all rural consumers and the metropolitan area.

An honourable member interjecting:

The Hon. R.I. LUCAS: Well, I've indicated it a couple of times. I have been asked the question, and I need to repeat the answer. We therefore argued and argued strongly for the one distribution company business so that we can continue the cross-subsidy between the city and the country. We will continue that. In addition to that, a proportion of the sale proceeds will go into a fund—

The Hon. T.G. Roberts: Until 2003.

The Hon. R.I. LUCAS: No. Again, the Hon. Terry Roberts does not listen. Until 2003 our pricing order will make sure that city and country customers pay exactly the same price. We retain control until 2003. It is no wonder the Hon. Terry Roberts is so frustrated with the Labor Party: he keeps making these statements which are obviously wrong and he has not listened to what is being said or read the materials that he has been given. The date to which the honourable member referred was 2013, but even that has now changed. The Government's position is that we will use some of the sale proceeds to continue until about 2013 the protection within the plus or minus 1.7 per cent just for some parts in the country; and then we further agreed after that to make budget allocations to make sure that we continue to protect small households and customers in the country.

We will be able to do that because we will have the headroom in the budget—because of the debt we have paid off as opposed to the amount of money we have lost—to use up some of that $150 million a year to continue that subsidy. Those who oppose the sale of ETSA and Optima, such as Mike Rann and up until now the Hon. Terry Roberts, will not have the sale proceeds and will not have the headroom in the budget to continue with that subsidy and protection for country customers. It is people such as the Hon. Ron Roberts and the Hon. Terry Roberts who oppose the sale who will be increasingly challenged over the coming debate in terms of how they will protect rural consumers if they do not have access, first, to the sale proceeds, and, secondly, to the headroom in the budget which will be freed up through the sale of ETSA and Optima.

I apologise for the third time for having to explain that, but it was again asked of me. I am happy to provide a further briefing to the Hon. Terry Roberts, if he wants it, in relation to how the Government with its plan is seeking to do all it can to protect rural consumers.

SCANLON, MR L.

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Attorney-General a question about the death of Mr Les Scanlon.

Leave granted.

The Hon. CAROLINE SCHAEFER: Last Sunday, Mr Les Scanlon of Hackham West died tragically when he went to the assistance of a young woman who was being pursued by an intruder. Mr Scanlon was well known to his community and particularly to those involved with Neighbourhood Watch. For the record, will the Attorney-General outline Mr Scanlon's contribution to his community? Does the Attorney believe that Mr Scanlon's death will impact on Neighbourhood Watch recruitment?

The Hon. K.T. GRIFFIN: The death of Mr Les Scanlon on Sunday 9 August was tragic—and tragic in the circumstances that he was, in a sense, an innocent bystander whose help was being sought by a neighbour who had been attacked. It is important to recognise that Mr Scanlon was an outstanding citizen and that the community has lost the benefit of his conscientious approach to community activities. In the same context, his family has lost a husband and a father. Mr Scanlon was the embodiment of community spirit and was greatly respected and liked within his community. I was talking to one of the police officers who had a very close involvement with Mr Scanlon and who described him as 'Mr Community' because he would do anything to help others.

The police officer knew him very largely through Neighbourhood Watch in the Hackham West area where Mr Scanlon had been a member of the branch since it was set up in 1991. He was the Area Coordinator for Hackham West and the Deputy Chair of the South Coast Division, and it was in that context that only two months ago I presented him with a certificate of recognition for his years of service to Neighbourhood Watch. It was interesting at that presentation, attended by a large number of people involved in Neighbourhood Watch in the southern region, that he was obviously

regarded with a great deal of affection and obviously was making a significant contribution to Neighbourhood Watch.

One of his greatest achievements was putting together the Neighbourhood Watch trailer used by other Neighbourhood Watch groups to promote membership and the movement's activities. He was involved in not only Neighbourhood Watch but also programs such as the 'Adopt a street' program, which was an innovative and low budget crime prevention program; an anti-graffiti campaign; and also involved as a member of the Onkaparinga Crime Prevention Committee. That was a membership that officially started about four months ago, but was unofficially a longer period of about 18 months. Mr Scanlon worked on other community projects such as a campaign to improve drinking water in the southern suburbs and was actively involved with the Hackham West Community Centre and the Hackham West Primary School. We hear a lot about suburbs such as Hackham West but, if one goes to Hackham West, one can quite readily feel the sense of community in existence there.

The Hon. T.G. Cameron: When were you last down there?

The Hon. K.T. GRIFFIN: I was there about five months ago, and last year I was there on at least two or three occasions. On behalf of the Government, I want to take the opportunity to express my deepest condolences to the family for their loss and to express also my gratitude for all the work that Mr Scanlon did on behalf of the community, particularly for the community in Hackham West. He was devoted to his family—to his wife, Debbie, and his children, Eran, Ben and Anita—and he had that happy knack, which is lacking in many, of being able to balance family life with community activities. His memory is an inspiration, and I hope that this tragic death will not deter others from making a similar contribution to the community as volunteers, whether as members of Neighbourhood Watch or otherwise, to help make the State a better place in which to live. In the short time since Mr Scanlon's death, and in discussion with some of the people who knew him, it is quite obvious that they will not allow that death to discourage others from being involved in community work in that area.

DAWSLEY CREEK

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning, representing the Minister for Environment and Heritage, a question about heavy metals in Dawsley Creek.

Leave granted.

The Hon. M.J. ELLIOTT: The Mount Barker *Courier* of 5 August 1998 gives a report on high levels of cadmium being found in Dawsley Creek (near Brukunga), levels which were deemed to be 20 to 30 times above health safety levels. I understand that a local dairy farmer destroyed more than 70 of his herd after the cows stopped producing milk or had difficulty calving. The origin of the cadmium appears to be from a pyrites mine, in connection with which, when exposed to oxygen and rainfall, leaching occurs, bringing out both sulphuric acid and a range of heavy metals. Cadmium is linked to a number of diseases, including cancer, bone degeneration, kidney diseases, as well as high blood pressure.

The Hon. T.G. Cameron interjecting:

The Hon. M.J. ELLIOTT: Yes—not good for you generally. I note here that an officer from the EPA, Dr Cugley, said that, because cadmium had to be ingested in large quantities to be a major health risk to humans, it was considered that there were not likely to be any problems. It is a fact that South Australian food generally is fairly high in cadmium—so much so that offal meat, such as liver and kidneys from sheep more than two or three years old, cannot now be sold for human consumption. South Australian wheat and—

The Hon. T.G. Cameron: Here in South Australia?

The Hon. M.J. ELLIOTT: Yes, in South Australia. South Australian wheat and potatoes are quite high in cadmium also. The reason I ask this question is that it appears that, because it was assumed that large quantities had to be consumed, there was not a health risk. I have been told that the risk can be much greater if people already have relatively high levels of cadmium in their system, which in South Australia may well already be the case. My question to the Minister is: has there been any attempt to ascertain whether or not cadmium levels have been elevated in people living in the near vicinity?

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

PASSENGER TRANSPORT ACT

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Minister for Transport a question about the review of the Passenger Transport Act.

Leave granted.

The Hon. A.J. REDFORD: Earlier today, the Minister tabled the Review of the Passenger Transport Act 1994 prepared by Bronwyn Halliday and Mark Coleman into the Passenger Transport Act and the operation of the board. The board is to be congratulated for the successful implementation and establishment of a new passenger transport regime under the auspices of the Minister. Indeed, some of the achievements of the Government since 1994 are remarkable. When this Bill was debated in this place on 10 March 1994, the Hon. Sandra Kanck said:

> On the issue of tendering for services, private industry is not likely to be interested in tendering for unprofitable services. They will be interested in just a few of our routes, and the most profitable services will be creamed off. This may provide a short-term cash flow for the Government, but where will the money come from to pay for the unprofitable routes?

Indeed, the Opposition (then represented by the Hon. Barbara Weise) also made some comments on that issue. Quoting a statement made by Dr Ian Radbone, the Hon. Barbara Weise said:

> The point he makes, which has been picked up in other studies and observations of various models adopted in other parts of the world, is that, whilst it is possible to design systems that will bring about significant savings to Government in the provision of public transport, often it has been at the expense of the service provided to the public and that the aim that all Governments have had to improve the service to the public has not always been one of the results achieved by adopting some of the measures implemented in various places.

The Hon. Barbara Weise went on to claim that the Bill at that stage would do that. She went on in her contribution and said:

> I am advised, for example, that one such plan that the Government was considering would have required the use of 50 extra buses at approximately $100 000 each, and that would add some $5 million to the cost of the provision of assets before one even starts talking about some of the other costs that are involved.

The report, at page 4, congratulates the board and, at page 21—

The PRESIDENT: Order! The honourable member is starting to debate in his explanation. I ask him to cut his explanation short and to ask his question.

Members interjecting:

The PRESIDENT: Order!

The Hon. A.J. REDFORD: I am sorry. I was just about to quote from a report that has been tabled in Parliament.

The PRESIDENT: To my ears, the honourable member is starting to debate. The honourable member has obtained leave to make an explanation, the relevance of which is not to debate but to give some facts pertaining to asking the Minister a question.

The Hon. A.J. REDFORD: I apologise, Mr President. All I have done is quote other people. I have not said anything for myself. Am I permitted to continue quoting this report for the purposes of the question?

The PRESIDENT: Yes, but I am warning you that you are debating when you should not be debating.

The Hon. T.G. Cameron: I would ask the question if I were you!

The PRESIDENT: Order!

The Hon. A.J. REDFORD: You've had a good couple of days, Terry. Don't push your luck! In the report tabled today, the authors of the report state:

> Overall the cost of providing bus services in the metropolitan area has reduced as a result of tendering and direct contracting out of services.

In the light of the report and in the context of what was said some four years ago by the Hon. Sandra Kanck in her dire predictions and the predictions made by the Opposition, how do the statements made by those members measure or sit with the findings of this review?

An honourable member interjecting:

The Hon. DIANA LAIDLAW: No. In fact, the question has been researched by the honourable member and asked without notice. I can highlight that the report notes savings of some $23 million over three years to 30 June 1997. I would highlight that those savings relate to the Passenger Transport Board's budget for the public transport portfolio. For its part, TransAdelaide would argue that, if one took account of the savings in real terms, it would be some $53 million or $58 million—I do not have the figures at hand—because the other operators have not received that which, with inflation and the natural flow of increase on the budgets, the old STA had for operating public transport services back in former Government days.

So, there have been considerable savings notwithstanding the measure one uses to judge those savings. I would also add that there has been a considerable level of service increase over that time. Certainly it was the goal of the Government, in looking at how we could revitalise passenger transport services in this State and stabilise patronage falls that had been going on under the previous Government, that we did not simply slash services to make savings. Because of his long term interest in public transport issues, the honourable member may recall that, to make savings, in 1992 the former Government cut out almost two thirds of weekend services and half to two thirds of night services. The—

Members interjecting:

The PRESIDENT: Order! There is too much audible conversation in the Chamber. The honourable Minister.

The Hon. DIANA LAIDLAW: The system has not recovered fully from those slash and burn days of the Labor Party of 1992 but, with competitive tendering, new players in the system and a new service and customer outlook by TransAdelaide as the reformed arm of the old STA, and with the benefit of the Passenger Transport Board and the standards and contracting performance requirements that it is setting, there is certainly new vigour in public transport in South Australia today.

Having read the review by Ms Halliday and Mr Coleman, and having discussed further the issues with them, I believe that, with the relaxation of the prescriptive contract conditions that have been established to date by the PTB, we will see much greater vigour, innovation and creativity in the design of services, which will be to the benefit of customers. I think we will see that those services can be undertaken at a reduced cost to the operator and therefore at a reduced cost to the taxpayer.

A lot of good work has been undertaken by Ms Halliday and Mr Coleman based on wide representations that they received—there were 49 interviews, and operators have been actively involved—and they know that, in terms of the commitment that they want to make to public transport in this State, they can do it better if the PTB can, in turn, reduce some of the prescriptive nature of the contracts and work on a basis of greater facilitation between the PTB and operators rather than through regulation, 'big boss' tactics and detailed requirements in contracts. I believe that the PTB prepared the contracts in the proper form four years ago.

Members interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: That was remarked upon in the review by the fact that we have not had the industrial or public disruption that services in most other States have experienced. The approach of the PTB was cautious. With the benefit of hindsight and in the light of the competition within the delivery of public transport services that this State now has, we can have a greater level of confidence with less prescription and more encouragement for innovative service delivery in the future.

