LEGISLATIVE COUNCIL

Tuesday 2 March 1999

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

ASSENT TO BILL

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

Statute Amendment (Mining Administration).

RUSSACK, Mr E.K., DEATH

The Hon. R.I. LUCAS (Treasurer): I move:

That the Legislative Council expresses its deep regret at the recent death of Mr Edwin Keith Russack, former member of the Legislative Council and member for Goyder in the House of Assembly, and places on record its appreciation of his distinguished public service, and that as a mark of respect to his memory the sitting of the Council be suspended until the ringing of the bells.

It is with some sadness that I move this condolence motion and speak on behalf of my colleagues, the Government members, in this Chamber. Keith Russack, as he was known, rather than Edwin (I do not think I know anyone who called him Edwin), was, first, a member of the Legislative Council from 1970 to 1973. I cannot understand why anyone would want to move from the Legislative Council and this fine Chamber.

The Hon. Carolyn Pickles: Some come up here.

The Hon. R.I. LUCAS: That is true: some go the other way. I cannot imagine why anyone would want to leave this Chamber to go to the House of Assembly but not only did Keith want to but he actually succeeded, which is more a point particularly for members of the Government Party—we can talk with some experience of that, both State and Federal, over a number of years. Keith Russack successfully made that transition from the Legislative Council to the House of Assembly in 1973—that very famous election in 1973. He was then a member of the House of Assembly until November 1982, which was the election at which I first entered the Legislative Council with my colleague the Hon. Diana Laidlaw. I am not sure whether any Labor members came in at that time.

I am not sure whether any Labor members came in at the 1982 election. Keith was a member of two House of Assembly electorates, first Gouger and then Goyder, as a result of the famous redistribution of the mid 1970s, and when he was a member of the Legislative Council he represented the Midland district. I do not know a lot about Keith's life before he entered Parliament. I know he was a Mayor of Kadina. That seems to be a ready route to progression within the Liberal Party, as Premier John Olsen is a former Mayor of Kadina.

Before I entered the Chamber I was listening to the Premier in another place, who cited a long list of Keith Russack's local community involvement. I must say that that does not surprise me. Keith Russack was the sort of person who would have been actively involved in his community and who would have seen a natural progression from serving his community at local government level and through to the very top of that and then through to representing his community and the State in the State Parliament.

I did not know Keith before he entered the Legislative Council and House of Assembly, but I must have met Keith for the first time somewhere between 1973 and 1976. I first joined the Liberal Party organisation at the end of 1973, and of course it was a period of great turmoil within the Liberal Party—or the Liberal and Country League, as it was then known.

The Hon. T. Crothers interjecting:

The Hon. R.I. LUCAS: If you want to talk about turmoil we will talk about the antics of you and some of your colleagues in the past few weeks, but now is not the time for that sort of interjection or debate. That time was a period of some turmoil within the Liberal Party, and my earliest recollection of Keith Russack was during that period when the Liberal Movement was rejoining the LCL, which became the Liberal Party of Australia, SA Division. In the coming together of the Liberal Movement and the Liberal Party as it was then there were a number of almost managed or negotiated preselections.

An honourable member interjecting:

The Hon. R.I. LUCAS: It was very interesting in a number of seats; I know Goyder was one but I also remember that the electorate of Mawson in the southern suburbs was another, and I think there may have been two or three others at the time.

The Hon. J.S.L. Dawkins: Murray.

The Hon. R.I. LUCAS: Murray was another; my colleagues are reminding me. There was certainly a handful of electorates. Broadly, in some of them, the Liberal Movement nominated 30 delegates and the Liberal Party nominated 30 delegates. For this reason I remember very well not the Goyder preselection but one in the southern suburbs (it might have been Mawson) where everyone held rock solid through two or three ballots at 30-all, and eventually someone broke and the other candidate eventually managed to win preselection on the third or fourth ballot.

I forget the exact numbers in the Goyder preselection, but it was a very similar preselection. I remember going to the electorate—again, the particular town escapes me but it would have been one of the major population centres within the then Goyder electorate—and I was aware of much of the skirmishing that had been going on, because it was a preselection battle between David Boundy, who had come from the Liberal Movement, and Keith Russack, who was still with the Liberal Party at that stage. It was one of those coolish Yorke Peninsula nights, and an abiding memory for me is the tremendous grace with which Keith Russack carried himself during the lead up to the preselection but also on that night. It was a very stressful evening as candidates got locked away. Those of us who have had to go through this foreboding experience all know that our political career and future flash before our eyes. Of course, it was particularly stressful—because Keith had won preselection for what was to all intents and purposes a very safe Liberal seat—for him to confront preselection for Liberal Party endorsement for that seat.

The conclusion to the story is that David Boundy won the preselection but that Keith Russack actually won the election. Keith ran as an unendorsed Liberal candidate for the 1977 election and was successful in defeating the endorsed Liberal Party candidate, David Boundy, for election to the seat of Goyder.

Very soon after that, Keith was elected by his peers to the shadow Cabinet. Our system at that time (it went through a very short stage) was one where five members of the shadow

Cabinet were elected in the Liberal Party room, a process similar to what I understand the Labor Party Caucus continues to do—

The Hon. A.J. Redford: Someone put a stop to that, didn't we, Rob!

The Hon. R.I. LUCAS: I am not sure who 'we' was in that context, Angus. However, at that time some were nominated by the Leader and some were elected by their peers. It is a testimony to my long-term abiding memory of Keith Russack that, having fought what was obviously a fairly intensive preselection and then an election, his peers and colleagues elected him to the shadow Cabinet as it was then.

My memory of Keith Russack, through the 20 or so years that I knew him, is one where I can rarely recall an occasion on which he did not have a smile on his face. He was just a thorough gentleman. I know we say that about some people in our condolence motions, but it is most apt when one talks about Keith Russack: I very rarely recollect seeing him without a smile on his face. Indeed, I very rarely recollect him ever raising his voice in anger or uttering a harsh word about others. I am sure it must have happened on occasions, but it certainly did not in my experience of Keith.

Keith was well loved by his electorate. He was respected and admired by his colleagues and by all who came into contact with him as a member of Parliament, as a prominent member of his local community and in his various shadow portfolios. At various times he was the shadow Minister for Transport and for Local Government and did serve as Chair of the Public Works Committee, as it then was. But in all those fields Keith was well regarded, admired and respected for his work, for his input to the community and for his input to the parliamentary process.

Therefore, it is with a great deal of sadness that I speak personally from my knowledge of Keith over that period, but I know I speak on behalf of a number of my colleagues. I know that some of my colleagues will probably add a few words to my own from their own personal perspective, but on behalf of all Government members I formally express our condolence and pass on our best wishes to Keith's family and friends. I thank Keith for the work that he undertook in the Parliament and in the community and pass on our commiserations at his passing.

The Hon. CAROLYN PICKLES (Leader of the Opposition): I rise on behalf of the Opposition to second the motion. I did not know Mr Russack, as he had retired from Parliament in 1982, my having entered this place in 1985. It is interesting that a number of people have chosen to leave this august Chamber and go below, and I am pleased that my colleague the Hon. Mr Holloway chose to be elevated to the Legislative Council. I know that some of my colleagues in another place do not hold us in very high esteem.

The Hon. P. Holloway: They're only jealous!

The Hon. CAROLYN PICKLES: I will ignore that interjection. Perhaps they are jealous. It seems from the contribution by the Leader that, when Mr Russack chose to make his move, some internal ructions were going on at the time. My recollection of the Liberal Movement is that, when it was being formed, I was serving on the Rose Park school council with David Tonkin, who later became Premier of this State. David took me aside, knowing my interest in politics, albeit of a different kind, because we were quite good friends. I stood against him for election in 1979: he won, I did not. David told me that a new Party would be formed and that it would be a middle of the road Party. I looked forward to it with a great deal of interest. So the Liberal Movement was duly formed, and David was part of that.

However, Mr Russack came into the Lower House at a time when the Liberal Movement was merging with the Liberal Party again, and I must say that that period of Liberal Party history was quite interesting. The repercussions of that split still resound, albeit more quietly now than for the past 10 years, but they are still there.

As the Leader indicated, Mr Russack was Mayor of Kadina and had a keen interest in his local area. I understand that he was Chair of the Standing Committee on Public Works. He was also shadow Minister for Local Government and shadow Minister for Transport. I am not sure whether the issues in that time were as taxing as they are today, but I assume that he had as much to do as shadow Ministers today and I am sure that he served with distinction in that time.

The Upper House in the period in which Mr Russack served was a very different creature from what it is today. The Legislative Council now plays a very different and vital role. Some would argue that it is a very negative role but people forget that the majority of legislation is passed in this place as a result of constructive debate. It is not passed in such a hurry that we do not have time to examine it. I am sure that, when Mr Russack moved to the House of Assembly, he would have missed the rather more measured atmosphere of the Upper House, as I understand it was in the 1970s.

I extend my condolences to Mr Russack's family and I am sure that all the people who knew him would remember his gentlemanly behaviour, about which the Leader commented. Sadly, that is passing us by, even in the Upper House. I am not sure what the gender neutral term for gentlemanly behaviour is.

The Hon. R.I. Lucas: 'Gentlepersonly'.

The Hon. CAROLYN PICKLES: That is rather cumbersome, but it is something that modern Parliaments could learn from older Parliaments. We are sad to note the passing of a distinguished member of Parliament.

The Hon. M.J. ELLIOTT: I rise to pass on the condolences of the Democrat members of this place to the family of Keith Russack. In a previous political incarnation, I met Mr Russack on a few occasions in a largely social context, so I cannot make any real comment about him as a politician. I note that, on the occasions I met him, I found him to be a generous person who was easy to get along with. I note that people from both Parties who worked with him in this place considered him to be a fair and reasonable politician.

The Hon. K.T. GRIFFIN (Attorney-General): Mr Keith Russack was a gentleman in every respect. He was well respected by his local community at Kadina where he carried on business as a jeweller and also during the whole of the time that I knew him as a member of Parliament. I was President of the Liberal Party in South Australia during a difficult period, which has been referred to by the Leader of the Opposition, after the trouble which resulted in the split of the Liberal movement from the Liberal Party, but I am proud to say that I was also President at the time we were able to negotiate a reunion.

It was as a result of the reunion that Mr Russack found himself in a fairly difficult preselection for the seat of Goyder. He was the member for Gouger and, as the Leader of the Government has already said, as a result of a redistribution he found himself in a tussle with Mr David Boundy,

the then member for Goyder, as both were seeking preselection for that seat.

I remember that preselection. As the Leader of the Government has indicated, Mr Russack handled himself with great grace. Although he was defeated at the preselection, he subsequently stood as an Independent Liberal and was successful in that endeavour. During that period of time he showed himself as something of a fighter, not in a nasty sense, but he portrayed a dogged determination and resolution to achieve as well as to get the job done.

Regrettably, during his time as a member of Parliament—for the first three years (1970-73) as a member of the Legislative Council and subsequently (1973-82) as a member of the House of Assembly—he only experienced three years of Government. During that period from 1979 to 1982, I recollect that he was the Chairman of the Public Works Committee. He had been the nominee of the Parliamentary Liberal Party for the office of Speaker in 1979, but he was defeated in that aspiration on the floor of the House of Assembly.

Mr Russack was a loyal Party supporter. He was diligent in his work in his electorate of Goyder, always serving to the best of his ability the interests of his electors. In all my dealings with him he was, as I indicated earlier, a gentleman. He was a man of his word and certainly a person of high integrity. It is sad that at the age of 80 he has now passed away. I extend my sympathy and condolences to his family in the recollection that he was a very sincere and great South Australian.

The Hon. J.S.L. DAWKINS: I am pleased to support the motion, which expresses members' deep regret on the death of Edwin Keith Russack, who died at the age of 80 at the Queen Elizabeth Hospital at 7 p.m. last Friday following a recent operation. I had the great privilege of knowing Keith Russack for many years. He was a colleague of my father in this place, and then he moved to the other place. Both he and his wife were great friends of my parents.

He entered this place at a by-election in September 1970 for the Midland District following the premature death of the Hon. Colin Rowe, who, like Mr Russack, was one of Yorke Peninsula's leading citizens. In his earlier years, Keith served in the Army for a considerable period and rose through the ranks to be a commissioned officer. He ran a successful jewellery business in Kadina and was prominent in many community organisations in that area, including the local Church of Christ, the Rotary Club of Kadina (now Northern Yorke Peninsula) and the well-respected Gideons organisation.

At the time of his election to the Legislative Council Keith was the Mayor of Kadina. In 1973, the former Premier, Steele Hall, moved from the seat of Gouger to Goyder, and subsequently Keith Russack stood for preselection and won the seat of Gouger, moving from this place. He was the first member of the Legislative Council to move to the House of Assembly since the former Agent-General Kirkpatrick did in 1915.

Mr Russack represented the Liberal and Country League (LCL) and then the Liberal Party in that seat until 1977, when Gouger was abolished in a redistribution, and at that stage he was serving in the shadow ministry as the transport spokesperson. Much of the seat of Gouger was placed in Goyder after the redistribution, so Mr Russack decided to stand for the Goyder preselection. That preselection, as the Leader of the Government has told us today, came soon after the merger of the Liberal Party and the Liberal Movement, and pitted him against Mr David Boundy, who had been the sitting member for Goyder for the previous two years.

As the Treasurer has told us, equal numbers from those two organisations were elected to that college, and Mr Russack lost by the narrowest possible margin. As the Treasurer and the Attorney-General have said, he immediately indicated with grace his intention to stand as an unendorsed Liberal, as provided by the Party constitution. Keith won the seat of Goyder with 9 082 votes to 6 603 votes after gaining some ALP preferences from the Labor candidate, Mr Thomas.

After the election, Mr Russack returned to the shadow Cabinet, with responsibility for the portfolio of local government. After the Liberal Party won the 1979 election he was, as the Attorney-General mentioned, the Liberal nomination for Speaker of the House of Assembly. However, having lost the ballot on the floor of that Chamber Keith subsequently became Chairman of the Public Works Committee and held that position until his retirement in 1982.

Mr Russack was a loyal servant of his electorate on both sides of Gulf St Vincent. He had a less than prestigious but eminently workable electorate office at Port Wakefield, and many people would remember that transportable building situated in the salty flats there. He was very well served in his office by Mrs Beryl Norrish.

In 1989 Mr Russack was awarded the Order of Australia medal for service to the community and to the South Australian Parliament. He spent his retirement years at Kadina and more latterly at the Star of the Sea home in Wallaroo, spending much of his time caring for his wife, Ruth, during her long illness.

Mr Russack offered wise advice to me and to at least one current member of the Federal Parliament after preselection losses. He had been through the mill and he could provide excellent advice. I may not be standing here today if I had not taken some of that advice. The Treasurer said that if anyone could be called one of nature's gentlemen it was Keith Russack. He was, indeed, a genteel and honourable man. It is with sadness that I note his passing, and I extend my condolences to Mrs Russack and the family.

The Hon. L.H. DAVIS: I want briefly to add my words to the condolence motion. Mr Keith Russack represented a strong, conservative Liberal community on Yorke Peninsula and, after active community service, was elected to the Parliament of South Australia for a period of 12 years: three years in the Legislative Council and nine years representing Lower House seats. Mr Russack is one of the few members who has made the transition from the Upper House to the Lower House.

As previous speakers have said, Keith Russack was respected by all members of the Liberal Party, irrespective of philosophy, in what was a very difficult period during the 1970s because he was, as the Hon. Trevor Griffin said, a real gentleman. He made a wonderful contribution to the community in which he lived. He made a significant contribution to the Liberal Party and also to the well-being of South Australia.

Motion carried by members standing in their places in silence.

[Sitting suspended from 2.47 to 3 p.m.]

QUESTIONS ON NOTICE

The PRESIDENT: I direct that written answers to the following questions on notice be distributed and printed in *Hansard*: Nos 1, 49, 95, 105 and 146.

ROAD ACCIDENTS

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

1. How many road accidents were the result of drivers running a red traffic light for the periods—
(a) 1996-97; and
(b) 1997-98?
2. How many road deaths were the result of drivers running a red traffic light for the periods—
(a) 1996-97; and
(b) 1997-98?
3. How many drivers were caught running a red traffic light in—
(a) 1996-97; and
(b) 1997-98?
4. How much revenue was raised as a result for—
(a) 1996-97; and
(b) 1997-98?
5. Considering research from the University of South Australia's Transport Systems Centre shows the running of red lights is much more prevalent than originally thought, what action is the Government taking to—
(a) reduce the numbers; and
(b) educate the public, particularly middle aged males, to the dangers of such driving?

The Hon. DIANA LAIDLAW: Information on road accidents involving drivers running a red light has been derived from Transport SA's database by summarising accidents where cause has been reported as "disobey traffic signals.

1. (a) 1996-97 695 accidents involving 'disobey traffic signals'
(b) 1997-98 617 accidents involving 'disobey traffic signals'
2. (a) 1996-97 2 deaths resulted
(b) 1997-98 3 deaths resulted

3. & 4.

Information on drivers being caught for running a red traffic light has been provided by SA Police. Drivers are detected either by a red light camera, where an infringement notice is subsequently issued, or by being observed by a SA Police patrol, where an infringement notice and on-the-spot fine are issued. The number of these offences and revenue raised is summarised for each of the financial years.

Year		Number	Amount $
1996-97	Red Light Camera Notices		
	Issued	4359	831203
	Expiated	2364	449678
	Infringement notice/on-the-spot fine issued by police patrol		
	Issued	2733	539335
	Expiated	2018	391414
1997-98	Red Light Camera Notices		
	Issued	8710	1680288
	Expiated	6120	1179320
	Infringement notice/on-the-spot fine issued by police patrol		
	Issued	2544	490195
	Expiated	1728	333038

5. (a) & (b)

The Transport Systems Centre's research report highlighted the degree of red light running of cars and pedestrians at different intersections in Adelaide, but noted that the rate of red light running at the 12 intersections observed varied significantly.

In 1996, Transport SA's Red Light Camera Review Committee reported on red light cameras in South Australia and recommended additional cameras be installed at other intersections.

Subsequently, a working group comprising representatives from Transport SA, South Australia Police and the Adelaide City Council has been established to examine all issues related to extending the red light camera network, including the issue of cost and public education.

Meanwhile, current road safety campaigns have been selected to target the proven high priority areas of drink drive, speed and restraint use where research indicates major road safety gains are likely to be made.

HEAVY VEHICLE ROUTE

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

1. When will a decision be made on whether Torrens Road or Churchill Road is to be the preferred route for the proposed new heavy vehicle route for inner Adelaide?
2. (a) Can the Minister guarantee local residents that vibrations from heavy vehicles using the new route will not damage their homes and businesses; and
(b) If not, why not?

The Hon. DIANA LAIDLAW:

1. There is no proposed new heavy vehicle route for inner Adelaide. The goal is to achieve an equitable distribution of freight across the network.

In reference to Torrens Road and Churchill Road, freight vehicles currently use both routes and, depending on their origin and destination will continue to use both in the future.

The Adelaide Better Roads program focuses not only on freight but on the broader needs of all road users, including cyclist and pedestrian needs, as well as amenity aspects.

2. Arterial roads are available for all modes of transport to use in providing accessibility for people, goods and services, and are engineered to cater for heavy vehicle passage. Results of recent vibration measurements undertaken on South Road at Croydon (this road caters for approximately 1 500 heavy vehicles per day) identified that vibration levels were transient and significantly lower than acceptable international standards.

Pavement conditions on Torrens Road and Churchill Road are similar to that existing on South Road at Croydon. In this context, the potential for damage to premises as a direct result of heavy vehicles is considered to be negligible.

Generally, it is considered that the clay soils on the Adelaide plains, which expand and contract with changing climate conditions, account for damage to houses and businesses.

MEDITERRANEAN WHITE SNAIL

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

1. Would the Minister for Primary Industries, Natural Resources and Regional Development provide information on what measures the State Government are undertaking, including biological, educational and financial, to control the Mediterranean White Snail infestation of South Australian crops?
2. How many farms are estimated to have been affected by the pest?
3. How much is it estimated to cost the economy in contaminated and lost crops and damaged machinery in 1998?

The Hon. K.T. GRIFFIN: The Deputy Premier, Minister for Primary Industries, Natural Resources and Regional Development has provided the following information:

1. Currently, a joint CSIRO/SARDI research project on the introduction of biocontrol agents is being completed. This project is examining several biocontrol agents which attack white snails. However these agents also attack a whole range of native snails, and moves to introduce these species have been abandoned. Another parasitic fly, which attacks conical snails, also controls white snails, and moves are being made to obtain permission to release this parasitic fly from quarantine.

CSIRO, SARDI and the University of Adelaide are currently negotiating further research efforts with Grains Research and Development Corporation (GRDC) and it is likely new projects involving at least two scientists will be up and running in 1999.

PIRSA has a snail fact sheet which includes a 'snail calender' outlining control measures which are appropriate for various times of the year. This information is available from PIRSA offices and agronomy staff.

2. The number of farms affected by white snail is not known accurately. Snails cause various problems in different years and there is no doubt that numbers have been high in 1998.

3. The cost in 1998 of snail contamination downgrading grain, damaged machinery, delays and lost time in cleaning machinery is estimated at several million dollars.

LOCAL GOVERNMENT RATES

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

1. How many late payment of rates fines in total were issued by Local Government Councils during 1997-98?
2. How many late payment of rates fines were issued by each individual Local Government Council during 1997-98?

3. How much revenue in total was collected by Local Government Councils for late payment of rates fines during 1997-98?

4. How much revenue was collected by each individual Local Government Council for late payment of rates fines during 1997-98?

The Hon. DIANA LAIDLAW: The Minister for Local Government has provided the following information:

1. This information is not available. Data is not collected on the number of fines issued by Councils.

2. This information is not available. Data is not collected on the number of fines issued by Councils.

3. Data provided by the Australian Bureau of Statistics indicates that in 1996-97 (the most recent available data), Councils in South Australia collected in total $2.8 million as penalties (fines and associated interest) on late payment of rates. As a percentage of total general rates collected by Councils, penalties for late payment of rates represented 0.6 per cent of total general rates. Comparable data for 1997-98 is not yet available.

4. The attached table contains data provided by the Australian Bureau of Statistics on the revenue collected by each Council as penalties (fines and associated interest) for late payment of rates during 1996-97 (the most recent available data). Comparable data for 1997-98 is not yet available.

Council Name	Penalties (Fines & Associated Interest)
Adelaide City	240 000
Adelaide Hills Council	113 000
Alexandrina Council	41 702
Barossa Council	24 242
Barunga West District	3 000
Berri Barmera Council	29 000
Burnside City	159 000
Campbelltown City	30 000
Ceduna District	14 000
Charles Sturt City	165 000
Clare And Gilbert Valleys DC	10 000
Cleve District	3 000
Coober Pedy	17 000
Coorong District	17 855
Copper Coast District	36 000
Elliston District	3 000
Flinders Ranges Council	9 000
Franklin Harbour District	3 000
Gawler Town	13 000
Goyder Regional Council	8 000
Grant District	11 000
Holdfast Bay City	30 000
Kangaroo Island Council	10 000
Kapunda Light	20 000
Karoonda East Murray District	3 000
Kensington And Norwood City	20 000
Kimba District	5 000
Lacepede District	10 000
Lehunte District	-
Lower Eyre Pen DC	7 000
Loxton Waikerie District	19 296
Lucindale District	6 000
Mallala District	25 000
Marion City	98 000
Mid Murray Council	23 405
Mitcham City	70 000
Mount Barker District	60 000
Mount Gambier City	16 000
Mount Remarkable District	12 000
Murray Bridge District	36 000
Naracoorte DC	15 457
Northern Areas Council	7 622
Onkaparinga City	268 298
Orroroo/Carrieton District	1 000
Payneham City	17 000
Peterborough DC	12 000
Playford City	100 000
Port Adelaide Enfield	182 000
Port Augusta City	43 000
Port Lincoln City	41 000
Port Pirie City And Districts	104 000
Prospect City	25 000
Renmark Paringa District	15 000
Robe District	9 000
Roxby Downs Municipality	3 000
Salisbury City	150 000
Southern Mallee District	9 000
St Peters Town	27 000
Streaky Bay District	10 000
Tatiara District	17 000
Tea Tree Gully City	150 000
Tumby Bay District	5 000
Unley City	82 000
Victor Harbor District	25 000
Wakefield Regional Council	31 000
Walkerville Town	7 000
Wattle Range Council	26 000
West Torrens City	39 000
Whyalla City	25 000
Yankalilla District	12 000
Yorke Peninsula District	22 000
Total	2 900 877

Source: Australian Bureau of Statistics

Prepared from councils Audited Financial Statements and supplements to those statements

Prepared on 10 February 1999

ALCOHOL, SAFE DRINKING INITIATIVES

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

1. In light of the recent study titled 'Reducing Violence in Licensed Venues' which urges the reduction of irresponsible drinks promotions, gimmicks and happy hours—

(a) Will the Government consider adopting the 'safe drinking initiatives' similar to those tested in the pubs and clubs in Cairns, Mackay and Townsville which led to a noticeable decrease in aggression, with physical violence dropping by up to 75 per cent; and

(b) If not, why not?

2. Does the Attorney-General agree with the study's findings which suggest reducing drunkenness among young men is critical in lowering the level of violence in this context?

3. If so, what steps is the Attorney-General undertaking to address this issue?

The Hon. K.T. GRIFFIN: The honourable member has asked whether the Government will consider adopting safe drinking initiatives similar to those introduced in Cairns, Mackay and Townsville.

I understand that these initiatives were local liquor management forums similar to those which have been in place in South Australia since the City of Adelaide Licensing Accord was introduced in July 1996. It needs to be borne in mind that the programs in Queensland arose from dramatic, unacceptable situations involving alcohol which demanded a response by State and local government and other sectors. The closest example in Adelaide would be in the Hindley Street precinct.

Licensing accords which are agreements between licensees, police, councils and the Office of the Liquor and Gaming Commissioner (may also include Drug and Alcohol Services Council and Crime Prevention) have been successful in achieving better management in licensed premises in areas covered by the accords.

Accords are currently in place in Adelaide, Port Pirie, Mount Gambier and Holdfast Bay. Accords have also been developed with some industry bodies such as bus operators. These accords which are not mandatory are evolving partnerships between all stakeholders which have and will continue to have benefits for the community by reducing liquor related anti-social behaviour and creating community, industry and patron awareness of responsible service and consumption principles.

However, by their very nature voluntary accords have the disadvantage that there can be a displacement effect whereby undesirable patrons are either removed from licensed premises or are denied entry and these people are causing problems in the street in the vicinity of accord participants. There is also the problem of these patrons frequenting non participating licensed venues which do not operate to the same standard as participating licensed premises.

South Australia recognised the need for continued emphasis on responsible service and consumption and harm minimisation in the Liquor Licensing Act 1997. The Act not only has key objectives but provides that it is a condition of every licence in South Australia that the licensee must comply with codes of practice prescribed under the regulations to minimise the harmful and hazardous use of liquor and to promote responsible attitudes in relation to the promotion, sale,

supply and consumption of liquor. The comprehensive statutory code covers practices relating to minors, practices promoting responsible attitudes to consumption of liquor on licensed premises, practices relating to intoxication and disorderly or offensive behaviour, practices relating to disturbance and practices promoting responsible attitudes to the advertisement or promotion of liquor. South Australia has been pro-active in this area.

It should be noted that the code is a condition on every licence and non compliance is grounds for disciplinary action against the licensee.

In South Australia, there is a good network of local crime prevention committees which identify local issues for action. If and when alcohol related crime and violence is identified as a significant local problem, these crime prevention committees develop and implement programs and initiatives to address the problem. In such cases, the committees often seek information and assistance from DASC, often through a DASC community worker. When such requests are received they are often referred to the inter agency Alcohol, Drugs and Crime Working Group which was one of five expert working groups established in 1990 under the South Australian Coalition Against Crime. This group recognised that alcohol was a major cause of crime and consequently the working group developed and has maintained to this day a strong focus on alcohol related crime and violence in and around licensed premises. It is the only remaining working group of the five established under the Coalition Against Crime.