The Hon. A.J. REDFORD: I ask a supplementary question. In the light of the Minister's reply, how reliable was the Hon. Sandra Kanck's statements and predictions in 1994, and how much reliance can be placed on her predictions for the future in relation to State services?

The Hon. DIANA LAIDLAW: The Hon. Sandra Kanck may have had some misgivings about competitive tendering and the reform of public transport. However, she did support the Bill. Although it went to a conference, she supported the findings of the conference, and a unanimous report was returned to this Parliament. She may have done so with misgivings, but she did support it. It would be wonderful if the same sort of spirit could be shown for the ETSA debate, but if the Democrats have their way the Bill will not get to a vote on the second reading.

Often there is fear of and resistance to change, but as with public transport we often find that there can only be benefit from such change. I understand the nervousness of people going into what is unknown, but I can only reassure the honourable member and the Hon. Ms Kanck on this occasion that her misgivings were misplaced. Nevertheless, I thank her for the support she gave to me and the Government at that time for the passage of that Bill.

RED LIGHT CAMERAS

The Hon. G. WEATHERILL: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning a question about traffic cameras.

Leave granted.

The Hon. G. WEATHERILL: Some time ago, traffic cameras were set up at some dangerous intersections. Is that practice still occurring, because there are many intersections where I think cameras should be installed to stop motorists running through red lights?

The Hon. DIANA LAIDLAW: I sought some information on this matter last week following representations from constituents who were worried about motorists rushing red lights in the Christies Beach area. I learnt that the installation of traffic cameras is ultimately a decision for the police, although advice is sought from the Department of Transport, Urban Planning and the Arts in terms of accident records. There is a monitoring cost of about $5 000 per year per camera, and for each arm of the traffic lights where a camera is placed the cost of installation is about $100 000. Like the honourable member, I was wondering why we cannot see more red light cameras established in South Australia, because I believe we are seeing too many people running red lights. Others who are cautious like me will stop in advance of the red light, and then you fear that somebody will crash into the back of you, so it is quite a hazardous exercise.

An honourable member: How long since you've driven a car?

The Hon. DIANA LAIDLAW: Two nights ago. I am licensed for a bus and for a car; I love riding my bicycle, and the car has just been serviced, so everything is fine. I even had my police record checked out for the bus licence, and I have none; I am clean. I had the absence of any police record verified before I admitted to this place that I had ridden on the footpath. Red light cameras, particularly in the Adelaide City Council area, is an issue that we will advance. The problem at the North Terrace and King William Street intersection has nearly reached nightmare proportions. It would have to be one of the most dangerous intersections not only in Adelaide but anywhere in the world. It is a terrifying intersection to get through and motorists rush the red light with increasing speed and in increasing numbers. I meet with the Lord Mayor next week and we will be seeking to advance red light camera operations, at least in the Adelaide City Council area. I acknowledge that there are cost factors and that the cooperation of the police is also required.

DRINK DRIVING

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning questions about cuts to city based drink driving campaigns.

Leave granted.

The Hon. T.G. CAMERON: On 22 July 1998, in response to a question on notice, the Minister for Transport and Urban Planning stated that Government funding for city based drink driving education programs has been slashed from $1 023 338 in 1996-97 to just $474 535 in 1997-98, a cut of more than 50 per cent, at the same time as she was boasting about our level of arts funding in this State. The cuts by the State Government to city based drink driving campaigns are a disgrace, particularly with the current road toll standing at 108, compared with 74 for the same time last year—the highest road toll in five years—and likely to rise above 200 by Christmas. Yet the Government has cut spending to metropolitan drink driving public education programs by more than half. On the other hand, funding for bike education programs (and I know the Minister loves riding a bike, even on footpaths—and I commend her for this) has risen from $160 100 to $198 320. I believe it was money well spent, particularly considering that during the same period the number of cyclists killed has fallen from seven in 1995 to three so far this year.

The Hon. Carmel Zollo interjecting:

The Hon. T.G. CAMERON: The Hon. Carmel Zollo interjects and says it is probably attributable to bike lanes, and she may well be right, but I am pointing out that additional funding has been provided to the bike education programs, and I applaud that. My concern is about the 50 per cent cutback in drink driving education programs, because I am a great believer that education rather than penalising people is the way to go. It is pretty obvious that public education programs do get results. Figures supplied to my office by the Attorney-General show that between 1996-97 and 1997-98 there has been a rise of more than 20 per cent in the number of people tested by the police at RBT stations.

The Hon. A.J. Redford interjecting:

The Hon. T.G. CAMERON: I will have a yarn with the Hon. Angus Redford later about whether or not there is opinion in my statement; I would have thought I was quoting facts. Similarly, the number of infringement notices issued by the police for drink driving has risen by 32 per cent for the same period—and I suppose that is an opinion.

The amount of revenue collected from drink driving offences rose by more than 40 per cent, a jump of more than 70 000—that is another opinion. While I am very pleased to see the police stepping up their RBT campaign against drink driving and wholeheartedly support their efforts, I believe that the Government should also be supporting the police by increasing funding to city based drink driving education programs, not cutting it. I believe that to reduce the road toll we need the mixture of both the carrot and the stick to do the right thing. I concede to the Hon. Angus Redford that that is opinion.

My question to the Minister—and I thank her for her forbearance on this—is as follows: considering the unacceptable road toll so far this year, 34 more than in the same period last year, and the increased efforts by the police to combat the number of people who are drink driving, will the Minister ensure that the funding for city based drink driving campaigns is restored?

The Hon. DIANA LAIDLAW: To my knowledge, the funding overall for public relations and advertising campaigns for road safety has not been withdrawn. However, following information from police and others, we are focusing increasingly on rural drink driving campaigns and seat belt campaigns, because that is where there has been such a disproportionate number of deaths on our roads over recent years, but particularly this year. If there is a transfer of funds, rather than a cut of budget overall, it is because of the need to focus on rural road safety issues. The honourable member will recall that he has asked such questions of me in the past and has asked me to focus on rural road safety issues. We have listened to him and to others, and we are doing so. Perhaps if he wishes to interject he may say that we are doing it well.

The Hon. A.J. Redford: We're doing it well.

The Hon. DIANA LAIDLAW: We're doing it well. It was a nod! I do acknowledge the nod from the honourable member and thank him for that.

STATUTES AMENDMENT (MOTOR ACCIDENTS) BILL

Adjourned debate on second reading.

(Continued from 11 August. Page 1316.)

The Hon. NICK XENOPHON: First, I declare an interest. Members are aware that I am a principal of a law firm that practises in personal injury law and, further, that I am a member of the Law Society of South Australia and previously had a very active involvement in the Australian Plaintiff Lawyers Association, of which I am also a member. Before I discuss the Bill, I would like to thank members who have spoken on it and, in particular, I note the thoughtful approach taken by the Hon. Angus Redford in his contribution. I do not propose to assess the minutiae details of this Bill, but I would like to comment on the Bill broadly by taking into account three distinct aspects.

The first aspect relates to the proposed amendment of section 35A of the Wrongs Act by increasing the threshold that currently exists before a claim for non-economic loss is made regarding an injured person's ability being significantly impaired for a period of seven days to the injured person's ability to lead a normal life being seriously and significantly impaired for a period of at least six months. To say that this proposal is mean spirited is an understatement. This proposal is draconian in its scope and will wipe out some 83 per cent of claims for non-economic loss, according to the Australian Plaintiff Lawyers Association. I understand that this figure has not been disputed by the MAC.

The victims of motor vehicle accidents who will be affected most by these changes will be those who do not have a claim for economic loss. The victims who will be hit hardest will be children, the unemployed, home carers and the retired. They will proportionately be hit hardest by the changes.

Section 35A has been in force for over 11 years. It effectively has slashed payments for non-economic loss—pain and suffering, in broad terms—by up to three-quarters. Whilst the scheme does not include some of the threshold requirements as applies in the other States, it has the worst benefits payable for the seriously injured in terms of non-economic loss. The maximum payment of $91 800 for non-economic loss contrasts favourably with that in all other States and Territories. If compulsory third party insurance is supposed to be about giving a fair level of compensation, based on principles of equity and fairness, to the victims of road accidents, the Act in its current form is, on any reasonable standard, miserly, especially for the seriously injured. The proposed amendment will make it impossible for most victims of road accidents to make a claim for non-economic loss. I find the provision repugnant and indicate my support for the Opposition's proposed amendment to delete this clause entirely to allow the *status quo*.

I now turn to new section 127A of the Motor Vehicles Act, which proposes to put into force a regime for controlling medical services and charges for medical services to injured persons using, essentially, the regime of the Workers Rehabilitation and Compensation Act, in particular section 32. Having dealt with the Workers Rehabilitation and Compensation Act in my practice in relation to injured workers, and in particular section 32, I cannot support this unnecessarily bureaucratic path, which all too often results in service providers and their patients being treated unfairly by the compensating authority.

There seems to be a presumption amongst insurers that the treatment providers for a victim of an accident are not entitled to a fair fee for service. I have had the benefit of representations made by the Australian Physiotherapy Association and I thank that association for its considered approach and submissions on this issue. I propose to move amendments in Committee to reflect the submissions of the Australian Physiotherapy Association, because its proposals will allow for a fair rate of remuneration for treatment providers.

The amendments based on the submission allow for charges to be based on average charges for services of the State. The proposed amendments also ensure that proceedings against the service provider for charging beyond the prescribed rate cannot be commenced unless liability has been accepted by or established against an insured person or the insurer, otherwise we may well be left with a situation where it appears that liability is disputed by the insurer—something that often happens—and the service provider provides treatment in good faith assuming that the insurer will not pay or, if you like, there is no claim—that has been accepted—charging the standard rate for treatment which may be slightly higher than the prescribed rate and then face prosecution at a later stage.

The amendment also allows a reasonable time limit of 12 months in which proceedings can be issued. I will also propose a new clause inserting section 127B, which will ensure that service providers can rely on a reasonable expectation that the insurer will make a decision on liability within 90 days, whether liability is accepted or rejected, so that there can be some level of certainty both for the victim and for the treatment provider. The amendment also provides for the insurer to pay charges for treatment within 30 days where liability is not disputed. Many service treatment providers have experienced problems in the past and this will ensure that that problem is overcome. I believe it is commercially fair for those treatment providers, particularly where liability has been determined.

I propose to contribute more fully during Committee, but I wish to touch on a number of other aspects of the Bill. I oppose new section 113A of the Motor Vehicles Act which will no longer make an insurer liable for aggravated, exemplary or punitive damages. Aggravated, exemplary or punitive damages are payable only in exceptional circumstances where the conduct of the negligent party is, in broad terms, so bad that the court believes that such an award is justified, in effect, to punish the negligent party for their conduct and the damage caused. The proposed amendment means that the insurer will no longer be liable, and I see that as unacceptable.

The sorts of cases where such damages have been awarded include cases where the driver has deliberately run over a victim. In Committee I will ask what savings the Government proposes to make with this amendment. I also find the proposed restriction to so-called 'nervous shock' claims under clause 12(b) of the Bill to be harsh and flying in the face of common law developments, which have taken a broader and compassionate view of such claims. A parent of

a child killed in a motor vehicle accident does not have to be at the scene of the accident or at the scene shortly thereafter to suffer horrific psychiatric injury as a consequence of his or her child's death.

I have dealt with nervous shock claims where the death of a child has been involved, and that is one of the worst types of claim that I have ever been involved with professionally. This would have to be one of the meanest clauses in the Bill and, again, I will ask at the Committee stage what savings the Government proposes to make with this heartless clause.

I also take issue with clause 12(c) to clause 12(i) inclusive, and I do not propose necessarily to state what has already been said by the Hon. Paul Holloway, the Hon. Carmel Zollo and the Hon. Mike Elliott on this. This is a callous piece of legislation, and I trust—

An honourable member interjecting:

The Hon. NICK XENOPHON: I am not sure whether an honourable member scoffed then. I trust that when this matter goes to the inevitable conference most, if not all, of these draconian changes will be removed.

The Hon. R.R. ROBERTS: In supporting the second reading of this Bill, I want to make some observations about one part of it in particular, namely, the provisions that are proposed in respect of penalties that will apply automatically to persons involved in motor accidents who have been under the influence of liquor. In observing this piece of legislation in its entirety, I agree with the last comment that the Hon. Nick Xenophon made: in many cases this is a callous piece of legislation.

There is no doubt in my mind that this is another attempt by the Government to look at another Government monopoly with a view to privatisation. To get an appreciation of that, we have to go back a little bit. Many years ago my colleague (I think he was in another place at the time) the Hon. Frank Blevins introduced legislation to ensure that all motorists were covered by compulsory third party insurance. That came about because the private insurance companies were loath to get involved and, when they did get involved, the premiums were such an exorbitant rate that it was almost unaffordable. A serious situation could have developed if accidents took place and people were not covered, so the Government made a conscious decision that third party insurance should be mandatory. That was a laudable decision, and it is a basic security that all motorists ought to enjoy.

Attempts have been made from time to time to change the arrangements and bring the private insurance companies back into the scheme, and I am reminded that on a couple of occasions the Hon. Diana Laidlaw introduced legislation to challenge the monopoly that SGIC held in those days. That legislation was rejected on a number of occasions by the Parliament.

Since the last election, the Government has announced in its budget strategy that it is scoping a whole range of Government-owned or Government-controlled utilities and organisations in this State, and one of those organisations is the Motor Accident Commission. One wonders whether that scoping study is taking into account the amendments proposed by this legislation. One suspects that it does.

What is the effect of this legislation? Does it extend the benefits payable to members who are covered by this legislation? No, it does not. In fact, it restricts the benefits that have been available: it restricts the maximum payouts and a whole range of things, including medical costs and other benefits. I do not believe that the Government ought to do that sort of thing with compulsory third party insurance. Many of my colleagues have made contributions, and those points will be discussed comprehensively in Committee. My colleague Paul Holloway has a series of amendments that he will move and they will be fully debated at that time.

We have here a Government that is trying to change the rules of the fund—and for what purpose? We have seen, again, this practice that the new Treasurer is introducing to this place. He says, 'Well, we will make you swallow this particular pill, so the premiums will go up. If we do not get this legislation passed (which heightens the bar in relation to what one is able to achieve), we will give you another pill. If you do not take one pill, we will give you two.' I think if CPI increases had occurred over the past couple of years, instead of the avoidance of that gradual increase which people would have accepted, we would not be in this situation today—but that was undoubtedly done for political reasons running up to an election.

Given that private insurance companies have wanted to get into this field for some time, we have a Government that is hell bent on privatising our utilities and Government instrumentalities. It has said that it must make it saleable. So, we are going through the same processes that we have seen with water, electricity and all the other things: we must make it saleable. The buses are another example. The Government put up the price of bus fares to make that business saleable, all the time telling the employees that it is for their benefit and that they must become more competitive, etc. However, the Government failed to tell them that it was really making it more attractive for an outside operator to come in and buy the business.

That is undoubtedly the situation with this piece of legislation. We are lowering the pay-out, so that a private insurer looking at this proposition will say, 'What are the premiums? What do we have to pay out?' It is not dissimilar to the WorkCover situation when the functions of Workcover were privatised. We lowered all the benefits, then we looked at the whole of the situation and said, 'Can private operators get involved?' The bottom line and top line came closer together and it became a viable proposition, and that is what is happening with the MAC.

I will raise one other issue before concentrating my remarks on the drink driving aspects of this Bill. The Motor Accident Commission has a monopoly situation. It also has an advantage, about which I have been made aware, in that it has an arrangement whereby, if an accident occurs and a plaintiff wants to get information, the plaintiff has to go through the discovery process to get the evidence that has been provided by way of statements to the police. However, I am advised (and I would ask the Attorney-General to look at this matter) that in fact the MAC has a direct line from its computers into the police computers and it can actually access those statements, whereas the plaintiff, the injured party, has to go through a discovery process and pay the costs associated with that. We do not therefore have an even playing field and, if an insurance company was going to buy it and those practices went along with it, that would be another advantage. So, there is an advantage to the operators and a disadvantage to the injured motorists of South Australia.

One aspect of this Bill that was discussed at great length by the Australian Labor Party in our Caucus was the clause which provides that there will be immediate deductions of benefits for those persons who are convicted of being over prescribed blood alcohol levels. That means one has only to

be over .05 per cent. We are talking about a situation where an injured motorist or an injured passenger, who could have reasonably assumed that a driver was drunk or under the influence—indeed with a blood alcohol reading over only .05 per cent—could be severely disadvantaged. There is also a clause which provides that if seat belts are not being worn there is an automatic deduction of 25 per cent. In the case of alcohol, it is up from 15 per cent to 25 per cent and, if one is not wearing a helmet on a cycle, there is also an automatic deduction of 25 per cent.

It gets worse than that. Under the Government's proposal, it can be 25 per cent and up to another 25 per cent depending on the discretion of the magistrate hearing the case. I have a strong objection to this and we have debated that. My colleague the Hon. Paul Holloway has an amendment which opposes the Government's proposition, that is, to have it cumulative and the second half of it being assessable so that it is up to another 25 per cent. Depending on the severity of the case, we are really talking about an injured motorist or passenger losing up to 50 per cent.

Why do I believe that to be unfair? Clearly, we can make the comparison—and the Government in its proposition does compare this arrangement for compensation with the Workers Compensation Act. When it suits the Government it makes one comparison and when it does not suit it its argument goes the other way. One is an at fault system of insurance and the other is a no fault system of insurance. This is not the first time the Government has engaged in this activity. We can talk about WorkCover and how we used to have provisions where, if a worker was injured on a journey to work, there was cover under the WorkCover prescriptions. That was a no fault system. It was decided to take that out and part of the Government's argument then was that there could be cover under the Motor Accident Commission. These arguments go from side to side depending on the whim of the Government at that time and what it is trying to achieve. In my view, as it is a fault situation the judge in all other circumstances has the discretion to say it will be X, Y or Z and the amount of compensation is assessable by the magistrate on the merits of the case.

When we bring in this situation of an automatic deduction of benefits for being over .05 there are two propositions to consider. If a motorist involved in an accident is blood tested and proves to be over .05 they face a driving charge and fine and penalty dependent on the fact that the driver was over .05. On the one hand the driver faces the liability for a driving offence and then faces double jeopardy and is penalised twice. The criteria behind being penalised twice is the point I want to address today. We rely on a blood alcohol testing machine to say the driver was over .05 but there is no consideration whatsoever whether the .05 and whether he had or had not had a drink had any part whatsoever in the circumstances of the accident.

The proposition before us automatically assumes that in all circumstances the liability remains the same. A person could be just over or under .05 in a real sense and can be severely disadvantaged in two ways. First, he gets a traffic infringement fine, which is fair enough because we all know about that. The driver then encounters the double jeopardy. In my submission there is a great injustice there because the driver could have been quite competent and may not have had his seat belt on, yet neither of those circumstances could have had a bearing on the cause of the accident or the measure of the disability of injury suffered, yet automatically these provisions apply. Worse than that, the Government wants to go one step further and make some assessment on the basis over the mandatory 25 per cent—up from 15 per cent. It says, 'We can go up to 25 per cent, if we can show that there is some connection or if there has been an absolute breach or inattention to responsibility.'It has said that there should be some discretion.

However, there is no discretion with the first 25 per cent. I was perfectly happy with the level of 15 per cent—although, if one arm says that it is a traffic accident, that is where the penalty ought to lie. Injuries may affect a person for the rest of their life such that they may have to live off payouts for the rest of their life. Regardless of whether the alcohol level was over .05 or under .05, the injury level will be exactly the same and the cost of managing that will be exactly the same. We will penalise not only the injured motorist but his family and his family's lifestyle, and that bears looking at.

The situation is further exacerbated when one looks at the operation of speed cameras in South Australia. When one looks at the legislation surrounding drink driving in South Australia, one sees that it is fraught with pitfalls and traps. The whole concept of alco-testers and their reliability, coupled with the legislation, in many cases can be demonstrated to be an absolute nonsense. Today I intend to lay out those things for the benefit of members. I also give notice that over time it is my intention to look at some private member's legislation with respect to this matter. Almost any member of the community could drive with a blood alcohol level of .05, and it could destroy their life. In those circumstance, the legislation has to be foolproof and absolutely accurate.

I refer to a document that was published in the *Law Society of South Australia Bulletin* of March 1998. It was put together by Mr David Peek, who is a barrister with Murray Chambers and who is the Chair of the Criminal Law Committee of South Australia. While it is not my intention to read the document out verbatim, I intend to refer to it, in large part, because it lays out clearly the problems with speed cameras and the legislation. Mr Peek states:

> Recently suggestions have been made that the prescribed concentration of alcohol under the Road Traffic Act 1961 should be again reduced, this time to .02 grams of alcohol per 100 millilitres of blood (originally .08 and subsequently .05).

If we were to do that and then apply that formula to what is being proposed in this MAC legislation, undoubtedly more penalties would be applied to motorists who breach that prescription. Further, the document states:

> Bearing in mind that well over 95 per cent of prosecutions for driving contrary to section 47B of the Act rely upon the result of a reading generated by a breath analysis machine operated by police—

that is not necessarily the case; it can be operated by contractors to the police, and the Police Bill will provide greater opportunities for that to occur—

> it is perhaps timely to consider the safety and fairness of adopting such a limit in the light of both the current legislative framework and the technology currently being used in South Australia.

Although all the provisions of section 47 are important—and the Minister for Transport knows this because she and I have had discussions about the matter in this place—perhaps the most critical provision is section 47G. For practical purposes, and provided certain specified conditions precedent are fulfilled, the current effect of section 47G is that a person who does not request a blood test following a positive breath analysis will face an irrebuttable presumption that the concentration of alcohol in the blood indicated by a breath analysis instrument was accurate at the time of testing and that such concentration was present in the blood throughout

the period of two hours before the analysis (that is 'the presumption').

Such person will be positively forbidden from adducing expert or any other evidence, no matter how strong, which demonstrates that at the time of driving—when the offence was alleged to have taken place—the person had well under the prescribed or alleged concentration of blood alcohol. It is not permissible to prove that the amount of alcohol actually consumed could not on any scientific basis possibly result in the concentration alleged by the reading. Nor can it be proven that breath testing machines as a broad class or the particular make and model of the machine actually used as a narrower class (as distinct from the particular machine as used on the particular occasion) are suspect or untrustworthy.

So, it does not matter whether you can prove conclusively that it is wrong or whether the medical evidence proves conclusively that it is wrong: if you did not actually request a blood test kit you could not prove your innocence. That is the presumption. The purpose of what I am about to demonstrate is that there is some cause for concern at this state of affairs. It is vital to scrutinise recent legislative changes and any proposal for further change from the broad historical and scientific perspective. If one adopts that perspective, one can better appreciate the true underlying reasons (sometimes unexpressed in judgments) for a strict construction of certain provisions of the Act and for the continued need for caution.

I shall canvass some of these statutory changes. Prior to the Road Traffic (Breath Analysis) Amendment Act 1993—and we all remember that—the obligation was on the police to inform a person who recorded a positive reading of the right to have a blood sample taken, to warn of the consequences if this was not done (that was previously contained in section 47G(2)(a)) and, if the subject requested a blood test, to do all things reasonably necessary to facilitate the taking of the person's blood by a medical practitioner nominated by the person. That was previously outlined in section 47F(1). The blood sample then had to be taken by a medical practitioner in the presence of the police officer. The sample was there and then to be divided by the practitioner into two approximately equal parts and placed in sealed containers: one was delivered to the member of the police force who was present, and the other was to be retained by the medical practitioner and dealt with in accordance with the directions of the tested person.

Uncertainty over what amounted to facilitation and the requirements of informing and warning generated a good deal of litigation. From time to time, those matters have been raised in this place. By and large, a strict line was taken in relation to these provisions because it was appreciated by the courts that the trade-off for the trouble of arranging the blood test on the relatively few (on a percentage basis) occasions when such was requested was the erection of the irrebuttable presumption of accuracy of the breath analysis machine, which is appreciated by most people in the legal profession, I am advised, to be a statutory fiction—and I would concur in that. However, as in most Government affairs, what came to be focused on was the inconvenience of the administrative burden rather than the benefit that was gained. No doubt financial and staffing considerations fuelled this tendency. The almost inevitable upshot was that police came to protest against what they perceived to be portrayed, and portrayed as being unreasonable obligations upon themselves, of the practice of facilitation.

By the Road Traffic (Breath Analysis) Amendment Act 1993 the concept of facilitation was swept away when the new regime of the 'blood test kit' was introduced. The obligation of the police officer upon a positive reading now is simply to read out the 'prescribed oral advice' and to supply a document containing the 'prescribed written advice' as to the availability of a blood test kit. After being given such advice, the subject who requests a blood test is given a blood test kit and it becomes his obligation to take it to a hospital and have the blood taken as prescribed. So, it is a serve yourself system which, in itself, I would assert, has some failings. No longer is there a requirement for the police officer to facilitate or assist in this process or to be present when the blood is being taken. The requirements of the oral and written advice and the procedures to be adopted are now specified in regulations rather than in the Act itself, namely, the Road Traffic (Breath Analysis and Blood Test) Regulations 1994.