Safe Profit—Planning for Service and Safety in Hotels

The crime Prevention Unit (SA Attorney-General's Department), in conjunction with the Alcohol, Drugs and Crime Working Group, has built on studies such as those conducted in various parts of Queensland and Victoria, to address safety in hotels and licensed clubs. In addition to community and local government efforts through the Attorney-General's Department Local crime Prevention Committee Program, the State Government has worked in partnership with the Australian Hotels Association (SA) to ensure that the industry takes responsibility for preventing violence and crime within its own businesses. Following research in over 40 licensed premises, Safe Profit, a planning tool for service and safety in hotels was developed with the industry. The AHA (SA) then trialled the package in a further 30 hotels to see how well licensees and managers could establish systems for prevention crime and improving safety within their businesses. The findings of that work, which was jointly funded by the Crime Prevention Unit and the AHA(SA), and sponsored by Coca-Cola (Amatil) Pty Ltd, will be available shortly. Focussing on the responsibility of the industry to prevent crime and improve safety in licensed premises, reflects State Government policy that all sections of the community, not just government, police and local communities, are responsible for preventing crime and improving safety within South Australia.

Young Males and Socialisation Project

The Young Males and Socialisation Project is about engaging SANFL clubs in developing crime prevention strategies. The project is based around the over representation of young males in crime related and other risk indicators, and the key location of football clubs in the social fabric of our metropolitan and rural communities. The particular issue (among other issues) of alcohol and crime is purposefully discussed with the clubs with great care being taken to ensure that the obvious strong association between alcohol and crime does not become an explanation about the causes of crime. This approach allows clubs to see the necessity of developing local strategies to suit local contexts and not rely on grand generalisations. (if one said for example that *90 per cent of our crime is 'caused' by young males*, this would be a useless statement because the word 'caused' has no explanatory power whatsoever about the over representation of young men in crime statistics.)

Some specific examples of strategies being developed at this time are:

- A monitoring system at South Adelaide Football club that will provide a way for players to set personal goals and identify pathways and obstacles that need to be addressed.
- A deliberate intention to use that system as an example for feeder clubs in the South Adelaide Football Development Zone.
- Another monitoring project at the Tea Tree Gully Football Club being conducted as a trial, is associated with the Norwood Football Club.
- Ongoing development of a range of strategies through the Port Adelaide Magpies Football Club Players Welfare Committee.
- Several seminars about male related issues for club officials and players.

The clubs that have become involved so far recognise a number of benefits to themselves from developing strategies:

- guiding younger men's developing maturity within a structured setting
- maximising players on field performance
- improving the club's relationship with feeder clubs
- strengthening the club's leadership role in the community and its identification with the community.

Local crime Prevention Committee Program

1. Port Lincoln has a project aimed at reducing the incidence of drinking within the Port Lincoln Dry Area Prohibition Zone. Throughout 1997 there was a high number of reports of drinking in the Dry Area by aboriginal, non-aboriginal, and young people. The project focuses upon increasing information about the dry area; monitoring incidents where alcohol is a contributory fact; liaising with the council about signage; working collaboratively with the Men's Support Group and Community Drug and Alcohol Action Group on projects which address responsible serving practices and the development of an Accord.

2. Port Pirie has a project aimed at reducing the incidence of assaults and behavioural offences in the CBD, especially near licensed premises. The strategies which relate to alcohol consumption concentrate on projects agreed upon within the Accord, such as monitoring the effectiveness of the dry area; training security and crowd controller staff; promotion of Pirie ID before service of alcohol; ensuring responsible dispensing of alcohol to avoid rapid consumption, and training staff re licensing laws especially refusal of service to intoxicated patrons.

3. Port Adelaide Enfield has two projects which consider alcohol and crime prevention. One is Port Mall and Environs which looks at alcohol related violence in the Port Mall and Market and adjoining car parks. There are a number of strategies covering security and street design. The strategies concerning alcohol include support and improvement to responsible service standards with the Golden Port and Central Hotels; advocating for police to increase patrols on routes used by patrons for moving between hotels, and continuing support for the use of Dry Areas within the area.

The second project is a research project into the impact on drug use on the Le Fevre Peninsula Community. The main thrust of the findings is that schools in the area have requested training within their staff meetings on issues pertaining to drug use by students.

4. Adelaide has an alcohol management project which considers the issue of anti-social behaviour and violence associated with alcohol consumption in Adelaide City. The project, at this stage, is about Council in collaboration with other stakeholders developing a process for effective management and appropriate strategy development. The expected outcome is ongoing management of alcohol related issues in Adelaide, including a capacity to strategically plan long term alcohol management and problem solve immediate issues.

5. Holdfast Bay is continuing its work with the Liquor Licensing Accord through facilitation of the Reference Group and Licensees' meetings and the establishment of working parties to address specific alcohol related crime issues as they arise.

None of these projects specifically and exclusively focus on young men and alcohol, they usually target crime locations, such as the CBD or the Foreshore.

PAPERS TABLED

The following papers were laid on the table:

By the Treasurer (Hon. R.I. Lucas)—

Regulation under the following Act—
Petroleum Products Regulation Act 1995—Subsidy Rate

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

Dog Fence Board—Report, 1997-98

By the Minister for Consumer Affairs (Hon. K.T. Griffin)—

Regulation under the following Act—
Liquor Licensing Act 1997—Dry Areas—Long Term—Normanville

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

Regulation under the following Act—
Harbors and Navigation Act 1993—Water Skiing

Local Government Act 1934—Rules—Amendment of Local Government Superannuation Scheme—Spouse Contributions

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

Reports, 1997-1998—
National Aboriginal Cultural Institute Inc., Tandanya
South Australian Country Arts Trust

By the Minister for the Ageing (Hon. R.D. Lawson)—

Office for the Ageing—Report, 1997-1998.

ELECTRICITY TARIFFS

The Hon. R.I. LUCAS (Treasurer): I seek leave to make a ministerial statement.

Leave granted.

The Hon. R.I. LUCAS: I wish to advise the Council of the measures which the Government will be required to implement if it is unable to proceed with either the sale or long-term lease of the State's power assets. The action the Government has taken to realise the value of the State's power assets is aimed at achieving three objectives. The first is to reduce public sector debt so that South Australia is in a sound financial position and able to hold its ground against competition from other States for industry, trade and population.

The second is to create the flexibility within the budget to provide the services required by the community of South Australia by reducing the burden of interest payments which currently stand at $2 million per day. The third is to protect South Australian taxpayers from the risks associated with the ownership and operation by Government authorities which are acting in a highly competitive and deregulated commercial environment. Today's press report that Western Mining Corporation might be moving interstate again highlights the risks of this market.

Sadly, we have been warning Mr Rann, Mr Foley and others about these risks, and sadly they continue to ignore these warnings. The lessons of the State Bank again are being ignored. The key to securing South Australia's economic and financial future is to reduce the burden of debt. I do not believe that any reasonable commentator or analyst could possibly argue that our current debt is sustainable. Certainly, the financial institutions and the ratings companies which determine the price at which we can raise funds in national and global markets are quite clear that the debt needs to be reduced, and they signalled as much in credit ratings that they have applied to our State.

To a large extent, the debt is a result of mistakes and misadventures by the previous Government. Since coming to office, the Government has made significant steps towards reducing the debt burden. However, we are now at the stage where we cannot go further without decisive action. The legislation which will allow us to take that decisive action is still before the House. Consequently, the Government believes that it is appropriate that before final decisions are made the Parliament understands the consequences of doing nothing. In the budget which I introduced to the Parliament on 28 May 1998 I said:

> Members must understand that if the sale of ETSA and Optima is stopped then the Government will be forced reluctantly to return to the Parliament in October with a mini-budget to provide up to $150 million of further tax increases or expenditure reductions to take effect for the later years of the four year financial plan. This is not a threat, but simply a statement of financial reality and responsibility.

The forward estimates on which the budget is based assume a budgetary benefit of $20 million in 1999-2000 and $100 million per annum therefore from the sale of the electricity assets. The lower benefit in 1999-2000 reflects the assumption that assets would be sold progressively throughout the year, with sales not completed until late in that financial year. The Government included only a conservative estimate of $100 million per annum of the budgetary benefit, but that if the sale of the electricity assets achieved proceeds at the high end of estimates, then the budgetary benefit could be up to $150 million per annum.

Some members such as Mr Foley have claimed that there is no $100 million budgetary benefit, no 'black hole' in the forward estimates and that there is no evidence of this figure in the budget papers. The Auditor-General in his report last year confirmed that these estimates had been included in the budget papers. On page 55 of volume A2 of his report—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: —the Auditor-General states:

> The amount of net premium which has in fact been assumed is relatively small in that year and $100 million in each of the following two years. This amount has been reflected in the estimates contained in the budget by reducing the published forward estimates of expenditure by the non-commercial sector (more specifically, the estimates of consumption expenditure) below what they would otherwise be by the amounts noted above.

Clearly, Mr Foley, Mr Rann and others have either not read or not understood the budget papers and the Auditor-General's Report on this issue. It is quite clear; it is quite explicit in the Auditor-General's Report and indeed in the various statements that have been made in relation to the budget.

Budgetary commitments to the provision of services; to the employment of teachers, nurses and police; for job creation projects such as the extension of the Convention Centre; and to the provision of medical and educational needs have been made against those forward estimates. If South Australia's electricity assets are not sold or leased, the shortfall has to be made up, and the Government will have no alternative but to raise additional revenue. If the Government is to remain as the owner and operator of our electricity assets, taxpayers will have to meet the costs of maintenance, repair and upgrade of our generators and other electricity assets. The Government had hoped that these costs would be met by the new private sector owners of these electricity businesses. The Government will now have to raise additional revenue to help fund these much needed capital works.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: As the Council would be aware, the options available to any State Government to raise additional revenue are extremely limited. This is even more so after recent decisions by the High Court. In considering a revenue measure to meet the shortfall caused by the intransigence of the Opposition and others, the Government has sought a measure which is broad-based, which will not directly impact on the competitiveness of our industries and which will not lead to reluctance on the part of employers to maintain employment and create new jobs. As a result, the Government reluctantly has decided that the most equitable way to raise the revenue required to support the budget is through an increase in electricity charges to households.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: It is disappointing that all we get from the Deputy Leader of the Opposition is laughter at a measure which will cause extreme hardship for many struggling families and households in South Australia. This Government is concerned about the struggling families and households who will have to endure this sort of power bill increase from Mr Rann and others. Mr Foley can laugh if he wishes, but it rests on his shoulders and those of Mr Rann the fact that we have to contemplate this power bill increase.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: The proposed increase would result in an additional $100 million being available to the budget each year from the beginning of next financial year to help meet the capital expenditure requirements of the power utilities as well as the budgetary black hole in the forward estimates. From 1 July this year the fixed supply charge for the domestic tariff will be increased from $82 per annum to $171.60 per annum, and the variable charge for electricity will be increased by approximately 16 per cent from 12.45¢ per kilowatt hour to 14.43¢ per kilowatt hour. Pensioner concessions are currently provided to up to 180 000 households through the payment of a concession of $70 per annum. This concession will be doubled to $140 per annum. The existing category of customers classified as charities by ETSA will not be subjected to this measure.

This Rann power bill increase will cost the average concession customer about $92 per year, and this Rann power bill increase will cost the average non-concession customer $186 per year. Whilst the average non-concession customer will pay $186, some high consumption households will pay higher increases. For example, the average increase for the top 1 per cent of households under the Rann power bill increase will be $527 per year. The reasons for this Rann power bill increase—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: —will be clearly detailed on each and every power bill account received by ETSA customers. In announcing these possible increases the Government is taking the only responsible course.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: We are also acting to ensure that all members of Parliament as we move towards the final stages of the debate on the question are fully aware of the consequences of their vote and are aware of their responsibility for any possible hardship on ordinary families which the measures undoubtedly imply. However, I make this commitment: the moment that the legislation currently before the Council receives the assent of His Excellency the Governor, the additional charges I have announced today will be removed immediately. I make it quite clear that, until this occurs and for as long as this additional charge remains, the Government will take all possible steps to remind the South Australian community that they are paying the Rann power bill increase.

Members interjecting:

The PRESIDENT: Order, the Hon. Legh Davis and the Leader of the Opposition!

The Hon. R.I. LUCAS: No-one should have any doubt that the increased power costs which the community may have to bear will be the result of the intransigence and the petty politicking of the Leader of the Opposition and his supporters. If the Opposition wants to take an ideological position against the sale of the State's power assets—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Holloway thinks this is a stunt. I ask him to speak to those struggling families who are going to have to pay this Rann power bill increase and explain to those struggling families—

Members interjecting:

The PRESIDENT: Order!

The Hon. Carolyn Pickles interjecting:

The PRESIDENT: Order, the Leader of the Opposition!

The Hon. R.I. LUCAS: The Hon. Mr Holloway can explain to those struggling families who have to pay this Rann power bill increase how he believes that this is a stunt.

Members interjecting:

The PRESIDENT: The Hon. Angus Redford will come to order.

The Hon. P. Holloway interjecting:

The PRESIDENT: The Hon. Paul Holloway, I have called for order umpteen times.

The Hon. R.I. LUCAS: The Leader of the Opposition might want to go crabbing with a few of his would-be supporters. If the Opposition wants to take an ideological position against the sale of the State's power assets, it must also take responsibility for the consequences. I remind the Council that the Opposition takes the view that the revenue dividend from the power utilities will be sufficient to support the State budget, meet interest costs and also reduce debt. Whilst this is impossible, even at historic levels of dividend flow to the budget, this measure would at least tackle the budgetary issue.

Certainly, it is not only members of the Labor Opposition who oppose this matter in the Legislative Council. However, it is the Labor Opposition who are the alternative Government of this State. It is the Labor Opposition who want the people of South Australia to believe that they can once again be trusted with the State's finances. If the Labor Opposition wishes to damage the financial strength of the State, it is they who will have to accept the consequences.