I turn now to the question of direct blood testing. The law recognises that a breath analysis reading is inferior to a direct analysis of blood—and this is the point that I come to in respect of the dangers of this new Bill—if for no other reason than that a breath analysis is much more indirect. It induces the likely alcohol content of the bloodstream by analysing a sample of the air that the person exhales. This necessarily applies a number of assumptions, some of which are highly questionable and some of which, although theoretically applicable to the average person—and I will touch further on 'the average person'—will not infrequently be significantly inaccurate when applied to the particular person being tested—we are talking about human differences.

In recent decisions the Supreme Court has firmly required strict performance of the conditions precedent to the enlivening of the section 47G presumption, particularly as to the remaining obligations of the police in relation to blood test rights, recognising the dire position of the motorist who does not avail himself of a blood test. I contend that the Supreme Court of South Australia has been correct in taking this stand. We are often subjected to the request to apply commonsense when adjusting these things. So-called 'commonsense' can be a dangerous thing. We all know that the strength of the prosecution case is usually inversely proportional to the number of times the prosecutor exhorts the jury to use its commonsense—the lawyers among us are well familiar with that.

So it is that sometimes when we think we have a personal experience of something, or we have heard a great deal of scuttlebutt on the topic over the years, we assume that it is not necessary to consult an expert or to research the matter that is simply a matter of commonsense. So it is with breath analysis. Sometimes what is thought to be the case according to commonsense may be dangerously superficial and sometimes quite incorrect. There are some inherent problems. The examples referred to are largely selected on the basis that they may be stated briefly and understood, whilst recognising that they are subject to numerous complications in any individual case.

The amount of alcohol actually being measured by a breath analysis machine is remarkably small. In the case of the Drager 7110 (currently the machine being used by the South Australian Police Department) the amount sought to be measured (at a true reading of .10 grams of alcohol per 100 millilitres of blood) is roughly the equivalent of two millionths of 1 ounce of alcohol—a very minute amount. One can readily appreciate from that that not a lot has to go wrong to affect the reading significantly. All modern breath analysis machines analyse a sample of deep lung (or alveolar) air, and

that is because it is said that the air adjacent to the lung tissue is in a continuous state of cross-transference with the alcohol in the lung tissue. So, an analysis of the air adjacent to the lung tissue can give a valid estimate of the amount of alcohol in the blood.

We need to pause there. Since the machine purports to measure the percentage of alcohol vapour in the sample of lung air, how does one obtain a reading from that of grams of alcohol per 100 millilitres of blood in terms of section 47B? The machine does give a digital read-out in those terms and it does have an attractive and impressive appearance, but the question has to be asked: how does it perform the conversion?

That leads us to the partition ratio. The machine has to be programmed with a conversion ratio (sometimes referred to in the profession, I am advised, as the partition ratio) of blood alcohol concentration to lung air concentration to be able to get from a volume of alcohol vapour in the sample of lung air to a measure of grams in mass of alcohol per 100 millilitres of blood. A number of problems immediately emerge. One problem is that the partition ratio is not constant in all human beings: it varies significantly from individual to individual. So, here we are taking a sample in volume, converting it into a mass, and we have to then apply that to all the vagaries of human construction. We can see that we are now starting to get onto dangerous ground.

If one were able to take three identical Drager 7110 machines respectively in service, I am told, in South Australia, England and New Zealand, place them side by side in one room and have a subject who has ingested an amount of alcohol blow into each machine *seriatim*, each would give a different reading. That is because each of those jurisdictions programs into their machine a different conversion ratio. In New Zealand, for instance, the ratio is 2 000:1; in South Australia it is 2 100:1; and in the United Kingdom it is 2 300:1. One might ask: why? Again, it comes down to scientific debate. The differences stem from the debate in the literature as to what is the appropriate conversion rate for the average human being. Many people have been looking for the average human being, but no-one has identified him specifically. The selection of different ratios produces a direct linear effect on the ultimate read-out. Thus, in the above example, assuming that all other things are equal, a subject who recorded .2 on the New Zealand machine would record .21 on the South Australian machine and .23 on the British-made machine.

The complications do not end there. My correspondent points out that, as with all matters of adopting so-called averages in the area of breath analysis and blood alcohol measurement, the particular individual being tested may have a true value significantly different from the average adopted for the purposes of programming and calibration. Of course, it may well be that most people will be fairly close to the ratio of 2 100:1—indeed, the individual who has a higher ratio than 2 100:1 will benefit from a falsely low reading on the South Australian machine. So, this is the determiner of all things as to whether one may be able to claim compensation under this Act or not—and there are more to come.

I have already pointed to a whole range of fragile assumptions to indicate why it could be asserted that these machines are not always 100 per cent reliable. But such is little comfort to the person whose ratio is naturally lower. It has been the experience that any accredited and well read expert will not purport to be able to exclude beyond reasonable doubt a partition ratio of 1 700 to 1. Indeed, there are significant lower ratios than that to be found in various studies in the literature.

The Hon. L.H. Davis: Are you going to address the Bill soon, Ron?

The Hon. R.R. ROBERTS: At the ratio of 1 700 to 1, it can be seen that the person who records .21 on the South Australian calibrated machine would record .17 if that machine were properly calibrated to his or her particular partition ratio.

The Hon. L.H. Davis interjecting:

The Hon. R.R. ROBERTS: I could stay here all day and the Hon. Legh Davis would not get the connection. He has never had a connection in his life.

The Hon. A.J. Redford interjecting:

The Hon. R.R. ROBERTS: You can leave any time you like and you will make everybody here happy, I am sure. It follows that a person who records .18 on the South Australian machine would actually be under the significant figure of .15—

The Hon. A.J. REDFORD: I rise on a point of order, Mr President. I am just wondering how on earth this is remotely relevant to the Bill.

The Hon. R.R. ROBERTS: Mr President, I am happy to answer the question of relevance. We are talking about the clause which precludes an injured motorist from getting justice because he can be ruled out on the findings of these machines, and I am pointing out to the Council that there are significant considerations as to the frailty of these machines. The honourable member, as a member of the legal fraternity, would have been involved in some of these cases and should well know most of this, though I doubt he does. For the edification of those people interested in the rights of motorists in South Australia, and clearly the Hon. Mr Redford is not, I will proceed.

The Hon. A.J. Redford: Are you going to let the President rule on this, or are you just going to keep barging?

The PRESIDENT: Order! The honourable member has not drawn breath since the point of order was taken. I rule that there is no point of order; but I would direct the Hon. Mr Roberts to go back to his prepared comments and to keep his remarks relevant to the Bill.

The Hon. R.R. ROBERTS: Thank you, Mr President. I will desist the opportunity to take the debate off the subject. These members of this Government have clearly demonstrated they have no thought for the injured motorists out there. They probably want to get off and have a quiet ale with their mates. Sure, they will not breach the .05; but I will not be deterred by them because I actually happen to think that the rights of South Australians are more important than their frail egos.

Another issue that needs to be considered with these machines that we are talking about depriving injured motorists of their rightful compensation is there is a second problem in that the whole concept of the conversion ratio depends upon a further variable, and that is the temperature of the exhaled breath to be measured. The figure of 34° Celsius is presently selected for the purpose of programming these machines. The basic assumption may be expanded as follows: at an assumed temperature of exhaled air at 34° Celsius, 2 100 mls of alveolar air is said to contain the same quantity of alcohol as 1 ml of circulating pulmonary arterial blood.

The Hon. M.J. Elliott interjecting:

The Hon. R.R. ROBERTS: The Hon. Mr Elliott wants to challenge the science. We have all been subjected to the

Hon. Mr Elliott's great knowledge of science on numerous occasions. Undoubtedly, he has an opinion, and he will have an opportunity to express it. No doubt 34°C is reasonably close, but the fact remains that, if a person has a higher temperature due to fever or physical exertion, etc., the reading is found, in practice, to be over estimated by about 8.5 per cent. So, if the reading is over estimated by 8.5 per cent, we are really talking about the difference between that person being entitled to compensation or not being entitled to compensation or, in fact, losing his licence and perhaps his livelihood.

The Hon. M.J. Elliott interjecting:

The Hon. R.R. ROBERTS: No. You can have it either way. An obvious and easily achievable improvement in breath test analysis machines, one which has been urged, I am advised, for many years—

Members interjecting:

The PRESIDENT: Order! There are five members standing and one member has been called to speak. I have said often: if members want to have a conference they should go outside into the lobby.

The Hon. R.R. ROBERTS: There is one obvious and easily achievable improvement. The Drager 7110 machine, as presently configurated in South Australia, does not incorporate this facility, but it would be a very simple matter to improve its efficiency by having a temperature gauge installed. A third problem is that, just as the conversion ratio varies from person to person, so it will vary for the same person according to whether that person is in the absorption or elimination phase. It is important not to confuse this aspect with the quite different matter of the so-called 'back calculations' which are often referred to in these proceedings and which seek to deduce blood alcohol content at an earlier time using a reading taken at a later time and as to which questions of absorption and elimination rates are obviously crucial.

A whole range of matters have scientifically been proven to affect the accuracy of these machines. There is a sixth problem which I will put forward because I think we can do something about this almost immediately. This problem, which is somewhat of a different nature, is presented by the continual refusal by SA Police to accept the recommendations, regularly made, that there should be duplicate (or replicate) testing as is carried out in most overseas countries. So, in answer to the Hon. Mr Elliott's question about whether a blood test is taken afterwards, what normally occurs is that a motorist pulls up at the RBT, blows into the machine and is advised whether he is over or under the limit. The motorist is then given the opportunity to have a blood test. If the motorist does not, he then faces the irrefutable—

The Hon. M.J. Elliott: What about crash victims?

The Hon. R.R. ROBERTS: If they do it with a blood test—

The Hon. M.J. Elliott interjecting:

The Hon. R.R. ROBERTS: You can still be tested with a machine. You can have either test. You can have the blood test, as I understand it. In respect of the RBT situation, when a positive test is returned, a further test should be carried out, say, within three minutes of the first. A small deviation would be permissible, but if the deviation is more substantial certain consequences should follow. Obviously, various legislative models could be adopted, but the important point is that at least the subject should have this means of asserting that the machine was not operating properly. It would not be difficult for this to be done. I am sure that most motorists, knowing that they had nothing to lose, would avail themselves of this test.

I could go on for longer about the Drager machines, the breathalysers, and the history of those things. I point out—as I think I have demonstrated in this contribution so far—that there is still a great deal of concern about breathalysers. We should remember that these machines are being used daily on a random basis to test whether divers or those involved in traffic accidents are over the limit. As pointed out by the Hon. Mr Elliott, if they are over the limit they have the opportunity to undertake a blood test.

When the 'breathalysers' (as they were called) first came in, each machine was gazetted with its number, but we now have a class of breathalyser. When the new breathalysers were introduced in South Australia, the old breathalysers' defects and difficulties, which are now readily recognised and referred to in the context of most analyses of the machines, were not so apparent when the old machine was the only machine in use. The inferior technology of the original breathalysers is well recognised and, when they were operating, the legislation took account of the deficiencies in their accuracy.

Now we have the Drager 7110 and everybody says it is great. One wonders what will happen in a couple of years, when even better technology replaces the Drager 7110 because of all the faults found in it; we will look and laugh. But I tell you who will not be laughing: those persons who were injured in a motor vehicle accident, who were just over .05 and who in some cases not only lost their licences and received fines for driving over the limit but also lost their ability to access proper compensation, and that affected the lives of their family and friends.

I believe there are serious problems for us all in this Legislative Council to address in future times. I point out that this is part of the system that this Government is proposing, with all its vagaries and statutory nonsense, to stop injured motorists and workers from accessing fair compensation. That is not for the benefit of the insured persons nor for the benefit of the funds but for the benefit of the bottom line of the scoping analysis that is done to make this facility more saleable so their mates in the private insurance industry can come in and scope it. I leave the Minister in charge of this Bill with this question: was the scoping study that has been commissioned at the Motor Accident Commission done on the basis that the total of this legislation would be enacted or on the basis of the circumstances that existed prior to this Bill's being introduced?

Whilst I support the second reading of the Bill, I indicate very clearly that I will support the Caucus decisions of the Australian Labor Party with respect to these amendments. I express my concern in respect of those provisions which lift the level of automatic deduction for benefits from 15 per cent to 25 per cent. My personal view is that it should remain at 15 per cent. In some cases it is arguable that even that is unfair, but that has been a fact; it is 15 per cent. My personal belief is that it should be up to 25 per cent at the discretion of the magistrate.

The Hon. T.G. Cameron: Why is that?

The Hon. R.R. ROBERTS: Because this is a fault system and in every other situation a magistrate has to look at all the circumstances and has a discretion. The legislation prescribes 15 per cent. We cannot do anything about that; it is the present legislation. I believe the concept is wrong. It should be up to 25 per cent, it should not be cumulative and the Government ought to be condemned for doing that and for its

overall plan of setting up the MAC so the private insurance companies can come in and make a feast of it.

The Hon. R.I. LUCAS (Treasurer): I thank members for their generally thoughtful contributions to the Bill—those that related to the Bill. The Hon. Ron Roberts, as is his wont, went off at a tangent somewhat.

The Hon. Caroline Schaefer: It was a very thoughtful contribution, though. It just didn't have anything to do with the Bill!

The Hon. R.I. LUCAS: As the Hon. Carolyn Schaefer said, it was a very thoughtful contribution, and I am not denying that; it just did not relate to the Bill. Nevertheless, there were plenty of other opportunities, I am sure, if the Hon. Ron Roberts wanted to get that speech off his chest. He could have moved a motion in private members' business. It was his all purpose speech that you can use for any Bill you want to use it for. I am sure that at some stage, when we find a Bill for which it is appropriate, as a Minister in this Government I will be able to respond to the issues that he raised.

The Hon. T.G. Cameron: And pigs will fly!

The Hon. R.I. LUCAS: The Hon. Terry Cameron expresses some doubt about that. I thank members other than the Hon. Ron Roberts for their thoughtful contributions as they related to the Bill. The only point that I would make about the Hon. Ron Roberts's contribution was the snide inference that he and Kevin Foley and some Labor members have made that in some way this Bill is all—

The Hon. T.G. Cameron interjecting:

The Hon. R.I. LUCAS: I cower every time I hear the name 'Foley'. The only person who has Mr Foley on the run is the Hon. Terry Cameron. He went white last night as he listened to that speech on electricity. But I will not be diverted.

The Hon. T.G. Cameron: He hasn't come and spoken to me about it yet.

The Hon. R.I. LUCAS: I doubt that he will. I think we will have that blank chair, as we had in *Stateline* last Friday with Kevin Foley's name on it, with him refusing to engage in the debate. I want to comment on this inference from Kevin Foley, now taken up by the Hon. Ron Roberts, that in some way this Bill is geared to the Government's fattening up the Motor Accident Commission for sale. As I have said previously in this Chamber and elsewhere, the Government rejects that notion. As I have indicated before, I remain to be convinced about the argument for the possible privatisation of the Motor Accident Commission. Before I would be prepared to support it I would need to be convinced that it was in the public interest.

Of course, I do not rule it out, but I start from a position of needing to be convinced, whereas I think in other areas the tendency and trend across Australia, in relation to TABs, for example, has been that inevitably TABs are increasingly likely to be privatised by State Governments. The honourable member asked a question at the end of his contribution as to whether the scoping study on the Motor Accident Commission had been done on the basis of this Bill's being passed. I will need to obtain advice on that, but my understanding is that it would not have been. I do not want to mislead the House in any way, being the cautious man that I am; I will take advice. But my understanding is that it would not have been, and I think that would be appropriate—

The Hon. T.G. Cameron: He's got his hands in his pockets again.

The Hon. R.I. LUCAS: Both hands, though. That would be appropriate, because this Bill has not been passed in one Chamber, let alone by the Parliament, therefore it would not make too much sense for the consultants looking at the scoping study of the Motor Accident Commission to assume that this legislation would be passed by the Parliament in its current form. For the sake of members, in thanking them for their contribution, I repeat that the Government's position is infinitely flexible on the final shape and nature of the legislation before us. We started from a premise that we believed that a 12.9 per cent increase in premiums was too much to ask of ordinary consumers and owners of cars, given the other increases that the Government, in the interests of balancing its budget, has already had to inflict upon car owners in the community.

Therefore, the Government did adopt the position of trying to have a reasonable increase of 8 per cent and trying to achieve some savings in the operations of the scheme which we were advised would be about 4.9 per cent, and that remains the Government's position. Frankly, the Parliament, in its wisdom, would be the first to acknowledge that these issues are not black and white. Many cases quoted by the Law Society, the Plaintiff Lawyers Association, the AMA and others tug at the heart strings.

We are all human and, therefore, we would all like to see the maximum amount of money paid to the maximum number of people who might seek to make a claim under these insurance arrangements. However, we must temper that with the fact that all of us must pay increased premiums for the benefits that are included in the schemes. Whilst the Hon. Mr Xenophon and others are arguing that this amounts to only 22¢ a week, or something similar, I point out to the honourable member and other members who have used those particular figures, as well as groups and organisations, that that is just this year's premium increase.

If this Bill is thrown out, that extra 4.9 per cent increase with be reflected in this year's premiums, and there will be increases in premiums for each of the following years from here on in. It is not just a one-off increase for car owners this year if this Bill is defeated—

The Hon. R.R. Roberts: Is this CPI?

The Hon. R.I. LUCAS: No, this is way above CPI. The increase this year, recommended by—

The Hon. R.R. Roberts: Next year, I am talking about.

The Hon. R.I. LUCAS: This year it was 12.9 per cent; we have said 8 per cent; and this Bill will provide for 4.9 per cent. In Committee I will be happy to provide further advice, but Mr Geoff Vogt, on behalf of the Motor Accident Commission, has recently undertaken an overseas study trip looking at similar schemes. His advice to me with respect to all similar schemes throughout the world, because of the courts and the increased payments that have been made, as well as the costs of running the scheme, is that premium costs are increasing of the order of 7 per cent to 10 per cent a year, even though the CPI might be only 2 per cent or 3 per cent.

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: I am saying that it is not just the courts but the costs of the scheme.

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: If the Hon. Mr Redford would just listen, he would know that I referred to the courts and the costs of the scheme, which includes a range of other things. As I said, I can take further advice on that but my recollection is that the premium costs of international schemes are generally rising by about 7 per cent to 10 per cent a year,

which is significantly greater than the CPI. We are not talking about CPI-alone increases. Whilst it is a cute point to make, the issue is not just about X¢ a week this year. The decision we must take is not just X¢ a week this year but, of course, the additional increases for each and every year here on in as the costs continue to increase.

The other point is that the attempt to close down some of the areas in terms of reductions in costs relates to areas where we have had warnings that the cost blow-outs are starting to occur. The view of the Motor Accident Commission and the senior counsel advising the commission is that, whilst in some cases it might presently result in relatively small savings to the scheme in the current year costs, the estimates are that they are potentially the areas where there will be growth in the scheme unless the loopholes are closed.

The Hon. Nick Xenophon: What about nervous shock?

The Hon. R.I. LUCAS: Nervous shock is one example, and I know that the Hon. Mr Xenophon believes that the Treasurer and the Government are callous in their attitude to nervous shock. But that is one of the areas where they believe that, potentially, as the courts may well seek to interpret, there might be some growth, but it is obviously not as big as some other areas, such as the non-economic loss provisions and others. It will always be, in relative terms, a smaller component.

I do not have first-hand knowledge of this area, unlike the Hon. Mr Xenophon and the Hon. Mr Redford in terms of their past personal experience, so I can only relay the advice that senior counsel have provided to the Government and the Motor Accident Commission in relation to the scheme. It is common sense that, in any scheme, once part of it is open, it is prised open even further and it becomes an increasing part of the costs of the scheme. Whether it is this scheme or any other scheme, that is just the way of schemes, and that occurs until it is eventually closed off if it is seen to be inequitable, unfair or too costly by this Parliament or some future Parliament in relation to a review of the scheme. It is important, and I repeat the point that we are talking about costs, not just now but in the future.

The Government's position is infinitely flexible on this. I do not come to this with an ideological position that we must clamp down on this as an absolute rort or whatever in the system. They are difficult, grey decisions and as I said on a number of occasions to my colleagues—the Hon. Mr Redford in particular who has a very close interest in this matter—I am happy to accept the judgment of Parliament on this Bill, the bottom line being that we have a viable fund which we are not leaving in difficulties. If we cannot cut the costs, we have to increase the premiums to make sure that we get the figures right.

I place on the record that I am happy to check and recheck the figures. As a result of some questions that the Hon. Mr Redford put to me privately when we went back and checked some figures, I want to place on the record some corrections to figures that were provided in an earlier part of the debate. I am happy to continue to incur MAC expense to employ actuaries to check and recheck figures where there is any concern in relation to particular issues.

From the Government's viewpoint, as I said, whilst being infinitely flexible, in the interests of fairness, if we must incur increased premiums and therefore charge car owners more, we would have to point out that the Parliament, through Mr Rann, the Democrats (Mr Elliott) and others, may well have forced the Government into a position that it did not want to be in.

If a majority of Parliament takes a decision, it is only reasonable that the Government be able to convey that information to car owners in some way, not only this year in terms of increased premiums but also in future years, because they will always be somewhat higher than the Government would like as a result of trying to reduce the costs of the scheme.

I refer now to the correction of a figure that was provided to me earlier, and as I said I am indebted to my colleague the Hon. Mr Redford, who is a very close watcher of provisions in the Bill. I do not know whether this resulted from his watching of the provisions of the Bill or from the healthy cynicism that he has for most issues in terms of his gut political instincts about matters.

The Hon. A.J. Redford: Like a true Upper House member.

The Hon. R.I. LUCAS: Like a true member of the Upper House or the House of Review. I congratulate the honourable member on his persistence in discussions with me, and we have had this issue further confirmed. It relates to what has been referred to as the six month provision. For the information of members, I advise that it was suggested in the debate that $7 million to $10 million would be saved. The other figure might not have been used in the debate or in Parliament but may have come about as a result of discussions between journalists, members and the Motor Accident Commission, and that was that 83 per cent of the current claims that are processed would be removed by this six month provision.

The Hon. A.J. Redford: That's claims for pain and suffering.

The Hon. R.I. LUCAS: Yes, claims for pain and suffering would be removed as a result of the six month provision. The APLA and the Law Society, and others of course, have said, 'What is going on here? Virtually all our work, or 83 per cent of the work we undertake, in terms of pain and suffering will disappear.' The Hon. Angus Redford queried both these figures with me and, as a result, we have had them checked. I will read into the record a note which I have received, just today, from Mr Geoff Vogt, Chief Executive Officer of the Motor Accident Commission and which states:

> It had been calculated that 83 per cent of persons injured in motor vehicle accidents would not be entitled to claim non-economic loss damages as a result of the threshold test proposed under clause 12(a) which requires a six months serious and significant impairment period or $2 500 in medical expenses. This calculation was erroneous, despite several reviews of the calculation being performed by SGIC. An actuary has subsequently been appointed to calculate the estimated number of persons who would fail to receive compensation for non-economic loss under the original test. The revised figure is 52 per cent of persons who would not be eligible for non-economic loss compensation.

I received that notification only today and I readily place it on the public record because it is important for those who have expressed an interest in this provision. I am advised that the estimate of savings remains, broadly, the same. The original estimate of savings was $7 million to $10 million: the more detailed estimate now provided by the actuary is in the ballpark of about $10 million, so it is at the higher end of the scale of $7 million to $10 million. Again, I can only share with members, as quickly as I can, information that is provided to me. As we progress through this debate, and I think inevitably and sensibly, to a conference on this matter to see if we can thrash out a compromise that is satisfactory to all parties, I indicate that we have had further information

provided based on the most recent figures, 1997-98. Some members, I know, in briefings have been given estimates of the savings of various claim control measures based on the then most recent figures, which was for 1996-97. In the interests of providing up-to-date information, we have had not only SGIC input but also actuarial input and advice on the savings based on the most recent figures, 1997-98. I think it will be useful and informative, as we get to the conference, to update the figures and the savings information for the benefit of members.

The Hon. Mr Redford read into *Hansard* a piece of correspondence which highlighted 11 facts and which was sent from Mr Brendan Connell to the Hon. Mr Redford. The Hon. Mr Redford asked whether I, as Treasurer, could comment on the veracity of each of the claims. In the interests of brevity, I will not read each of the claims. I will refer to them by number; they are numbered 1 to 11 in the *Hansard* record and they also come from the APLA document.