I referred earlier to my speech introducing the budget. On that occasion I said that some people in the community and in the Parliament believed in what I described as the 'magic pudding' approach to managing a budget. They oppose asset sales; they oppose expenditure reductions; and they oppose revenue increases. At the same time, they demand more expenditure. They are ready to throw their weight behind wage claims regardless of their merit, as we saw the Leader of the Opposition, in a most irresponsible way, standing on the steps of this House and supporting an 18 per cent pay increase for firefighters when they were already the highest paid, or second highest paid, firefighters in the land. Yet at the same time these magic pudding—

Members interjecting:

The PRESIDENT: Order, the Hon. Mr Roberts!

The Hon. R.I. LUCAS: At the same time, 'Magic Pudding Mike', or the Hon. Mr Rann, refuses to put forward any alternative plan or any alternative policies. The Opposition can no longer hide on this issue. It has to make a decision. Will it allow the asset sales to proceed, or will it be responsible for the imposition of higher electricity charges on all South Australian households, that is, the Rann power bill increase?

PARLIAMENT, MEMBERS INDEMNIFICATION

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to make a ministerial statement about the indemnification of members of Parliament.

Leave granted.

The Hon. K.T. GRIFFIN: On Wednesday 17 February the Hon. Paul Holloway MLC asked a question as to:

> . . . whether the State is indemnifying the member for Bragg in relation to the defamation case being taken against the member for Bragg and the Treasurer by the Hon. Nick Xenophon and, if so, when was the policy altered to extend that protection to Government backbenchers?

In answering the honourable member's questions, I was mistaken as to the precedents for indemnification of members. I am advised that there are precedents for former Government Ministers being indemnified, but in the past backbenchers have not been indemnified by the State in respect of actions alleging defamation by them. Mr Ingerson has not been granted an indemnity.

QUESTION TIME

ELECTRICITY TARIFFS

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Attorney-General a question about the Olsen-Lucas tax grab.

Leave granted.

The Hon. A.J. Redford: Are you talking about the Rann tax?

The Hon. CAROLYN PICKLES: No, the Olsen-Lucas tax grab. I refer the Attorney to media reports indicating that legal advice was sought by the Government because questions were raised regarding the legality of the Olsen-Lucas tax proposal. My questions are as follows:

1. Will the Attorney table details of the legality of the mechanism to be used by the Government to raise the revenue? If not, why not?

2. Has the Government received advice from the Australian Consumer and Competition Council and National Electricity Market Management Company, and does the advice indicate that the Government's ETSA tax decision conforms to national competition principles?

The Hon. R.I. LUCAS: As the Minister with ministerial responsibility for this revenue measure, I am pleased to respond to the honourable member's questions. I indicate that in the ministerial statement that I have just read the Government has introduced a power bill increase. We have called it the 'Rann power bill' increase, and it will be known as that.

The Hon. Carolyn Pickles: It will be known as the Olsen-Lucas tax grab.

The Hon. R.I. LUCAS: You don't have the advantage of sending out the accounts.

Members interjecting:

The PRESIDENT: Order, the Leader of the Opposition!

Members interjecting:

The PRESIDENT: Order, the Hon. Mr Davis, and the Leader of the Opposition as well! You have asked your question.

The Hon. R.I. LUCAS: As I indicated in my ministerial statement, as the power bills are sent out to each and every domestic household in South Australia, there will be a clear indication on those accounts as to the reasons for the increase. At this stage there is no final wording on those accounts. It is unlikely that it will be as blunt as I might otherwise have wished, but households in South Australia will nevertheless, even through the subtlety of the message, understand the origin of the power bill increase.

Members interjecting:

The PRESIDENT: Order! This is your Question Time.

The Hon. Carolyn Pickles: I am just not getting the answer.

The PRESIDENT: Well, you have asked the question.

The Hon. R.I. LUCAS: If you settle down for a moment I will go on.

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: Settle down. In considering this issue, that is the first important point to make: the Government has implemented a power bill increase. We are not implementing a tax or, indeed, a levy. As we looked at the various options available to the Government, we did look at the New South Wales Labor Government and its particular procedures. They have actually implemented a tax on electricity in New South Wales to take money from electricity consumers—

The Hon. Carolyn Pickles: Isn't that a Labor Government?

The Hon. R.I. LUCAS: A Labor Government.

The Hon. L.H. Davis: She doesn't seem to know about it.

The Hon. R.I. LUCAS: She is obviously not aware of it, so she led with her chin on this issue. The Labor Government in New South Wales introduced a tax two years ago.

The Hon. R.R. Roberts: So what?

The Hon. R.I. LUCAS: Ask the question of the Leader of the Opposition.

The Hon. R.R. Roberts interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: We all operate under the same constitution and the same ACCC and NEMMCO, which is the question that the Leader of the Opposition put to the Government. The New South Wales Government does not have a different constitution. It does not have its own version of the ACCC or NEMMCO to work within. It is a national constitution. The ACCC is a national body, and whatever applies in New South Wales applies in South Australia. The New South Wales Labor Government has been even more explicit and it has instituted a tax or levy. The South Australian Government has not instituted a tax or a levy: we have instituted a Rann power bill increase, which is of a different nature—

The Hon. Carolyn Pickles interjecting:

The Hon. L.H. Davis: Did you hear that? She is going to rip hers up!

The Hon. R.I. LUCAS: The Hon. Carolyn Pickles says that she is going to rip up her bill. I presume that the import of that is that she is not going to pay her bill. In that case, the full force of the law and ETSA will be visited on the Hon. Carolyn Pickles, I assume.

Members interjecting:

The PRESIDENT: Order, the Leader of the Opposition!

The Hon. R.I. LUCAS: The Leader of the Opposition has lived in the dark for the past seven or 10 years. It will be no different if the power is turned off at her domestic residence. That is a choice for the Leader of the Opposition to take. I hope that she is not advocating that to the other households in South Australia that might be subject to this Rann power bill increase.

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: Do you want me to answer your question? The Government, in its consideration of this measure, looked at what was occurring in other States and we saw what happened in New South Wales under a Labor Government, but we are not following the New South Wales Government path. We have instituted the Rann power bill increase, and there is nothing in the advice that the Government has received which says 'Thou shalt not proceed' in relation to this issue. The Government has been comforted by the broad range of advice that we have received and by the precedent, if we wanted to go down the path of a tax in South Australia, established by the New South Wales Labor Government.

The Hon. P. HOLLOWAY: I have a supplementary question.

Members interjecting:

The PRESIDENT: Order! There is one member on his feet.

The Hon. P. HOLLOWAY: Has the Treasurer consulted with the ETSA board about these increases and the statements that he has informed the Council will be included with the bills? If so, will he table the instructions to the board which direct it to enclose such propaganda within the statements that are sent out?

The Hon. R.I. LUCAS: I indicate—

Members interjecting:

The PRESIDENT: Order! The question has been asked. There is a member on his feet and he has the floor.

The Hon. R.I. LUCAS: I indicated what in the ideal world I would like to put on the increased power bill, but in its bluntest form that is unlikely to be what is eventually on the account. Even in its subtlety, the message will be quite apparent to all people who pay ETSA accounts over the coming years.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: I have had discussions with the Chair of the board. In the end, if I have to issue a direction in relation to these matters, I will very happily make those directions public by tabling them in this Chamber.

The Hon. A.J. Redford: In the spirit of honesty.

The Hon. R.I. LUCAS: In the spirit of openness, accountability and honesty, I will ensure that any direction that I issue to the board will be tabled in this Chamber, as it would be appropriate to do. I will be having further discussions of a more formal and detailed nature with the Chairs of the boards and the individual companies that report to me. We will now await with some degree of anxiety the passage of the ETSA sale legislation, because we hope that we will not have to issue any directions to the boards. We hope that we will not have to implement the Rann power bill increase. We hope that we can tear it up and get on with the business of selling ETSA and Optima in South Australia. Sadly, if we are forced to do otherwise, the Government through me as Treasurer will have those discussions with representatives of the board. If need be, I will issue directions, as it is within my capacity to do, and in those circumstances I will be happy to table a copy of those directions.

The Hon. P. HOLLOWAY: My questions are directed to the Treasurer. First, how much of the expected $100 million Olsen tax will be spent on what the Treasurer described as maintenance, repair and other capital expenditure in the electricity industry and how much will be spent on filling the so-called black hole? Secondly, as the Treasurer's statement claims that the Government hoped that new private owners would pay for capital works, does the Treasurer believe that private owners would not seek to recover such costs from electricity consumers through higher charges? Thirdly, are the increased electricity charges—the Olsen tax—restricted to franchise customers only and, if so, will the Olsen tax continue beyond 2003?

The Hon. R.I. LUCAS: The Rann power bill increase can apply only to franchise customers. If customers are contestable, they can purchase their power elsewhere, as we saw with Western Mining on the front page of the *Advertiser* this morning. The sad reality is that we have been trying to warn the Hon. Mr Holloway for some 12 months that his approach, that is, slavishly following Mr Rann on this issue, will lead to a situation where many of our big customers may well leave ETSA. Sadly, the Hon. Mr Holloway has chosen to ignore those warnings. He hopes that, if he closes his eyes and puts his hands over his ears, this terrible issue will go away and he can talk about something else.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Holloway has asked a number of questions.

The Hon. R.I. LUCAS: I indicate to the Hon. Mr Holloway that that is not the way to run a Government and that is not the way to run a business. He has to open his eyes, take his hands from over his ears and look at the reality of this cutthroat national electricity market. We are not able to dictate a price.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: We are not able to dictate a price to contestable customers.

The Hon. R.R. Roberts interjecting:

The PRESIDENT: Order! I am tired of hearing the voice of the Hon. Ron Roberts. Please do not interject.

The Hon. R.I. LUCAS: The Government hopes that, at the time of or before the election that is due in 2001-2, we will have been able to sell or long-term lease, preferably sell, our electricity assets, because it will still be an issue if no decision has been taken by then. If by 2003 neither of those two options has come to fruition, we as a Government will not be in a position to dictate to contestable customers, and the Government of the day will have to institute $100 million worth of expenditure cuts to schools, hospitals, police and a range of other public services, or it will have to institute a new broad-based tax in the year 2003 to replace that component of the $100 million that might be lost.

I am advised that it is not fair to assume that all of that $100 million would be lost after the year 2003. There are some customers who, come what may, will be prepared to stay with ETSA power, because they love ETSA and are prepared to pay a high price for the power that is sold by ETSA. The ultimate test for Mr Holloway in the year 2003, given that he loves ETSA so much, is whether he will be prepared to stay as a customer of ETSA and pay a higher price rather than a lower price that might be offered by an interstate retailer.

I do not have to ask the Hon. Mr Holloway to know what he will do in reality—he has demonstrated that with the purchase of shares, etc. He does not let principle and philosophy get in the way of his own personal circumstances—and I do not blame him for that. It is his hard earned money that the taxpayers have directed his way, and he will maximise the value of it either through share purchase—

The Hon. T.G. Cameron interjecting:

The Hon. R.I. LUCAS: I am sure that, based on that precedent—

The Hon. T.G. Cameron interjecting:

The Hon. R.I. LUCAS: At least he is hardworking. He does not get very far. He paddles a lot under water, but he does not get very far above the surface. Based on that precedent, there is no way in the world that, come the year 2003, the Hon. Mr Holloway will set a lead by paying a higher price for ETSA power so that ETSA can stay in Government ownership and fight off the interstate retailers. If all those other options do not come to fruition, some moves will need to be taken by the Government of the day in the year 2003 in relation to this measure.

The Government is not in a position to indicate at this stage how much will be spent on maintenance or budgetary provisions. We are still trying to work that out. If we are left in the unpalatable position of having to run these businesses as Government owned enterprises, clearly we have been putting a number of expenditures on hold hoping that the private sector operators would have to fund those options. If we are not able to—and that is what we are looking at at the moment—we will have to look at how we can—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: Well, moving to the second question, which is whether the private sector owners and operators will take that into account, what the honourable member misses in all this is that he is part of a leadership team that is saying, 'We will continue to get $300 million or so from ETSA in the competitive national market.' That is the line of Rann and Foley, Dick Blandy and others: they actually say that we will—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: What we are talking about here is the dividend flow from the business to the shareholders, which, in this case, is the budget and the taxpayers, for private sector operators. It will be a question of how it impacts on their dividend flow. They will have to decide whether in the long term they take a smaller dividend flow so that they can set up their businesses—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: No, so that they can set up their businesses for the long term. We too—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: Well, they will be bound by an independent regulator who will look at their expenditure and, if it cannot be justified, it will not go into their asset base. If it does not go into their asset base, they cannot ratchet up the prices. The difference with monopoly owners such as Governments of the past is that, because it is a monopoly, any price that goes into the businesses can be ratcheted up without any independent regulation or oversight at all in relation to the price that the consumers field. So the hollowness and the shallowness of the argument of Mr Rann, Mr Foley and the Hon. Mr Holloway is exposed by the second question that the honourable member raises.

STATE DEVELOPMENT

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Treasurer, representing the Premier, a question about State development.

Leave granted.

The Hon. T.G. ROBERTS: During the break, the Hon. Mr Cameron, other members and I were offered a visit to the District Council of Wattle Range.

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: The hospitality of Mayor Don Ferguson was accepted and welcomed. The reason for the invitation by the Wattle Range council was to expose those members of the Legislative Council who responded to the invitation to some of the difficulties involved with competitive land use and other problems that are being faced by land users and those people who have applied for water licences and native vegetation clearance approval.

It is clear that pressure has now been placed on the South-East—this was predicted by me two years ago in the Council—by some of the primary industries which would have had an impact on the Mount Lofty Ranges being moved to the South-East. That decision has now started to have an impact in this area. The growth of the wine industry has put pressure on land prices. We see in today's newspaper that a very high price per hectare is being paid for old grenache vines. The same pressures on land prices for, in particular, agricultural, horticultural, vinicultural and silvicultural uses are now starting to impact on the Government's ability to manage land use.

A select committee is looking into water allocations, pricing policies and preservation. Many difficulties are being faced by the people who are looking at that issue, and there are a lot of arguments particularly in the South-East and the northern part of the Upper South-East regarding the allocation of water. My questions are:

1. Will the Government inquire into and report to Parliament on the benefits of an integrated land and water management scheme, with environmental protection and agricultural, horticultural, vinicultural and silvicultural practices being the basis for the inquiry?