I am told that the claims numbered 1, 2, 3, 6, 8 and 11 contain correct or substantially correct information. Paragraph 4 states:

> 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.

The response I have been given states:

> With regard to paragraph 4, claim frequency has reduced due to the inclusion of farm vehicles in the CTP scheme and the low incidence of reported claims for this class of vehicle at this early stage.

In relation to paragraph 5, which claims an increase of $22 million on the previous record, I am told that that is not correct; that there was an increase of $18.3 million, not $22.4 million in net earned premium, and registrations increased by 1.7 per cent.

In relation to paragraph 7, I am told that the reference should be to 1987 amendments, not 1997 amendments—that is just a typo, I presume. Since 1987 incurred claims were lower in 1992-93 than in 1996-97. As to paragraph 9, I am told:

> With regard to paragraph 9, the special leave application to the High Court in *Blake v Norris* was refused. The discount rate was held at 3 per cent. There is now no potential for the High Court to further erode the financial entitlements to claims by way of common law. Since the amendments to the Wrongs Act which took effect in 1987, the discount rate has remained at 5 per cent for the purposes of calculating damage for loss of earning capacity.

As to paragraph 10, the claim was that the average cost per claim per year was the lowest recorded and has diminished every year since 1991, which was a very significant claim by the APLA. I am told:

> In paragraph 10 the average cost of claims has increased by 13.5 per cent since 1991 to June 1997.

It does not exactly answer the question of whether it has increased every year or whether there are ups and downs. The claim was that the average cost per claim was the lowest recorded and had diminished every year since 1991. I am told that the average cost of claims has increased by 13.5 per cent since 1991 and this was up until June 1997. If the claim had diminished every year since 1991, when in fact it has actually gone up by 13.5 per cent, clearly that claim is in error.

The Hon. A.J. Redford: Inflation has gone up—

The Hon. R.I. LUCAS: It may have done so. The claim here does not refer to whether it is a real cost claim. It just refers to the average cost per claim per year. It is obviously an absolute figure. That substantially answers the questions 1 through to 11. The honourable member has asked for figures on projected savings. As I said, as to some of those savings provisions we have now more recent information based on 1997-98 figures. Either in Committee or, hopefully, when we get to the conference, we will be able to go through some of the figures and savings in greater detail. Just now I cannot turn up the table with some of those figures but I am happy to explore them in Committee. We have reworked figures for 1997-98 as opposed to 1996-97.

In conclusion, I thank members and I have endeavoured to answer the questions put by members in the second reading. It is the Government's intention in the Committee stage not to unduly extend the debate. It is the Government's view that ultimately this Bill will end up in a conference. It is the Government's view that we are infinitely flexible in terms of reasonable and sensible compromise on the Bill. It is the Government's view that unduly long debate in this Council, another place and then in both Houses again will only delay the inevitable conference where all these issues will need to be thrashed out again with all interested parties working together. I indicate that the Government will not unduly delay, from its viewpoint, the Committee stage.

It acknowledges that the Bill will be significantly amended in the Legislative Council. We have no intention of dividing on the amendments to be moved, unless of course there is some requirement to do so. In acknowledging that the Bill will be significantly amended, the Government will adopt the position of inserting the Bill again in its original form in the House of Assembly, if that is the will of the House of Assembly, and I repeat that is not an indication of intransigence or unwillingness to compromise. It is a process used to assist us to get to a conference quickly where we will indicate our willingness to compromise in a genuine endeavour to reduce the costs of the scheme if we can and reduce what we see to be unnecessarily high increases in premiums for motorists this year and for each of the future years in which the scheme will operate.

Bill read a second time.

In Committee.

Clause 1.

The Hon. A.J. REDFORD: I would like to make a comment in relation to what my Leader said in response. I am grateful for the Treasurer's undertaking to provide the information I have sought as outlined in my speech on 9 July last. I propose to write to the Treasurer in the next day or so confirming the questions, and I would be most grateful if we could have the answers at some stage prior to the Houses going into conference, which seems to be the inevitable end result of this process.

Clause passed.

Clauses 2 to 5 passed.

Clause 6.

The Hon. CARMEL ZOLLO: Does clause 6 mean that the insurer has no responsibility for any additional damage or aggravated damage to a previously injured person? If this is the case, how will these people be able to afford medical care for aggravated injuries one would assume were not covered by any other previous claim, as the injury had worsened due to involvement in a motor vehicle accident?

The Hon. R.I. LUCAS: I am told that the fund will not be required to pay but that the injured person will be able to seek payment from the negligent driver. I am told also that these circumstances are rare and that there are not too many examples of such claims on record.

The Hon. A.J. REDFORD: In relation to this clause I understand that the concept that any aggravated damages or exemplary damages which might be awarded arising from the conduct of the insured person should not be paid by the insurance company, being in this case the MAC. On my reading of this clause it would seem that there may be occasions where exemplary or aggravated damages might be awarded because of the conduct of the MAC itself in the management of a claim. In that regard I would be grateful if the Treasurer could advise whether or not any such award has been made. In other words, has an award been made for aggravated or exemplary damages because of the way in which the MAC, previously the CTP department of SGIC or, indeed, any other personal injury insurer in any other context—and the Minister may not be able to answer that last question—conducted its affairs?

The Hon. R.I. LUCAS: I am advised that the MAC is not aware of any such example.

The Hon. R.D. LAWSON: Further to that last point, I would have thought that the new section, which only prohibits the recovery from the insurer of punitive damages caused by or arising out of the use of a motor vehicle, would have no operation at all in respect of punitive damages that might be awarded from the conduct, for example, of the MAC in litigation.

The Hon. NICK XENOPHON: I indicate that I oppose clause 6. Will the Treasurer indicate how many claims there have been over, say, the past three financial years involving aggravated, exemplary or punitive damages; the sorts of payouts that have been made cumulatively for that period; and the largest payout for those types of damages?

The Hon. R.I. LUCAS: I am advised that we do not have that information with us. We are happy to take that question on notice. Let me assure the honourable member that he will have another opportunity to explore the answers to the question.

The Hon. M.J. ELLIOTT: This is a matter that had not been brought to my attention previously, so I thank the Hon. Carmel Zollo for raising it by way of question initially. On the surface, it seems that, in terms of cost to the scheme, there would be virtually nothing in it but, in terms of a person who may be injured, this may be the only real protection they get. However, in any case, given the fact that it has been raised at this late stage and that it involves some issues of some merit—and recognising that we are going to a conference—there is no harm in keeping the issue live for now; and in this case 'keeping it live' means opposing the clause but recognising that it may be brought back in its original form at a later time.

The Hon. P. HOLLOWAY: I indicate in my first contribution that we will go along with the strategy proposed by the Treasurer; that is, we try to speed up the Committee stage as much as possible. I think the action suggested by the Hon. Mike Elliott and the Hon. Nick Xenophon is perhaps the prudent one. Let us delete this clause now. We can look at it in the conference and iron out any problems then.

Clause negatived.

Clauses 7 and 8 passed.

Clause 9.

The Hon. P. HOLLOWAY: I move:

Page 3, line 24—After 'Part' insert:
in relation to another accident.

This clause allows the Motor Accident Commission to reduce an injured person's entitlement to damages as a result of a debt due to the Motor Accident Commission arising out of another accident—at least that appears to be the intention. It has been put to the Opposition that the clause could possibly be read to involve a debt due to the Motor Accident Commission by the injured person as a result of the same accident in which the person was injured. Therefore, I am moving the amendment to clarify the position.

The CHAIRMAN: I point out to the Committee that the wording of the Hon. Mr Holloway's amendment is the same as that of the Hon. Mr Elliott's circulated amendment.

The Hon. R.I. LUCAS: My advice is that the Government is sympathetic to the amendments and will not stand in their way.

Amendment carried; clause as amended passed.

Clause 10.

The Hon. CARMEL ZOLLO: In relation to compulsorily acquiring a vehicle, what occurs in the case of a write-off situation where a vehicle may be insured comprehensively or for third party property damage and the vehicle is made the property of that insurer? Would the insured be required to reacquire the written off vehicle or comply with the section?

The Hon. R.I. LUCAS: The legal advice provided to me indicates that it is the insurer who will have to hand over the vehicle to the Motor Accident Commission.

The Hon. P. HOLLOWAY: In relation to this clause in general, it might be helpful if the Treasurer could explain to us why the Motor Accident Commission actually needs this power. In what circumstances would the Motor Accident Commission exercise this power? One can envisage a situation where a person had loaned a vehicle to another person and that person is involved in an accident. They could find that their vehicle is subsequently compulsorily acquired by the MAC. One would hope that such a situation would only apply in very rare situations. I guess it would be useful for the Committee to know exactly what those rare situations might be.

The Hon. R.I. LUCAS: I am advised that it is for evidentiary reasons. The investigations might well have to determine issues such as whether or not the seat belt was being worn or whether the nature of the—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: You need to have the vehicle to look at it—or whether the nature of the damage to the vehicle is consistent with the claims being made. I am advised that there are a range of other evidentiary reasons like that as to why this provision is required. I am also told that it is very rarely used. It is one of those fall-back provisions that, I presume, with commonsense very rarely has to be used. I presume that these sorts of information evidentiary arrangements are able to be accommodated without actually having to use this provision. But I gather that, on rare occasions, this particular power may well be required.

The Hon. P. HOLLOWAY: Obviously if there is an accident involving serious bodily injury one would expect that the police would be involved in that and make their own investigation of the circumstances of the accident for their own purposes. One would ask the question: why would they not be able to do it at the same time if the police have impounded the car, or whatever the case might be? How does this power relate to police investigations which, presumably, would occur in most, if not all, motor accidents involving serious injury?

The Hon. R.I. LUCAS: I am told that, whilst obviously there is some overlap, the police are looking for different things when they are investigating the cause of the crash.

Obviously, they are not looking at it from the point of view of all the detail that might be required from an insurer in terms of the interests of the insurer and the insurer's fund. For those reasons, I guess there are different reasons for needing to have access to the accident vehicle. It is as simple as that really: different purposes for which the investigation needs to be undertaken—in one case for the police which is to determine the cause of accident; in the case of the insurer, it is in relation to issues with respect to insurance and claims that might be made on the fund. I am advised that, substantially, it is meant to be an anti-fraud provision.

The Hon. M.J. ELLIOTT: I do not know what difficulties there have been in access so far. I do not understand why there is not a clause in terms of guaranteeing access to the vehicle in some way, rather than acquisition. There then seem to be further implications. If the insurer then becomes the owner of the vehicle, what does that say about access for persons representing the injured party?

The Hon. R.I. LUCAS: I am advised that access is normally all that is required but in some cases extensive testing and other things need to be undertaken by the fund and they need more than just access to the vehicle. They need the vehicle itself and, clearly, their having access to the vehicle to do significant testing may well be a significant inconvenience to the owner of the vehicle. As I said, it is intended that this provision will be used very rarely and it is a fall-back provision in certain cases.

The Hon. NICK XENOPHON: What does the Treasurer envisage would be the right of access to the vehicle by solicitors or experts for other interested parties? My concern is that this clause, if enacted, would prevent access to the vehicle by other interested parties. If the vehicle has already been acquired by the insurer, this would prevent other experts from looking at it.

The Hon. R.I. LUCAS: I am advised that the provision would allow denial of access but that it would not be in the interests of the commission to deny access to others.

The Hon. NICK XENOPHON: Is the Treasurer saying that the commission has an absolute discretion in terms of allowing access to the vehicle?

The Hon. R.I. LUCAS: That is a reasonable interpretation of what I have just indicated based on the advice given to me.

The Hon. M.J. ELLIOTT: To short circuit this discussion, I will adopt an approach similar to that which I adopted in respect of clause 6 and, for the time being, oppose this clause. This matter deserves further attention even if, ultimately, it remains in the Bill. At this stage, on behalf of the Democrats I oppose the clause.

The Hon. P. HOLLOWAY: The course of action outlined by the Hon. Michael Elliott is sensible at this stage. We will deal with this matter later.

The Hon. NICK XENOPHON: I endorse the approach of the Hon. Mike Elliott and the Hon. Paul Holloway.

Clause negatived.

Clause 11.

The Hon. P. HOLLOWAY: I move:

Page 4, lines 15 to 18—Leave out the definition of 'prescribed limit'.