2. Will the Government also inquire into providing a supportive education and training policy to suit existing and potential job and business opportunities in order to come to grips with successful management in this area of the State?

3. One interim measure that can be taken by the Government to head off one problem would be if the Government could place a native vegetation assessment officer in the South-East to overcome some of the difficulties faced by land owners, councils and conservationists who are interested in the issue of land water management in the South-East?

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

The Hon. A.J. REDFORD: As a supplementary question, having regard to the Mayor of Wattle Ranges comments in the *South Eastern Times* of Thursday 25 February that the Government must get serious on how the Native Vegetation Act is interpreted and enforced, will the Minister inform the Mayor that the Government does not interpret and enforce the Native Vegetation Act, that it is the responsibility of an independent body, namely, the Native Vegetation Council, and that the Government is precluded from interfering in the manner that he suggests?

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

The PRESIDENT: It is a very innovative supplementary question.

RAIL INFRASTRUCTURE

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning a question about Federal funding for rail improvements.

Leave granted.

The Hon. J.F. STEFANI: Today, the Federal Minister for Transport and Regional Services (Hon. John Anderson) announced a major Government initiative for the improvement of rail infrastructure. My questions to the Minister are:

1. What benefits may be forthcoming to South Australia from this announcement?

2. What is the anticipated expenditure by the Federal Government, and what are the details of the improvements to the rail infrastructure?

The Hon. DIANA LAIDLAW: This is fantastic news for South Australia. It will generate great benefits for our freight industry and our work to be a freight hub for Australia. It is important, too, for road safety reasons, with more and more people being concerned about heavy vehicles on the roads. If we can win more freight business from and to the Eastern States and Perth, and ultimately north to Darwin, it will be of benefit to the whole freight industry and as regards wear and tear on our roads and road safety. Important new jobs will be created in South Australia arising from the announcement today by the Federal Transport Minister, with $16 million to come to South Australia. The Commonwealth will spend $4.6 million on extending the crossing loops, with further funds being provided by the Australian Rail Track Corporation, $3.4 million on self-restoring switches, $5.5 million on replacing damaged track and $2.3 million on new crossing loops.

Freight forwarders have been demanding such an investment for years and I am pleased that this Government has seen fit to find this money for these purposes. When this work has been completed by the end of the year it will save about two hours on the journey from Adelaide to Perth, and that is an important competitive advantage for rail. It will mean that two long, heavy trains, or consists of trains, can operate on the line at the one time.

One of the problems for rail freight to Perth and to Adelaide now is that we can have only one train of some 1 800 metres in length operating at any one time, so it is a very expensive piece of infrastructure across Australia to have available for only one train operating at any one time.

The new crossing loops and the other safety devices will mean that at least two trains can operate, so in addition to the two hours saved we will find that there are further cost advantages for rail from this investment. It will be good for the South Australian manufacturing industry and horticulture in terms of getting product to market, and it will be important in the short term for jobs and in the long-term for the competitive pricing of goods in and out of South Australia. I strongly support the Federal Government's initiative in this area. It will be of great benefit to the State as a whole.

DUBLIN WASTE DUMP

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning a question about the Dublin dump protest structures.

Leave granted.

The Hon. SANDRA KANCK: On Sunday I travelled to Dublin and again met with some local residents who had been protesting for more than a year about the proposed location of a dump right next to their homes. Their staying power on the issue and their capacity to up the ante has impressed me. Since their protest first began, the locals have progressed from simple slogans on their fences to quite sophisticated eye-catching public art. These include life size figures in different costumes and settings, ranging from a replica of a UN monitoring station to a silver-clad figure in a UFO. All of them carry provocative statements about the Government's decision to allow a dump in their area.

When I walked onto the properties on Sunday with four other people to look more closely at the work that has gone into the structures, I was surprised at how many travellers who drove past tooted their car horns in support. The residents have heard, however, that the Minister is not as impressed by the structures and that she considers them to be illegal developments. My questions are:

1. Has the Minister taken the time to observe these protest structures at close hand, and does she consider that these structures have any validity as public art?

2. Has the Minister spoken to any of her advisers or the local council regarding the legality of the protest structures?

3. If so, does she propose to take any action in relation to them?

The Hon. DIANA LAIDLAW: I have never passed an opinion on these structures, so the vividness of the imagination of those who spoke to the honourable member at the weekend and suggested that I have commented upon the legality of them is absolutely stupid. I have laughed at them, and I have always enjoyed art works and public art for public humour. I think that they get their message across, and that is the goal of those who wish to comment on a process that has gone through all the legal and environmental procedures. Some people may not like the outcome, and they can comment. It is a democratic society and I would always uphold the democratic right to do so.

INKERMAN WASTE DUMPS

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

Leave granted.

The Hon. J.S.L. DAWKINS: I noted in yesterday's edition of the *Advertiser* an article entitled 'Down in the Dumps' relating to the possibility of four extra dumps being established at Inkerman in addition to the already approved proposal put forward by Path Line Australia. The article stated that the additional dumps, making a cluster of five, could result from a loophole in State Government laws. Can the Minister advise the Council whether she is aware of additional applications for dumps at Inkerman? Can she also advise whether such dumps will be permitted?

The Hon. DIANA LAIDLAW: I am aware that the Development Assessment Commission today received applications for landfill developments in the Inkerman area. Four applications were received and each has been lodged by a different company, but interestingly the addresses of all the companies and the contact person are the same.

An honourable member interjecting:

The Hon. DIANA LAIDLAW: That's so. The applications propose landfills that vary in size from about 71.5 hectares to 112 hectares and propose that each receive

less than 20 000 tonnes of waste per annum. I am aware, as I have said in this place in the past, of the difficulties that Ministers of Planning encounter in commenting on proposals when this Parliament has established a set process, independent of Government, to assess such applications, and I respect the Parliament's wish in terms of that assessment process.

However, I also respect the fact that this Government, because of community interest in the whole of the waste industry, resource management and recycling, released in January a comprehensive, integrated and long-term strategy for the minimisation and management of waste. One of the Bills before this Council at the present time for the closure of Wingfield is critical to the implementation of that strategy, but equally critical were further guidelines for proponents in terms of lodging future applications for any landfill site and for the assessment of those processes in terms of a very clear framework of how we would manage such applications and assessments.

The Government determined that operations at 20 000 tonnes or greater per annum in terms of receiving of landfill material would be assessed as non-complying development applications. However, all applications would be subject to the new policies in terms of slope, landfill gas extraction, the need for liners and leachate control, to name just a few.

The reason why we picked 20 000 tonnes or greater for non-complying development applications was our assessment that anything less than 20 000 tonnes should essentially be regarded as local council landfill serving a regional centre. It is quite clear that the proponent who has lodged these four applications for landfills under 20 000 tonnes does not regard them as local landfills serving a regional basis. The local area would not need such capacity. I should say that the State does not need that capacity, either. The applications will be considered under the Development Act.

The processes for the Development Assessment Commission will be advertised, and the Development Act itself provides for third party appeal rights. The Development Assessment Commission established by this Parliament, as I mentioned, is independent. We would all wish it to be so, and I have certainly respected that role. It is mandatory, again under the Act, that the Development Assessment Commission receive advice from the Environment Protection Authority and that the EPA does have the authority or power to direct that the Development Assessment Commission refuse an application. In that part of the process I certainly have no role as Minister.

However, while I have no role in that process, I take a very dim view of proponents who contrive a project to circumvent rules. I would hold that dim view in relation to any project. I certainly hold it in relation to these applications. It is quite apparent to me that the applications for these four contiguous sites are not designed to meet a local purpose, that is, 20 000 tonnes or under per annum in terms of catchment, lodgement and landfill size.

The Hon. T.G. Roberts: What is the application designed to do?

The Hon. DIANA LAIDLAW: In respect of the four new applications, I have not read them or seen them. They clearly are designed to receive landfill. As I say, the Government's guidelines of under 20 000 tonnes per annum are designed specifically to deal with regional and local council dumps. It is clear that these four adjacent sites would have capacity well beyond local purposes. Clearly, the applications have been contrived to circumvent the rules and the understandings that have been established in terms of the Government's setting the waste strategy.

The Hon. Sandra Kanck interjecting:

The Hon. DIANA LAIDLAW: I have not received that advice today; only that there is one company address. The applications have been lodged by different companies but there is one contact person and one address. I can provide the honourable member with that information if she so wishes.

INTERNET

The Hon. G. WEATHERILL: I seek leave to make a brief explanation before asking the Minister for Disability Services a question about the Internet.

Leave granted.

The Hon. G. WEATHERILL: As a virtual newcomer to the Internet I have found that the more—

Members interjecting:

The PRESIDENT: Order! It is very hard for the Minister to hear the question when there is discussion across the Chamber.

Members interjecting:

The Hon. G. WEATHERILL: Unlike the Hon. Mr Cameron and the Hon. Mr Davis, I do not profess to be an expert in this field, but I would have thought that two people as smart as they are on the Internet would ask the Minister some of these questions to support the people of South Australia and to protect them from things that are happening on the Internet. They are too smart for that. They do not care about anybody but themselves.

Members interjecting:

The PRESIDENT: Order!

The Hon. G. WEATHERILL: The more I use the Internet and talk to different people in different areas I find that young school children in particular—between the ages of eight, nine and 10—are experts in this field and are able to access pornographic material on the Internet. As you search for this material you are asked the question, 'Are you over 18?' You must answer 'Yes' or 'No.' I would imagine that, nine times out of 10, just for devilment kids would type 'Yes'. They are then able to access this area. Governments around Australia have not caught up with many of these things that are available on the Internet. For instance, I have not heard anything from any Ministers, Federal or State, about people using credit cards on the Internet. People have been able to access bank accounts—

The Hon. L.H. Davis interjecting:

The Hon. G. WEATHERILL: This is the man who is handling it, if you don't mind—and rip off people. Also, I understand that relevant legislation is before the Commonwealth Government which can also be accessed through the Internet. The Victorian Government also has before it legislation to combat much of the material that has been put on the Internet recently. My questions to the Minister—

The Hon. A.J. Redford interjecting:

The Hon. G. WEATHERILL: I did not see that.

The PRESIDENT: Order!

The Hon. G. WEATHERILL: Is the Minister having negotiations with the Commonwealth and Victorian governments in terms of what they are doing with respect to material on the Internet, and has the Minister made any reports or references to advise the public that they can get ripped off by giving their credit card details on the Internet?

The Hon. R.D. LAWSON: I thank the honourable member for his question, which I assume is really directed to

me in my capacity as Minister for Information Services although, as Minister for the Ageing, I think it is of significance to report that in this International Year of Older Persons we have initiated a number of programs to encourage older citizens to use information technology and the Internet. I am delighted—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.D. LAWSON: —that through libraries across the State and in a number of programs conducted by non-government organisations, such as the Council for the Ageing, we have been facilitating training courses for older people in the use of personal computers and the Internet.

On the matter of pornographic and other material on the Internet, all members will have recently received their personal computers through the MAPICS program. In the material that was supplied at the time those personal computers were issued, the attention of members was drawn to the fact that their computers, when being used by staff, might be used for the purpose of accessing material which might not be considered appropriate. The attention of members was drawn to a number of programs that exist to prevent access through the Internet to sites which are deemed inappropriate.

The Government, within its own Public Service, does have protocols and rules relating to the inappropriate use of computers for accessing material of that kind. A number of public servants have had to be counselled in relation to accessing inappropriate sites. However, I am advised that the problem is not serious in our Public Service.

The matter of the use of credit cards to make payments and the possibility of fraudulent access being had to people's credit sources is serious. For a number of months—in fact, I suppose it is now years—the computer industry has been seeking a way of ensuring that secure payments can be made over the Internet by encryption and other devices which will prevent persons obtaining access to credit card numbers and other payment mechanisms. That is an international problem, which is being addressed in this State and Australia. The State of South Australia is a member of the Federal Online Council, which comprises all Ministers with responsibility in this field, and that ministerial council is closely monitoring developments in relation to encryption.

In answer to the honourable member's question about whether this State is having consultations with the Commonwealth, I can inform him that we are through the online council. The honourable member's question raised a number of other significant and important matters. In so far as I have not answered them I will take them on notice and bring back a more detailed reply.

The Hon. CARMEL ZOLLO: I have a supplementary question, which I ask in view of the special nature of our jobs and the MAPICS information we received—

The PRESIDENT: Order! The honourable member must come straight to the question, without an explanation.

The Hon. CARMEL ZOLLO: I was explaining that it is in relation to the MAPICS contract. Clause 4 of the MAPICS contract that we received attempts to specify what Ozemail—the contracted Internet service provider to MAPICS—may do to ensure that its policy is followed. Subclause (4)(1) provides—

The Hon. A.J. Redford interjecting:

The Hon. CARMEL ZOLLO: Excuse me; you are not the President of this Chamber.

The PRESIDENT: Order! If you follow the Hon. Angus Redford's example, you must ask your question straight away.

The Hon. CARMEL ZOLLO: The Minister referred to the MAPICS information we received and the contract that was enclosed in that. The point I make is—

The Hon. A.J. REDFORD: I rise on a point of order, Sir. She has been told about four times now to ask the question. She is making an explanation.

The PRESIDENT: I ask the honourable member to ask her question.

An honourable member interjecting:

The PRESIDENT: No; it is not the honourable member's turn.

The Hon. CARMEL ZOLLO: Is the Minister able to advise what exactly is meant by monitoring our accounts in that contract to ensure that Ozemail policy is being followed? Do any Ministers, Government officers, employees or other contractors have access to members' email server and Internet account history logs? Will the Minister seek a specific terms of use agreement tailored to the needs of members? What general protection is offered to members as consumers and, in particular (other than those already mentioned by the Minister), what specific protection is offered relating to privacy and politically sensitive material?

The PRESIDENT: Before the Minister for Disability Services answers the question, I point out that supplementary questions ought to be one question as a quick follow-up. The way it has been done is very innovative but it will take away from the spirit of questions from either side of the Chamber.

The Hon. R.D. LAWSON: I do not have before me clause 4 of the document to which the honourable member refers, but I will be happy to examine it and provide the honourable member with a more detailed response in due course. However, I can assure the honourable member and members of the Council that under MAPICS arrangements there will be no monitoring by Ministers, governments or anyone else of access that members of Parliament have to the Internet. The privacy of members will be respected in the protocols which are being developed in the MAPICS project. The only monitoring that will be done is of a financial kind, because members will receive an allowance for the use of the Internet, and the contract that has been entered into by Ozemail Camtech does provide for costing.

The Hon. T.G. Cameron interjecting:

The Hon. R.D. LAWSON: The Hon. Terry Cameron's interjection raises the point about how—

The Hon. T. CROTHERS: I rise on a point of order, Sir, given your ruling about supplementary questions. In light of the way in which you ruled in respect of supplementary questions, is the Minister out of order by responding to interjections?

The PRESIDENT: The Minister is not out of order, in my opinion. He should not be answering interjections—and neither should anybody else—but the Minister can answer questions in the way he wishes to. I point out that time is running out for Question Time.

The Hon. R.D. LAWSON: The exact nature of use of the Internet by the 69 members of this Parliament is not yet determined, and in due time we will ensure that everybody has maximum possible use of the Internet on a monthly basis. We envisage that some will have little use of the Internet, while others will have very substantial use. It is intended that the contract we have with the Internet service provider, Ozemail Camtech, will provide a flexible program.

TRANSPORT ACT REVIEW

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning questions concerning the review of the Transport Act 1994.

Leave granted.

The Hon. T.G. CAMERON: The *Advertiser* of Saturday 13 February carried an advertisement promoting the review of the Passenger Transport Act 1994 in relation to competition policy. The advertisement states:

> In accordance with clause 5 of the Competition Principles Agreement signed with the Commonwealth Government in 1995, the Passenger Transport Act 1994 is being reviewed. The guiding principle for the review is that the Act should not restrict competition unless:
> ·The benefits of the restriction to the community as a whole outweigh the costs
> ·The objectives of the Act can only be achieved by restricting competition.

I have some real concerns about the independence of the review. The consultants undertaking the review, Bronwyn Halliday and Associates, are the same consultants who undertook a review into the performance of the PTB under the Transport Act last year. My questions to the Minister therefore are:

1. What process was used to appoint the consultants conducting the review and, considering the role they played in last year's review into the PTB, is the Minister confident that this review can be independent?

2. If parts of the current Act and regulations are found to be anti-competitive, will the Minister give an assurance that recommendations will be implemented as soon as possible?

3. Does the Minister consider five weeks to be enough time to consult with industry, consumers and other interested parties?

The Hon. DIANA LAIDLAW: I suspect I should explain the process which I hope will confirm in the honourable member's mind that there is no question regarding the independence of those undertaking this work. The consultants will produce an issues paper, which will then be widely circulated across South Australia and possibly interstate, concerning the issues in public transport, taxi regulation and hire cars—all those issues. It will be a very public process. Consultants identified the issues. The issue paper goes out, and responses are then assessed by the consultants. The report then comes to me and goes to Cabinet in terms of noting the responses to these reports. I am totally confident that it is independent.

I can advise the honourable member that the Passenger Transport Board nominated Ms Bronwyn Halliday to do the report, supported by Mr Barry Burgan of the University of Adelaide (Centre for Economic Studies, I think) who is deemed to have expertise in this area. Those two names were then put to the Department of Premier and Cabinet, which is looking at the consultancy criteria in every instance and at the people undertaking the consultancies to make sure that from a State and industry perspective all the guidelines for these consultancies that we are required to undertake for competition policy meet the competition policy guidelines. There is hardly any point going through this whole exercise without having first checked that the processes being adopted will meet the guidelines set by the national competition policy.

So, this will be a big issue for the taxi industry and for the hire car industry. We have already had debates in this place about regulations and standards and a whole range of factors that may be seen as restricting competition. I highlight that the Government in this State and those across Australia have indicated that there is a case for continuing the regulation of the taxi industry.

I know that the Hon. Terry Cameron has not always held that view. I do not know what his new Party's policy is on the question, but the honourable member may like to respond to the issues paper or speak to me generally about this matter. But, generally, it is the view of Transport Ministers across Australia that there should continue to be regulation in the taxi industry. However, we must support that case through Government response to this consultancy. We have yet to win the case, because it has to be accepted by the Competition Policy Commission.

PILCHARDS

In reply to **Hon. IAN GILFILLAN** (10 December 1998).

The Hon. K.T. GRIFFIN: The Deputy Premier and Minister for Primary Industries, Natural Resources and Regional Development has provided the following information:

1. The Pilchard Fishery Working Group (a joint industry Government body) recommended to the Minister for Primary Industries, Natural Resources and Regional Development that the 1998 quota for pilchards in South Australia be 11 500 tonnes. As of the 19 November 1998 approximately 7 000 tonnes of this quota had been taken. Many fishermen had already filled their individual quota for 1998. Both PIRSA Fisheries and SARDI were of the view that the impact on the stocks by reopening the fishery on 20 November 1998 would be minimal given that there were only approximately 6 weeks fishing remaining in the year. The scientific information which is also being collected as part of commercial operations would also be invaluable in assessing the impact of the recent pilchard kill. The honourable member should note that the total spawning biomass in South Australian waters in 1998 was approximately 95 000 tonnes. The South Australian Fisheries Director, Dr Gary Morgan, was unfortunately misquoted in a newspaper article as saying that 100 000 tonnes of pilchard had already died. This figure related not to the amount that had died but to the total spawning biomass as estimated by SARDI.

2. Pilchards grow rapidly and, based on the observations of recovery time after the 1995 kill recovery should only take 12 – 18 months. Most of the fish that died during the recent mortality event were large adult fish, with smaller juvenile fish being much less affected. As a result there are large numbers of juvenile fish which will grow to provide that basis of the 1999 and subsequent fisheries.

3. A comprehensive nationally coordinated research program has been put in place and has been endorsed by the Consultative Committee on Emergency Animal Diseases. At its last meeting in Adelaide on 15 December 1998 this joint pilchard scientific working group was provided with information on penguin and seal monitoring programs which have been put in place by DEHAA to assess any impacts of the pilchard kill.

4. No other species have been affected.

5. The Pilchard Fishery Working Group is developing a long term scheme of management for the pilchard fishery with a view to implementing this in 1999.

6. South Australia is both nationally and internationally recognised as a leader in fisheries management particularly in the way in which industry and Government work together to establish management arrangements. This national and international recognition should be applauded.

SEWERAGE CHARGES

In reply to **Hon. J.F. STEFANI** (26 November 1998).

The Hon. K.T. GRIFFIN: The Minister for Government Enterprises has advised that the increases in charges for sewerage services to residential customers in the Adelaide metropolitan area were as follows:

Year	Metropolitan Rate	Increase %	Minimum Rate	Increase %
1994-95 Base	0.222%	-	$186	-
1995-96	0.232%	4.5%	$194	4.3%
1996-97	0.246%	6.0%	$203	4.6%
1997-98	0.251%	2.0%	$205	1.0%

The average increase in property value for residential customers for 1995-96, 1996-97 and 1997-98 were:

1995-96 1.8%
1996-97 -1.8%
1997-98 -0.1%

The increases in charges for sewerage services to commercial customers in the Adelaide metropolitan area were as follows:

Year	Metropolitan Rate	Increase %	Minimum Rate	Increase %
1994-95 Base	0.233%	-	$186	-
1995-96	0.232%	-0.4%	$194	4.3%
1996-97	0.246%	6.0%	$203	4.6%
1997-98	0.251%	2.0%	$205	1.0%

The average increase in property values for commercial customers for 1995-96, 1996-97 and 1997-98 was:

1995-96 -0.1%
1996-97 0.3%
1997-98 0.2%

* Note: The overall increase in 1995-96 included a 0.5% increase in the Environmental levy.

EMPLOYMENT

In reply to **Hon. R.R. ROBERTS** (6 August 1998).

The Hon. K.T. GRIFFIN: The Minister for Government Enterprises has advised that:

1. The Department of Industry and Trade is providing some assistance to Schlumberger for relocation of its Head Office and manufacturing facilities to Adelaide. This type of assistance was available to all tenderers and is in line with the Government's normal incentive arrangements. Details have been presented to the Industries Development Committee and were fully accounted for in the selection process. In line with commercial practice, the exact details of the package remain confidential.

2. SA Water has contracted with the Australian registered company Schlumberger Measurement and Systems Pty Ltd which is a wholly owned subsidiary of Schlumberger Limited.

Schlumberger Limited is a large multi-national company listed on the New York Stock Exchange and on exchanges in Paris, London, Amsterdam and Switzerland. It is one of the two largest metering businesses worldwide, the other being Asea Brown Boveri, the multi-national parent company of Davies Shephard, the other shortlisted company.

There is no company or contractual relationship between United Water and Schlumberger.

Schlumberger Limited has operations in over 100 countries, and Compagnie General Des Eaux (CGE), one of the parents of United Water, is a world wide water company. Schlumberger sells meters to CGE in France and possibly in other countries.

Schlumberger has advised that CGE does not appear on the register of shareholders of Schlumberger Limited, and that Schlumberger Limited does not hold any direct shares in CGE.

The contract is between Schlumberger and SA Water. United Water has had no involvement in the evaluation or selection process. The process has been overseen by an independent Probity Auditor.

3. Under the terms of its contract with SA Water, Schlumberger is contractually committed to achieve certain Economic Development outcomes in addition to supplying meters. These include:

- Establishment of a water meter manufacturing business in Adelaide within six months;
- Relocation of its Australian head office from Melbourne to Adelaide, within nine months;
- Establishment of a gas meter and regulator manufacturing and calibration business in South Australia within 12 months. This is currently located in Melbourne; and
- Generation of sales that have a local South Australian content of $46.5 million over the six years. (Gross sales required to achieve this are approximately
  $75 million).

Direct employment created by these commitments is expected to rise to 90 people over the six years. These 90 people will be employed either by Schlumberger or by local South Australian businesses which will produce components or be suppliers to Schlumberger. The indirect flow-on effects from this contract have been modelled by the SA Centre of Economic Studies which indicate that the total employment effect is in excess of 200.

In relation to the role of the Phoenix Society, it currently has a contract with SA Water to refurbish old meters removed from the water network. Refurbishment is no longer economically viable and will cease once new meters are available.

Under the contract, Schlumberger or its suppliers will manufacture approximately 70 per cent of the meter components in South Australia, with the remaining specialised components being imported. Schlumberger will contract with the Phoenix Society to assemble and test meters in Adelaide, thereby offering an opportunity for Phoenix to enter the precision assembly business. The Government, through SA Water's Industry Best Practice Program will support Phoenix with retooling and retraining some staff so that it can acquire the new skills necessary to take on this more challenging work.

Over the next year, SA Water and Schlumberger have agreed to explore how the specialised imported components can be manufactured in South Australia. This will offer further opportunities for precision high technology business to expand and compete internationally. The net result will be more jobs and further business growth.

KATNOOK GAS TURBINE POWER GENERATION STATION

In reply to **Hon. T.G. ROBERTS** (27 October 1998).

The Hon. DIANA LAIDLAW: Boral submitted a development application for the Katnook Gas Turbine Power Generation Station to the Wattle Range Council. Neither Planning SA nor the Development Assessment Commission was contacted by Boral for any assistance in regard to the proposal, and neither had any involvement in the processing of the application.

Council granted planning consent to the proposal on 17 November 1998. Council has advised that there were no appeals against this approval.

ElectraNet lodged an application with the Development Assessment Commission for a 132KV transmission connector for the power station to the National Grid. ElectraNet is a Crown Agency under the Development Act 1993 and therefore the proposal was assessed pursuant to Section 49 of the Act (Crown Development).

Planning SA assisted ElectraNet with this application. The application was approved on 22 December 1998.

ENVIRONMENT PROTECTION AUTHORITY

In reply to **Hon. M.J. ELLIOTT** (9 February).

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

1. The current staffing level at 31 December 1998, including temporary staff and externally funded staff was 172.8 FTE's. There are also a further 22.0 staff in the regional areas of Berri, Mount Gambier and Port Augusta that are notionally attached to the EPA. These staff will become formal members of the Agency on 1 July 1999.

2. The staff of the EPA are allocated to tasks as follows:

Task/area	FTE	Task/area	FTE
Executive	4.0	Staff Training	1.6
Business Services	16.0	Publications & Education	2.0
Atmosphere & Noise Strategy	6.0	Customer Services Desk	2.0
Coast, marine & catchment strategies	9.0	EPA & Water Admin & Licensing	23.2
Waste Strategy	10.0	Air Monitoring	4.0
Board Support	3.0	Water Monitoring & Information	24.0
Planning Assessments	2.0	Investigations & Enforcement	4.0
Technical Support/Advice on Air, Noise, Waste, Water & Contaminated sites	16.0	Compliance management in air, noise & water (Northern & Southern Zones)	21.0

Task/area	FTE	Task/area	FTE
Special Projects – mainly externally funded projects, eg Waterwatch, NPI, Coastwatch & Stream Riparian	18.0	Strategy, Operations & Evaluation management	7.0

It is important to note, however, that it is the nature of the Agency's work that there is considerable overlap. For example, while only two FTEs are nominated for Planning Assessments most operational officers are involved in assessing development applications referred to the Agency for comment.

3. The following table shows the funding levels for each of the past five years. The financial year 1994/95 shows the financial effect of merging the SA Waste Management Commission with the Environment Protection Office. Data for 1997-98 show the post restructure situation which includes EPA, Coastal Management, Water resources licensing, and hydrometric functions.

1994-95	$	$
Environment Protection Office	4 851 000	
SA Waste Management Commission	1 137 600	
Total 'EPA'		5 988 600
1995-96		6 392 700
1996-97		7 958 000
1997-98		9 722 000
1998-99		13 247 000

4. If a member of the public expressed a grievance regarding an officer's action the matter would be investigated by the appropriate manager or, if necessary, the EPA Executive.

If a grievance should be expressed regarding the Agency's actions the EPA Investigations Unit would carry out an internal investigation.

If that investigation was considered unsatisfactory the grievance could be referred to the Ombudsman for an independent consideration of the matter.