This clause relates to the control of medical services and charges for medical services to injured persons. As I indicated during the second reading debate, the Opposition accepts that there is a need for some sort of intervention in this area. However, we are concerned about some of the problems that are being created. It is my understanding that negotiations are going on between the various medical fraternities as to the best way of dealing with these problems. I regard this amendment as a test case on this clause. If it is carried, I think there will need to be further debate later on clause 11. I envisage that when this matter is debated in conference we will probably come up with something along the lines of the amendments of the Hon. Nick Xenophon and the Hon. Mike Elliott.

Clearly, we need a lot more work in relation to this question about how we limit fees and charges levied by the medical profession. As I have said, this amendment is a test case. I guess when this conference eventuates we will have more discussions about how we can clarify all these issues and come up with better arrangements that are fair to the medical profession and the victims of motor accidents and also ensure that there is no abuse of the system or overcharging.

The CHAIRMAN: The Hon. Nick Xenophon also has an amendment.

The Hon. NICK XENOPHON: I have discussed this matter with the Hons Paul Holloway and Mike Elliott, and it is my understanding that this amendment could still be considered at the conference without necessarily being put at this stage.

The Hon. R.I. LUCAS: The honourable member is correct: if the Hon. Mr Holloway's amendment is successful the issue will be up for grabs at the conference and an amendment or further amendments along the lines of the Hon. Mr Xenophon's or a new amendment arising out of the conference will be possible at the conference.

The Hon. M.J. ELLIOTT: I will indicate how I will approach clauses 11 and 12 at this stage so we can move through them reasonably quickly. I will be persisting with only a couple of my amendments at this stage, just to keep life simple. It seems to be acknowledged that the Bill will go to conference, so in the circumstances the amendments moved by the Hon. Paul Holloway are the direct opposite of what the Government is proposing in parts of clauses 11 and 12. The amendments which I and the Hon. Mr Xenophon have on file, which are really compromise amendments, are capable of being addressed in the conference itself.

I have seen the Hon. Nick Xenophon's amendments only today and have not yet had an adequate chance to give them the consideration I would like to give them. I am not expressing a preference for his or my amendments at this stage, and other possibilities may come out of the conference. In general terms, I indicate that some matters in clauses 11 and 12 cause me some concern, and I raised them during the second reading debate. The amendments I have on file give some indication of the way I was thinking of handling them, although I can also see some merit in the approach taken by the Hon. Nick Xenophon. But, with a few exceptions, for the most part I will support the Hon. Paul Holloway's amendments and will move only a few of those which I currently have on file.

The Hon. CARMEL ZOLLO: I have not seen the Hon. Nick Xenophon's amendments; are they on prescribed scale and prescribed services? Do they relate to the same issue and perhaps the disinclination of medical practitioners to deal with motor accident victims because of the scale that is currently tied in with workers' rehabilitation?

The Hon. NICK XENOPHON: That relates partly to the reluctance of some practitioners and the difficulties in dealing with victims of accidents because of the scale under section

32; and using the same regime as the Workers' Compensation Act is using is undesirable. The amendment has been based on submissions from the Australian Physiotherapy Association, which simply seeks to have an average rate of fees based on the market over a three year period so that there is no surcharge in the fees but simply a fair rate of payment.

I will not proceed with my first amendment on the basis of the Treasurer's indication that it can be considered at the conference.

Amendment carried.

The Hon. NICK XENOPHON: I move:

Page 4, lines 19 and 20—Leave out 'for the purposes of section 32 of the Workers Rehabilitation and Compensation Act 1986' and substitute:

By notice under subsection (2).

This amendment deletes reference to section 32 of the Workers Rehabilitation and Compensation Act and simply inserts a new paragraph prescribing the limits and scales of charges for the purposes of the section. Basically, it steers away from the model of section 32 of the Workers Rehabilitation and Compensation Act and seeks a rate based on limits to be prescribed but based on fair market rates for treatment.

The Hon. R.I. LUCAS: The Government is opposing the bulk of these amendments unless we indicate that we are sympathetic to or supporting individual amendments. Obviously, the numbers are such that this amendment will be successful, but I am advised that in the past day or two the Government has reached agreement with the AMA in relation to this issue and, probably by the time of the conference, we will be able to share with members what might be a sensible compromise amendment agreed between the Government and the AMA.

The Hon. P. Holloway: It's not just the AMA, is it?

The Hon. R.I. LUCAS: No, but it is obviously a key player in all this. The amendment can always be further amended at the conference. The Government has continued what we believe to be fruitful discussions with the AMA and, by the time we reach a conference, we hope to have at least an amendment agreed to by it and perhaps others as well, I am not sure, and a letter acknowledging an agreement.

The Hon. M.J. ELLIOTT: I am pleased that progress is being made with the AMA. It is always preferable if these sorts of things can be negotiated, and it is unfortunate that there was not a draft Bill outside the Parliament when negotiation occurred before it was introduced, and these sorts of things should have been capable of resolution. One bit of concern I have is that the AMA is not the only party. Privately, I have been a little concerned that the AMA, obviously, has been making sure that it does not have a problem, but the sorts of amendments it proposes do not work particularly well for the physiotherapists or a number of other service providers. In drafting my amendments, I tried to ensure that all the relevant health providers were adequately covered under the legislation.

I would be saying very strongly to the Government now, whatever is ultimately taken to the conference, to please make sure that it does not just look after the AMA, which is perhaps one of the strongest unions in Australia, but that it also looks at the legitimate concerns of other health provider groups, which have concerns that are very similar to those of the AMA. The draft I saw earlier particularly addressed the narrower concern. It is a legitimate concern, but the legislation must cover all health provider groups in similar fashion.

The Hon. R.I. LUCAS: We will be delighted to try to accommodate as many people as we can. The reality is that in this sort of legislation it is not always possible to please everyone, and eventually the conference, in the first instance, and then the Parliament will need to make a decision as to whether we will be able to accommodate everyone. If we cannot, we will accommodate as many as we possibly can. The Government's intentions are pure in relation to this: we are happy to further consult and try to get as many people into agreement as possible, but my experience in these matters over many years is that it is not possible to please everyone. If it were, it would be a pretty simple life being a member of Parliament. We will do our best and, if the honourable member has a drafting provision with which all members are delighted, the Government will be happy to productively and cooperatively explore that amendment in the conference.

The Hon. P. HOLLOWAY: I would have thought that this amendment was contrary to the Hon. Mr Elliott's amendment seeking to making it a regulation, and I am not sure whether the two can run together. I will clarify that matter, but I do not believe it is worth wasting too much time on this. I would have thought that the Hon. Mike Elliott's amendment to line 23 would be more potent in that sense.

The Hon. NICK XENOPHON: I seek leave to amend my amendment, as follows:

By deleting 'notice' and inserting 'regulation'.

Leave granted; amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 4, line 23—Leave out 'notice' and substitute 'a regulation made'.

The intention of my amendment is to ensure that, if services are to be excluded from the application of this section, it should not just happen by notice but should happen by regulation.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 4, lines 24 to 26—Leave out subsection (2) and substitute:

(2) The Governor may, by regulation—

(a) prescribe scales of charges for prescribed services for the purposes of this section.

(b) exclude specified services from the application of this section.

There was another amendment on file from the Hon. Nick Xenophon that is basically the same as my paragraph (a) but it does not include the need for it to happen by way of regulation. What we have tried to do is merge the two amendments into one. It is important that, where there is to be a scale of charges, it comes by way of regulation. We realise that there is a lot of political contention within this matter. It is a case that the Parliament would like to keep within its own purview.

Amendment carried.

The Hon. NICK XENOPHON: I move:

Page 4, after line 26—Insert new subsection as follows:

(2a) The following provisions govern the prescription of scales of charges for prescribed services for the purposes of this section:

(a) the scales of charges must be based on three-yearly surveys of the average charges for the services in the State;

(b) changes to the scales of charges are to be made annually between surveys to reflect changes in the cost of providing the services;

(c) no scales of charges are to be prescribed or changed except following a process (to be prescribed by regulation) under which the scales are to be agreed between the Minister and professional associations representing the interests of providers of the services or, failing agreement, determined through arbitration.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 4, lines 31 to 33 and page 5, lines 1 to 4—Leave out subsection (4).

As I indicated earlier, we will probably end up with a final form that is somewhat different from that. However, just to hurry it along, I will move my amendment, and we will deal with the consequences at a conference later.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 5, lines 5 to 13—Leave out subsection (5).

Amendment carried.

The Hon. M.J. ELLIOTT: I will not be persisting with my amendment to insert a new subsection. It is a matter that we might want to reconsider during the conference, depending on how some of the other matters are handled. I now move:

Page 5, after line 18—Insert new subsections as follows:
(7) This section expires on 1 October 1999.

This amendment and the one to be moved by the Hon. Nick Xenophon are not competing amendments. My judgment is that it will be difficult at the end of the day to get right via legislation precisely how negotiations, etc., may occur between the AMA, the APA, various other interested health groups and the MAC. At the end of the day, a lot of the matters can be resolved only if people sit down and talk their way through them. It is a process that took a long time with WorkCover. For years, they did not talk with the various groups, and they had all sorts of problems. Somewhere along the line they had this bright idea of sitting down and talking to each other, and I understand that amazing progress has been made. No matter how much you try to handle things by legislation, at the end of the day what is really important in terms of how we go about handling injured people and how we will handle those sorts of matters is capable of being worked out in an administrative sense.

So, the purpose of my amendment is to say, 'Well, on 1 October 1999 we will look back and see whether these things have been worked out,' and, if they have, clause 11 should cause us no further concern. But, on the other hand, if they have not been worked out, we may have to revisit a lot of issues and try to solve a lot more by legislation than perhaps we might decide to do at this time.

The Hon. NICK XENOPHON: I move:

Page 5, after line 18—Insert new subsections as follows:
(7) Proceedings may not be commenced for an offence against subsection (6) in respect of prescribed services provided in relation to bodily injury caused by or arising out of the use of a motor vehicle unless liability to damages in respect of that injury has been accepted by or established against an insured person or the insurer.
(8) Proceedings for an offence against subsection (6) may be commenced at any time within 12 months after liability to damages has been accepted or established as referred to in subsection (7).

The Hon. M.J. Elliott's amendment carried; the Hon. Nick Xenophon's amendment carried.

The Hon. NICK XENOPHON: I am pleased to say that I will move this amendment without any further amendment. I move:

Page 5, before line 19—Insert new section as follows:
Prompt handling of claims
127B. (1) Where, in accordance with this Part, notice has been given to the insurer or the nominal defendant of a claim for damages in respect of death or bodily injury caused by or arising out of the use of a motor vehicle and, in the case of notice given by an insured person to the insurer, the insured person has furnished the insurer with any information reasonably required by the insurer, the insurer or nominal defendant must as soon as reasonably practicable and, in any event, within 90 days, notify the claimant and the insured person (if any) whether liability to damages is accepted or rejected by the insurer or nominal defendant in relation to the claim.
(2) Where, on receipt of an account for the payment of a charge for prescribed services (as defined in section 127A), the insurer or nominal defendant does not dispute liability to pay the charge, the insurer or nominal defendant must pay the charge within 30 days.

Amendment carried; clause as amended passed.

Clause 12.

The Hon. P. HOLLOWAY: I move:

Page 5, lines 23 to 27—Leave out paragraph (a).

As far as the Opposition is concerned, this is probably the most important of the amendments. This relates to the loss of non-economic benefits, in other words, the pain and suffering clause. The Government proposes to extend the current seven day requirement out to six months. We believe that is a very unsatisfactory situation. It has been covered extensively in the second reading debate. We understand that it would reduce the number of potential claimants under this clause by over 80 per cent. Therefore, this amendment ensures that the current situation remains.

The Hon. R.I. LUCAS: I repeat: in relation to these amendments to clause 12, obviously the Government will continue to oppose them, but it acknowledges that the numbers in both Houses are against the Government and therefore it will re-enter the debate in the conference that inevitably will follow. I indicate to the honourable member that, in relation to the second reading explanation, the 83 per cent figure has now been corrected and the figure is actually 52 per cent of claims. Whilst the estimate of savings remains at $10 million rather than the $7 million to $10 million, the actuaries have now done a more precise calculation based on 1997-98 figures and that figure is $10 million. When we get to the conference obviously this will be a key issue.