5. The Government's view is in accordance with the provisions within the *Environment Protection Act 1993*. The Act requires considerable public notification and allows public access to most of the information held by the EPA. With particular relevance to the question is the requirement under Section 109 of the Act that the Authority must keep a Public Register of information. The register must include:

- details of authorisations and details of development applications referred to the Authority, both including conditions;
- details of any suspension, cancellation or surrender of an environmental authorisation or any disqualification imposed;
- details of beverage container applications and approvals;
- details of incidents causing or threatening serious or material environmental harm that come to the notice of the Authority;
- details of orders issued under the Act and of any consequent action taken;
- details of prosecutions and other enforcement action;
- details of civil proceedings before the ERD Court under the Act; and
- other information as prescribed.

Information about what is to be done in relation to environmental improvements is generally available from the public register. The only information in this regard that is not available to the public is that found in Voluntary Environment Improvement Programs. These programs are intended to advance environmental improvement beyond minimum levels. This information often has commercial sensitivity and is not to be made public.

In addition, much other information is made freely available including the results of monitoring carried out by and for the EPA.

It is evident from the Government's support for the Act that the Government believes in the public's right to know, with the necessary restrictions where commercial confidence is required.

ELECTRICITY, PRIVATISATION

In reply to **Hon. NICK XENOPHON** (22 July 1998).

The Hon. R.I. LUCAS: I provide the following response to the honourable member's questions about the advertising campaign to promote the sale of ETSA and Optima (ET*SALE* campaign):

1. Funding was provided by the Department of Premier and Cabinet, Premier's Other Payments – Promotion of the State line

2. The legislative provision for the funding is provided for under the 'Premier and Minister for Multicultural Affairs—Other Payments'.

3. As I indicated in Parliament on 22 July 1998, the Government authorised the program.

4. Actual costs amounted to $ 331 564.59 as follows:

- Costs of placement of television time and print media advertisements over the period 1/7/98 to 5/7/98.

Media-Television	Dates From	Dates To	Cost
ADS10 Adelaide	30/6/98	5/7/98	6 871.00
NWS 9 Adelaide	30/6/98	5/7/98	14 859.00
ADS 7 Adelaide	30/6/98	5/7/98	17 888.00
GTS 4 Port Pirie	30/6/98	5/7/98	3 623.00
RTS 5A Riverland	1/7/98	5/7/98	1 282.00
SES 8 Mt Gambier	30/6/98	5/7/98	2 909.00
Government Service Fee			630.85
Total			$ 48 062.85

Media-Regional Radio	Dates	Cost
5AU Pt Augusta/Whyalla	28/6/98	678.00
5CC Pt Lincoln/Eyre Pen	28/6/98	678.00
5CS Whyalla/Pt Augusta	28/6/98	678.00
5MU Murray Bridge	28/6/98	678.00
5RM Berri	28/6/98	678.00
5SE Mt Gambier	28/6/98	678.00
Government Service Fee		54.10
Total		$4 122.10

Media–Print	Date	Cost
Australian Financial Review	1/7/98	9256.80
The Australian	1/7/98	8192.80
Advertiser	1/7/98	4788.00
	4/7/98	7597.63
Sunday Mail	5/7/98	7182.00
Adelaide Review	1/7/98	3200.00
Regional Papers	1/7/98	20 526.15
Government Service Fee		807.89
Total		$61 551.27

Costs of design, production and distribution of brochure 'ET*SALE*': $89 818.10

Costs of design and production of television and radio commercials,
print advertisements, research and development of media and community
strategy: $128 010.27

UNEMPLOYMENT

In reply to **Hon. T. CROTHERS** (26 November 1998).

The Hon. R.I. LUCAS:

1. In looking at the State Public Service, the non-commercial sector in full-time equivalent terms has fallen from 73 989 employees in June 1992 to an employment level of 63 875 in June 1998, a decline of 10 114 or 13.7 per cent.

Data on Commonwealth Government employment for South Australia is available only to 1996-97. Between 1991-92 and 1996-97, Commonwealth Government employment in the State fell from 11 200 to 8 400—a fall of 2 800 or 25 per cent.

It is impossible to estimate job increases or declines in the private sector that are directly attributable to globalisation and economic rationalisation – however these words are defined. Globalisation and rationalisation affect different industries in different ways at different times. It is worth pointing out that despite the falls in State and Commonwealth Public Sector employment, the unemployment rate in South Australia has fallen since this Government took office in December 1993, from 11.1 per cent to 9.3 per cent in January 1999. Over this period, employment has increased by 26 200 or 4.1 per cent.

2. Living standards are notoriously difficult to measure, because of the subjectiveness of weightings of certain variables. For example, are improvements in access and quality of health more important as a living standards variable than increasing income? One economic variable widely considered as a sound indicator of living standards is household income per head of the population. In the 10 years to 1996-97, household income per head of mean population in South Australia has increased in nominal terms by $7 857, or 63 per cent.

Over this period, Adelaide's inflation rate rose by a lesser 50 per cent.

3. Measuring inequality is also difficult, because there are monetary and non-monetary considerations in defining inequality. A monetary measure of inequality is to look at trends in the distribution of weekly total earnings of full-time adult non-managerial employees. However, this does not take account of non-wage and salary income sources. Unfortunately, the latest data on weekly total earnings of full-time adult non-managerial employees for South Australia relate to May 1996. This shows that over the period the wage in the 25th percentile of employees (ie the wage level at which three-quarters of employees are at a higher wage) increased from $356.10 in May 1988 to $489.70 in May 1996—an increase of 38 per cent. Looking at higher incomes, the median wage (ie that wage level at which half of all employees are at a higher wage) increased from $421.10 to $587.10 over this period—a rise of 39 per cent. The 75th percentile (the wage level at which one-quarter of employees are at a higher level) increased from $528.60 in 1988 to $757.80, a rise of 43 per cent. By this measure, income inequality has widened in South Australia. Over this period, Adelaide's CPI rose by 36 per cent, implying a small rise in real wages.

4. The Minister for Employment and Minister for Youth and the Minister for Education, Children's Services and Training have advised that certainly the Government would agree that there is a place for specifically targeted education and training initiatives and there have been many examples of this. In particular, in relation to the Information Technology and Telecommunication industry sector, which the Honourable member referred to, the Government has been most active in bringing together academic institutions and industry to fulfil the workforce needs of the sector.

The Government, through the then IT Workforce Strategy Office, conducted one of the first in depth surveys of the industry sector to be undertaken in Australia. Part of this survey was to assess the future workforce and skill demand and use this information to ensure the institutions and training providers were able to meet these needs.

This information has been used extensively in the preparation of the industry training plan by the Information Industries Training Advisory Board and used by individual TAFE institutes for the development of their programs.

In addition, the Government has provided seed funding for the creation of new Chairs in Information Technology at the State's three universities. This funding, which has been matched by the universities will see the creation of five new Chairs in Information Technology and Telecommunications. A 'consortium' consisting of industry sector leaders is also being formed to direct the research programs.

SCHOOL BUSES

In reply to **Hon. CAROLINE SCHAEFER** (17 November 1998)

The Hon. R.I. LUCAS: The Minister for Education, Children's Services and Training has provided the following information.

The Department of Education, Training and Employment has examined Bureau of Meteorology scientific advice on climate and air conditioning requirements in sparsely occupied areas of Australia, and recorded data from the South Australian Regional Office of the Bureau of Meteorology on local areas subject to maximum temperatures greater than or equal to 35 degrees Celsius on at least 25 school days a year.

In applying South Australian Bureau of Meteorology analysis of days when the maximum temperature is greater than or equal to 35 degrees Celsius on at least 25 school days, there is a defined boundary across the state, north of which school bus airconditioning is to be trialed. In this area, the department currently provides seven school bus services to and from Roxby Downs Area School, Leigh Creek Area School, and Murputja, Ernabella, Kenmore Park, and Pipalyatjara Anangu Aboriginal Schools.

The department has selected the following school bus routes at Roxby Downs, Leigh Creek and Murputja to trial airconditioning. School participation in the trial is subject to consultation with local principals and Aboriginal Community elders and their acknowledgment that there is no guarantee of ongoing airconditioned school buses.

The Roxby Downs Area School's large department owned and operated bus travels 34 kilometres a run over bituminised road to transport school children residing at Andamooka.

Leigh Creek Area School is served by two department owned and operated (small and large) buses which transport school children from the outlying Nepabunna and Lyndhurst areas. The department has selected the Nepabunna school bus, which travels 70 kilometres over a dirt road with five or six bus stops.

The Murputja Anangu School's small department owned bus travels over very corrugated dirt roads, in conditions described as extreme.

The numbers of students using the Roxby Downs and Leigh Creek school buses are likely to change for the start of the 1999 school year. This may result in a realignment of services at Leigh Creek and a transfer of the large bus to the Nepabunna run. A small bus may also replace the large bus at Roxby Downs.

Officers from the department have advised that it takes approximately two months to supply and fit appropriate airconditioning to a large Hino school bus and two to three weeks for a small school bus. Having regard to all of the resource and trial factors, the project plan to conduct a trial of fitting and operating school bus airconditioning at Roxby Downs, Leigh Creek and Murputja in 1999 will take time to implement and complete. The department has advised that a detailed report on all aspects of testing school bus airconditioning at three locations of the state should be available by the end of May 1999.

MANUFACTURING INDUSTRY

In reply to **Hon. T.G. ROBERTS** (27 November 1998).

The Hon. R.I. LUCAS: The Premier has provided the following information.

1. There is no substantive evidence to indicate that the manufacturing sector in South Australia is in a slide.

The manufacturing sector did experience the effects of reduced tariff protection during the 1980s and during the first half of the 1990s when average rates of protection for the sector fell from 10 per cent to 5 per cent. While further tariff reductions are in prospect for the automotive and textiles, clothing and footwear industries, most of the dislocation is behind us.

Over the past five years, the prime emphasis of the manufacturing sector has been to increase productivity and become more internationally competitive. Notwithstanding the structural change and instability that has impacted upon our manufacturing sector over the past 15 years, there have been many success stories, especially over the past 5 years:

- Gross industry product for the manufacturing sector increased 33 per cent over the period 1991-92 to 1996-97.
- During 1997-98, South Australian manufacturers directly exported $3.4 billion of the goods they produced. This represents a 6.3 per cent increase on the $3.2 billion recorded for 1996-97 and is to be commended considering the current economic climate. Over the five years to 1997-98, annual average growth for South Australian manufacturing exports has been 9.4 per cent, compared to 6.5 per cent for total South Australian exports.
- Manufacturing employment in South Australia throughout 1998 averaged 101 000 persons, an increase of 1.1 per cent on 1997. Although employment numbers fell sharply in the 1980s and early 1990s, employment levels in manufacturing have stabilised over the past two years.

These figures make it difficult to point to a slide in manufacturing.

2. There is no requirement to develop a separate policy as there is no evidence of 'desperate Asian nations' export drive into the manufacturing sector.

The latest import/export figures from 1997-98 show an increase in imports from our major Asian trading partners in dollar values which in part reflects currency devaluations in these countries. There is no evidence of "dumping" products in Australia and if this is the case there are mechanisms in place to deal with such matters.

During this same period our exports grew in the Asian Area by around six per cent. As the Asian monetary crisis is a significant issue for Australia, the Federal Government has established a number of measures to assist our importers/exporters as follows:

- Additional trade credit insurance to Australian exporters.
- Convening "export summits", Trade Policy Advisory Council Meetings and National Trade Consultations which allow industry representatives to discuss directly with Ministers the impact on Australian firms of trade flows.
- Providing information and identifying opportunities, while urging companies to undertake appropriate planning and risk management as they increase sales and seek to take advantage of lower market entry costs in the region. For example, Austrade's Internet

site provides alerts and advice updated weekly and seminars and conferences dealing with the East Asian crisis.

- Co-sponsoring the Australia Summit in June in 1998 in Melbourne, where business and government leaders from around the region discussed regional renewal and related business strategies.
- Taking opportunities to the World Trade Organisation, and in particular through the Cairns Group, to open markets for Australian business.

Likewise the South Australian Government has an extensive array of assistance measures delivered by the Department of Industry and Trade through The Business Centre (TBC) and the South Australian Centre for Manufacturing (SACFM).

BAKER, Mr J.

The Hon. IAN GILFILLAN: I seek leave to make a brief explanation before asking the Attorney-General a question about the settlement with John Baker, the previous Managing Director of Beneficial Finance.

Leave granted.

The Hon. IAN GILFILLAN: It is not long ago that there was publicity of the settlement with the previous manager of the State Bank, Tim Marcus Clarke. Quite properly, the details were made public and it was able to be questioned in this place. I am not making a judgment as to how one regarded the quality of that settlement, but at least it was in the public domain.

Mr Baker held, at the time of his general managership of Beneficial Finance, a position of public trust, managing a wholly owned subsidiary of the people's own bank, the Bank of South Australia. Therefore, he was in effect either managing or mismanaging public assets. From a report in this morning's *Advertiser*, it is understood that there were allegations of fiduciary and professional breaching of his duties in those areas and that the Government filed legal action on 6 October 1995. My questions to the Attorney are:

1. For what reason can it be argued that the settlement should be kept secret from the people of South Australia? Was there some advantage to the people of South Australia in the settlement being kept confidential? If it was, surely the reason for that can be made public.

2. Does the Attorney agree that, in the light of the secrecy, it is reasonable to expect that some deal was done which the Government itself is ashamed to make public?

The Hon. K.T. GRIFFIN: In normal circumstances I would generally insist on any settlement in matters as controversial as State Bank matters being available for public scrutiny. In this particular matter there were, I thought, some good reasons for the terms to be confidential. Essentially, they related to issues that I will canvass in my response. The deed of settlement does acknowledge that:

> . . . the terms and conditions of the deed of settlement will be kept strictly confidential and will not be disclosed to any third party, except where such disclosure is required by law or pursuant to this deed, or where such disclosure is required to be made in the usual course to the solicitors or advisers to the State of South Australia or Mr Baker or by mutual agreement in writing.