If there are to be savings, this is by far and away the most significant area for savings. Unless there is something reasonable in terms of a compromise achieved at the conference, it is highly unlikely that the savings package will achieve any reasonable level of savings at all. As I said, that will be a judgment for the conference, the Parliament and then for me ultimately as Minister regarding whether or not the Government believes it should continue with the Bill. Obviously, this is a key issue. The Government acknowledges the concerns that have been expressed. As I have indicated previously, the Government is always infinitely flexible in relation to any reasonable proposition that is put, and we look forward to exploring it at the conference. I indicate without entering the debate on all the subsequent amendments—and I hope there are not too many amendments to the amendments—to this clause that the Government maintains its position but will not extend the Committee stage by entering the debate on each amendment.

The Hon. M.J. ELLIOTT: I also have an amendment which would overlap the honourable member's amendment, but I will not be moving it at this stage. Clause 12 causes me some concern in that what we are talking about is not whether people are getting unreasonable amounts of compensation but what will happen to the cost of car insurance. Surely, there is the argument about what is reasonable and fair compensation and then you ask, 'How can we provide it most efficiently?' Ultimately, it is user pays. If part of driving a car means that there is a risk of having an accident and a risk of accident means that people may be injured and we need to give them fair compensation, then I thought the user pays principle might demand that you may, in some circumstances, have to

pay more. But we have not really heard any debate about what is fair and reasonable: what we have heard is that we need to save some money in this area.

The Hon. T.G. Cameron interjecting:

The Hon. M.J. ELLIOTT: No, I am not. I can see that there is the potential in this area that seven days would bring in a large number of, I suppose, fairly minor claims and probably, at the end of the day, with legal costs and everything else, you are not a long way in front. I would certainly entertain perhaps a 21 day period, which I believe was the original proposal from the SGIC. But any suggestion of six months is quite amazing and is not in the ballpark at all, as far as I am concerned. At this stage, I have not seen any cost assessment on the impact of these various levels—and I suspect that the difference between 21 days and six months will be nowhere near as dramatic as going from seven days to 21 days, even though I have said that the issue of cost in itself really should not be a prime consideration.

The Hon. NICK XENOPHON: The claims affected with the amendment to section 35A have gone from 83 per cent to 52 per cent, which is quite a dramatic turnaround. Is the Treasurer prepared to provide all documentation relating to that—including the basis upon which it was calculated and the likely savings? As I understand it, the likely savings were between $7 million to $10 million when 83 per cent of claims were affected, but now it is $7 million to $10 million with only 52 per cent of claims being affected. Perhaps I have misunderstood that. Could the Treasurer clarify that?

The Hon. R.I. LUCAS: Certainly. There are a number of changes. You are now working on 1997-98 figures, as opposed to 1996-97 figures. The estimate of savings is now more precise—it is now an estimate of about $10 million—whereas the estimate which was originally done was a ballpark estimate of $7 million to $10 million. So, the actuary has now come down, I am told, closer to the $10 million mark, and there is an acknowledgment, as I indicated in the second reading, that there were errors in the original calculations undertaken by SGIC which gave that figure of 83 per cent. I believe that a number of people were quite surprised by that figure of 83 per cent when it was originally calculated. My colleague the Hon. Angus Redford, who is most assiduous in relation to these matters, raised a cynical eyebrow about this 83 per cent figure. It was as a result of that that further clarification has been sought. Some expense has been incurred in relation to an actuary's estimate, and we now have the figure of 52 per cent.

At this stage, I am not prepared to provide all documentation. I will be happy during the conference stages of the debate to provide details of the background of the information—how the calculations have been undertaken and that sort of detail—to provide further information which will assist in the calculations and consideration by the conference of these issues. I assure the honourable member, as I have assured other members, that I am happy to try to provide as much information as I can in relation to the accuracy of the information. I am reliant on the accuracy of the calculations that are done, in the first place, by SGIC and then by actuaries. Let me assure members that, unlike the conferences I have entered in the past, the conference will not be going back to the first principles of being able to redo calculations, in the conference stage of the debate. That is, of course, not something that is generally within the skill base of members of Parliament, in terms of actuarial calculations by members of Parliament.

I am happy to assist as best as I can. I will take some advice and see what information I can provide to the honourable member prior to the conference as to the assumptions made by the actuary and how the new calculations have been arrived at, and the 1997-98 information. Certainly, when we get to the conference, I am also happy to further explore in detail any questions that any member might have during the conference stage of this particular consideration.

The Hon. NICK XENOPHON: If I could borrow the Hon. Angus Redford's cynical eyebrow referred to by the Treasurer, will the Treasurer provide the actuarial calculations prior to the conference so it can be independently scrutinised by independent actuaries?

The Hon. R.I. LUCAS: I will take advice on that. Certainly I am happy, as I indicated, to provide information about some of the assumptions made by the actuary on the information provided. Whether or not I will provide all the detailed workings that the actuary has undertaken is an issue I will need to take up with the Motor Accident Commission. At this stage I give a commitment that I will provide as much information as I can. I know that the Hon. Mr Xenophon is raising a cynical eyebrow—

The Hon. Nick Xenophon interjecting:

The Hon. R.I. LUCAS: —Mr Redford's cynical eyebrow in relation to this. Can I assure him that there is nothing to my knowledge I am knowingly concealing from the honourable member. I am just relaying to him information that has been provided in relation to the calculations, quite openly acknowledging the error of the original 83 per cent figure and indicating it is a 52 per cent figure. I think that is just an indication that the Government is endeavouring to be as frank as is possible in relation to this particular issue.

The Hon. M.J. ELLIOTT: I do not want to drag this out but I would certainly like to see the numbers before we go into conference. A conference is a not a place where you receive new information. A conference is a place where you try to sort your way through the various amendments, etc, to try to get something that basically works and on which agreement will be struck. It is not a place for new information to come in and particularly complex actuarial information. I indicate very strongly that I would like to see costing impacts well before going into conference.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 5, lines 28 to 35—Leave out paragraph (b).

This paragraph deals with the issue of nervous shock. This paragraph would, if passed, take away any entitlement that a close family member may have because of witnessing the injury caused to a loved one at a place other than the accident scene. We believe that that clause is most unnecessarily mean-spirited, so we oppose it.

The CHAIRMAN: Mr Elliott has an amendment in the same wording.

The Hon. M.J. ELLIOTT: I withdraw my amendment.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 6, lines 1 to 5—Leave out paragraph (c).

This clause relates to the loss of earning capacity. It is not easy to understand. Subparagraph (ca) provides:

> In assessing possibilities for the purposes of assessing damages 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 think that is likely to lead to a rather large amount of unnecessary litigation.

The Hon. M.J. Elliott interjecting:

The Hon. P. HOLLOWAY: That's right. What it really says is that there must be at least a 25 per cent likelihood of a loss of earning capacity before the court makes a finding in this area. I would have thought that that creates a standard of proof that is totally artificial, to say the least. So, this paragraph is opposed by the Opposition.

The Hon. M.J. ELLIOTT: I indicate support for the Hon. Paul Holloway's amendment as I have an identical amendment on file.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 6, lines 9 to 11—Leave out paragraph (e).

This paragraph is opposed. It limits a claim for loss of consortium to four times State average weekly earnings. We believe this is an unnecessary restriction.

The Hon. M.J. ELLIOTT: I will not move my amendment at this stage. This matter may be raised again during the conference.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 6, lines 28 to 30—Leave out 'or such greater percentage as the court thinks just and reasonable having regard to the extent to which the accident was attributable to the injured person's negligence'.

This is the first of the cumulative amendments, the first of which relates to persons who drive with above the prescribed concentration of alcohol in their blood and therefore contribute to their liability in respect of an accident. The Opposition supports the fact that a 25 per cent factor should be introduced by way of contributory negligence for a person who drives with over the prescribed concentration of alcohol in their blood. However, we do not believe that we should go further and enable the court to increase liability beyond that proportion.

As my colleague the Hon. Ron Roberts pointed out earlier, there is some argument as to whether one should even go as far as 25 per cent in terms of contributory negligence. However, we believe that if the figure is set at 25 per cent for all these matters—and we will deal with a number of them later—that should be the end of it. If a 25 per cent liability factor is deemed appropriate by the court, that should be the end of it, and no further penalty should be involved.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 6, lines 34 to 37—Leave out 'or such greater percentage as the court thinks just and reasonable having regard to the extent to which the proper wearing of a seat belt would have reduced or lessened the severity of the injury'.

My next three amendments have a similar effect in that they do not allow the court to reduce the percentage of contributory negligence beyond 25 per cent in the various cases involved.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 7, lines 9 to 11—Leave out paragraph (e).

It is a similar amendment.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 8, lines 2 to 5—Leave out 'or such greater percentage as the court thinks just and reasonable having regard to the extent to which being within the compartment would have reduced or lessened the severity of the injury'.

Again, this is a similar amendment.

Amendment carried.

The Hon. P. HOLLOWAY: I have an amendment on file to leave out subclause (3), but I have had some discussions with Parliamentary Counsel about the effect of this, and I would like the Minister to clarify exactly what this clause is meant to achieve. We have just dealt with clauses which apply a contributory negligence factor of 25 per cent where a person is not wearing a seat belt, is over the prescribed blood alcohol limit, is not wearing a helmet and so on. The clause that we are now discussing prescribes that these reductions due to contributory negligence are cumulative.

Some concern was expressed to us that if this clause was read in a particular way it may have the effect of greatly reducing benefits. For example, if a person is found to have contributed to an accident by having breached a couple of those provisions by, say, not wearing a seat belt or being over the limit, even if those factors had not contributed to the accident, nevertheless that person could have their payments deducted. If you add it up one way it could be 25 plus 25, making a 50 per cent reduction in their payment for economic loss. However, I understand that the intention is that in fact that should not be the case and that the way this reduction applies will not in fact reduce the benefits for people injured in accidents. I would like the Treasurer to clarify how this clause will apply in relation to a person who may have been found to be negligent in relation to the previous paragraphs, and how this works in relation to a deduction in their claim for economic loss.

The Hon. R.I. LUCAS: The advice that has just been provided to me is that this provision applies to all heads of damage. As an example, if in a particular accident someone has failed to stop at a stop sign or failed to give way at a give way sign, the damages might be reduced by 10 per cent from 100 per cent to 90 per cent; and, if they were not wearing a seat belt, they might be reduced by 25 per cent of the 90 per cent which, I am advised, will take them back down to 67.5 per cent. I am told that in some cases the courts, because this is not entirely clear, have interpreted a similar example as meaning that the damages will be reduced by 10 per cent, and then the 25 per cent seat belt reduction will mean that they will be reduced to 65 per cent. So, in some cases the Hon. Mr Holloway is adopting—

The Hon. P. Holloway: Only some cases?

The Hon. R.I. LUCAS: I do not know whether it is all or some, but it is certainly in some cases. The Hon. Mr Holloway is adopting a tougher position than that of the Government; that is, he is seeking by way of his amendment to endorse a position where, in the examples that I have given, the damages would be reduced to 65 per cent, whereas the Government's position is to make quite clear to the courts that it would be 67.5 per cent, and the Government is also seeking to reduce the opportunity for legal cost and legal argument, I am advised, as part of all this. Whilst the Government is happily rolling over and being amended out of its very existence, I thought I would point out to the honourable member and his supporters on this matter—

The Hon. M.J. Elliott: I didn't move this one.

The Hon. R.I. LUCAS: No, I am saying to the honourable member and his supporters—his gang of three—that we are a little surprised at this amendment and the Opposition's position on it.

The Hon. P. HOLLOWAY: In view of the Treasurer's explanation, I will not proceed with the particular amendments, although I would feel a little more comfortable if the

Treasurer would assure me that no cases would arise where someone may be better off if this clause were deleted. He has indicated that in some cases people could be worse off if we deleted the clause, therefore we would not wish to delete it for that to happen. However, I would like his assurance that there could not be a situation where the reverse applied.

The Hon. R.I. LUCAS: I can only give the assurance that I am given, that is, that the case will either be worse off under the Opposition's amendment or the same: it will be 25 per cent of 90 per cent or 25 per cent off the original 100 per cent. I share with the honourable member the advice which I have received.

The Hon. P. HOLLOWAY: In view of that advice, I will not proceed.

The Hon. P. HOLLOWAY: I move:

Page 8, line 29—Leave out 'subsection (10(i) or (jb)' and substitute:

subsection (1)(i)(iii) or (jb)(ii)

This is a rather difficult amendment to describe. I did it at some length during the second reading stage, so I will not canvass it again. It is purely to correct what could be an anomaly within the Bill.

Amendment carried; clause as amended passed.

Clause 13 and title passed.

Bill read a third time and passed.

ADJOURNMENT

At 6.37 p.m. the Council adjourned until Tuesday 18 August at 2.15 p.m.