That clause is subject to a further subclause, as follows:

> Both Baker and Beneficial acknowledge and accept that the Attorney-General is responsible to Parliament, is subject to constitutional convention and is a Minister and member of Cabinet and of the Executive Council. Consequently, the Attorney-General may be required to respond to questions or provide information concerning this deed and to disclose some or all of its terms, in which case both Mr Baker and Beneficial Finance agree to make no objection in relation to any disclosure. However, any disclosure made pursuant to the deed is subject to the right of any party to reply in the event such disclosure is unfair, inaccurate or misleading.

So, it is recognised that I have an obligation that if I am asked a question I have to answer it, although I can answer it in such manner as I judge to be appropriate. It needs to be recognised that there is information about these proceedings on the public record. I issued a press release on 7 October 1995, and for the sake of the record I should read it into the *Hansard*. It is a media release headed, 'Government issues legal proceedings', and is as follows:

> On the advice of the Acting Crown Solicitor, legal proceedings have been issued in the Supreme Court against the former Managing Director of Beneficial Finance Corporation, Mr John A. Baker. In May last year the Government received written advice from the bank litigation section of the Crown Solicitor's office which supported the issue of proceedings against Mr Baker in respect of a particular transaction in 1989. The transaction relates to a loan from BFC to Lameroo Lake. Lameroo Lake is a Melbourne real estate development group. The proceedings are a claim for damages for losses suffered by BFC in excess of $4.3 million.
>
> The basis of the claim against Mr Baker relates to an alleged conflict of interest. Beneficial Finance Corporation also alleges a breach of fiduciary duty and a breach of various statutory duties under the companies code. Civil proceedings will not be issued against other employees and officers of BFC who were involved in this particular transaction. On 21 June 1993 Cabinet approved the establishment of the Bank Litigation Task Force. It was to consider and advise on any civil claims arising out of the Auditor-General's inquiry or the Royal Commission reports. It was agreed and arranged that the task force would act for the State Bank and its subsidiaries and for the Government.
>
> The Government has since issued civil proceedings against some of the former Directors of the State Bank; their insurers FAI; the former auditors of the State Bank, KPMG Peat Marwick; and former auditors of Beneficial Finance and some of its subsidiaries and affiliates, Price Waterhouse. The Government has adopted the general principle that, except in the case of a breach of a fiduciary duty, legal action for civil recovery should not be instituted unless there is a reasonable prospect of recovery of sufficient moneys to justify the costs involved in the legal action.

This matter has been pursued in the courts since that time. Some uncertainties arose over a period of time in those proceedings. I requested counsel's opinion last year and sought advice with regard to the action. I received a detailed opinion in August 1998. That opinion identified that there was a significant evidentiary problem which had developed in relation to one witness and that that created some difficulty for the State. I do not think it is appropriate for me to identify that evidentiary problem or difficulty. I can give an assurance that that was the advice that was given by counsel. That made some difference to the way in which the State pursued the matter against Mr Baker.

It is fair to say that Mr Baker has at all times pleaded that he acted honestly. In that sense, therefore, it was always possible that the court could exercise its discretion to grant him relief under section 535 of the Companies Code. That section enabled a court to relieve a person who acted in breach of duty from liability either in whole or in part where that person had acted honestly. All the circumstances of the case warranted the person being relieved of liability in the action. There was that possibility that the court may exercise its discretion in favour of Mr Baker.

It is also fair and important to say that notwithstanding the fact that the State has pursued Mr Baker for an alleged conflict of interest in these proceedings, he has cooperated with the South Australian Asset Management Corporation, that is, the remnants of the State Bank, in its efforts to make other recoveries as a result of the collapse of the State Bank.

The Hon. Ian Gilfillan interjecting:

The Hon. K.T. GRIFFIN: Yes, I will talk about that in a minute. In the light of the advice that I received and in the light of discussion that occurred between the parties, it was

put to me that the State should consider endeavouring to settle the matter. The estimate which has been received—and it is only an estimate—of the costs which have been incurred by the Government in relation to this matter is something like $136 000. If we had gone to trial, the estimated cost was a further $70 000. There were a lot of interlocutory matters where Mr Baker was disputing our right to take certain steps, so there was a lot of litigation. On the basis of the advice that I received and the assessment that his assets were very limited, notwithstanding the very large amount that was originally being claimed, the Government took the view that a settlement was appropriate.

I have been asked what the terms of the settlement are and, whilst they are confidential, I think it is appropriate to identify that the total amount payable is $25 000. Let me say, before the media becomes too rampant about that figure when compared with the amount that was originally claimed, that on all the advice that I received that was a fair figure, taking into consideration also that Mr Baker had been cooperating with the State and its legal team in relation to other recoveries it was seeking to make from other debtors of the South Australian Asset Management Corporation, which as I said is the remnants of the old State Bank.

I can understand that some may be critical of the limited recovery. On the other hand, there comes a time when one has to make a judgment about what is the appropriate way to deal with a particular piece of litigation from the amount of the costs that I have indicated were likely to be further expended by the Crown with very little prospect of recovery, even if we had been successful in the case. I took the view that the matter should be settled, and that was done on proper advice. That is where it rests.

I hope that, in the light of the confidentiality provision in the deed, the parties to that deed—Beneficial Finance and Mr Baker—will see the response that I have now given as a fair response and one which would not warrant any comment by them to the media. If they do comment, that is a matter for them. I am very sensitive to trying to be fair in the way I represent this matter. If either of the parties feels that my explanation has not been a fair and reasonable summary, I would expect them to let me know and I would endeavour to correct it if I believed the points that they made to me were well made. I have no control over the way the media will now report this.

The Hon. Ian Gilfillan: What was the point of secrecy?

The Hon. K.T. GRIFFIN: The point of secrecy was that there had been cooperation with the Government, there were disputes from the other side about the substance of the claim, which were very strenuously fought by Mr Baker, and the amount was relatively small, so the view was taken that it was not inappropriate to deal with the matter on a reasonably confidential basis. It is now in the public arena because the question has been asked in Parliament. All the parties recognised that may be the case and that is why I have been frank with the Council in relation to the terms of the settlement.

PARLIAMENTARY SUPERANNUATION (ESTABLISHMENT OF FUND) AMENDMENT BILL

Second reading.

The Hon. R.I. LUCAS (Treasurer): I move:

That this Bill be now read a second time.

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

Leave granted.

This Bill seeks to make some amendments to the *Parliamentary Superannuation Act 1974.* The changes will impact on the administration of the scheme without having any impact on the structure of members' benefits.

The principal change being sought in the Bill is the establishment of a formal fund, which shall hold assets to meet the liabilities under the scheme. The assets will reflect the balance of both member and employer contributions, and investment earnings on those contributions, necessary to fund the entitlements under the scheme.

The scheme had a formal fund up until the mid 1980's, when a decision was made to dispense with the fund as the scheme was largely unfunded with benefits guaranteed and payable from the Consolidated Account. Now that the scheme has been fully funded by the Government, it is appropriate that a formal fund be established.

Without the existence at present of a formal fund, the Act refers to 'notional contribution accounts' being constructed in those circumstances where it is necessary to determine the employee component of a benefit to be paid to a former member.

The amendments included in this Bill will not only formally establish a Parliamentary Superannuation Fund, but also require the Parliamentary Superannuation Board to establish and maintain member contribution accounts for all members.

The Bill also provides for the balance held by the Treasurer in the special deposit account as at 30 June 1998, to be transferred to the Fund. As at 30 June 1998, there were sufficient assets held in the special deposit account to match the actuarially determined liabilities of the Parliamentary Superannuation Scheme.

The establishment of a fund will also provide for a more appropriate basis for crediting interest to members' contribution accounts, and will bring the scheme into line with a normal member contributory superannuation scheme.

The Bill also proposes an amendment to section 22A, in order to address a technical deficiency in the existing provision which deals with the entitlements of members of the new scheme who leave the Parliament with less than 6 years service. The amendment clarifies the amount of the employer component preserved for a former member who elects on leaving the Parliament, to take an immediate payment of the employee component.

The restructuring contained in this Bill will provide for more efficient administration of the scheme.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

It is important that the amendments relating to the Fund made by this Bill operate from the commencement of a financial year. The clause provides for the operation of the Bill from 1 July 1998.

Clause 3: Amendment of s. 5—Interpretation

This clause adds two new definitions to the interpretational provision of the principal Act.

Clause 4: Insertion of Parts 2A and 2B

This clause inserts new Parts 2A and 2B into the principal Act. New Part 2A establishes the Parliamentary Superannuation Fund and corresponds to provisions in other superannuation legislation establishing superannuation funds. Part 2B provides for members' contribution accounts and is similar to corresponding provisions in other superannuation legislation.

Clause 5: Repeal of s. 21B

This clause repeals section 21B which has been superseded by new section 13B.

Clause 6: Amendment of s. 22—Other benefits under the old scheme

This clause makes a consequential change to section 22 of the principal Act.

Clause 7: Amendment of s. 22A—Other benefits under the new scheme
This clause amends section 22A of the principal Act. Paragraph *(a)* inserts a new subsection (2) which spells out in more detail than the existing provision that the employer component which may be paid many years after the employee component will not be reduced to zero because the payment of the employee component (which is equivalent to the balance standing to the credit of member's contribution account) has been debited against that account. New subsection (2a) deals with the position of the person who was a former member before 1 July 1998 and therefore does not have a contribution account. New subsection (4) gives the former member the option of rolling over the employee and employer components over to another superannuation fund or scheme. The remaining provisions added by this clause are consequential.

Clause 8: Amendment of s. 39—Financial provision
This clause adds a provision that is found in the other superannuation Acts. The benefits under the principal Act are paid by the Treasurer from the Consolidated Account or a special deposit account and this provision allows the Treasurer to obtain reimbursement by charging the amount of benefits against the Fund.

Clause 9: Repeal of Schedule 1
This clause repeals schedule 1.

Clause 10: Amendment of the Superannuation Funds Management Corporation of South Australia Act 1995
This clause makes a consequential amendment to the *Superannuation Funds Management Corporation of South Australia Act 1995.*

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

STAMP DUTIES (MISCELLANEOUS) AMENDMENT BILL

Second reading.

The Hon. R.I. LUCAS (Treasurer): I move:

That this Bill be now read a second time.

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

Leave granted.

The *Stamp Duties (Miscellaneous) Amendment Bill 1999* seeks to amend the *Stamp Duties Act 1923* ('the Act') in respect of three separate issues.

The first amendment extends the current exemption provided for the inter-generational transfer of a family farm so that it will apply to situations in which the family farm is transferred to a nephew and/or niece of the transferor.

Several submissions have been received from practitioners, and the South Australian Farmers Federation raising particular concerns in this area where a niece or nephew was the sole surviving family member of the owner of a family farm. The existing exemption from stamp duty is not available if the family farm is transferred to the niece or the nephew of the transferor, even when this is the only avenue available to keep the farm within the family ownership. The proposed amendment will extend the concession to exempt transfers to nieces or nephews of the transferors.

The amendment also extends the inter-generational farm exemption to exempt stock implements and other chattels (farm and plant equipment), held or used with the land when transferred as part of the family farm within the family group.

These measures have strong support from the South Australian Farmer's Federation, legal and accounting practitioners, and the rural community in general, and reinforces the Government's commitment to encourage the ownership of family farms within the family group.

The second proposal amends the Act to provide an exemption from *ad valorem* stamp duty to ensure that members of prescribed interest schemes do not incur an additional layer of duty as a consequence of compliance with the new regulatory requirements of the Commonwealth's, *Managed Investments Act 1998.*

The *Managed Investments Act* represents the Commonwealth Government's response to the recommendations of the Australian Law Reform Commission, the Companies and Securities Advisory Committee and the Final Report of the Financial System Inquiry in respect of the managed investment industry. The *Managed Investments Act* amends the Corporations Law by adding new provisions dealing with the registration, management and regulation of managed investment schemes (formerly known as prescribed interest schemes).

A key requirement of the *Managed Investments Act* is that the existing two-tier structure of a prescribed interest scheme, consisting of an independent scheme trustee and a separate management company will be replaced by a single Responsible Entity that will combine the role of trustee and manager.

The proposed stamp duty exemption will apply to any conveyance or transfer of property by the prescribed interest scheme that is necessary for the purpose of the conversion of that prescribed interest scheme to a managed investment scheme, within the meaning of Division 11 of Part 11.2 of the Corporations Law as part of the new Commonwealth regulatory environment.

The third proposal makes a minor amendment to the definition of 'Broker' for the purposes of the on-market share provisions of the Act.

The Australian Stock Exchange (the ASX), demutualised its activities on 14 September 1998, changing its Business Rules to reflect its altered state of operation.

The definition of 'Broker' at section 90A of the Act relies in part on the now rescinded definition of a 'Member' contained in the ASX Business Rules. This Bill proposes that the definition of 'Broker' contained in the Business Rules be adopted for the purposes of Section 90A of the Act.

I commend this Bill to honourable members.

Explanation of Clauses

Clause 1: Short title
Clause 1 is formal.

Clause 2: Amendment of s. 71CC—Exemption from duty in respect of conveyance of a family farm
Clause 2 extends the exemption from duty on an instrument that transfers an interest in land used for primary production to an instrument that transfers an interest in land used for primary production and goods comprising livestock, machinery, implements and other goods used or acquired for the business of primary production conducted on the land.

It also extends the definition of 'relative' to include a child or remoter lineal descendant of the brother or sister of the person or of the spouse of the person.

Clause 3: Amendment of s. 90A—Interpretation
Clause 3 amends the definition of 'broker' to mean a person who is a broker under the Business Rules of the Australian Stock Exchange.

Clause 4: Amendment of schedule 2
Clause 4 proposes a new exemption from stamp duties on the conveyance or transfer of property provided the Commissioner is satisfied of two elements. Firstly, that the conveyance or transfer is made as a consequence of the conversion of an undertaking (for which a deed had been lodged under Division 5 of Part 7.12 of the *Corporations Law* as in force before the commencement of the *Managed Investments Act 1998* of the Commonwealth) to a registered scheme within the meaning of Division 11 of Part 11.2 of the *Corporations Law*, and secondly, that the members have, after the conveyance or transfer, the same beneficial interests in the scheme property as they had prior to the conveyance or transfer.

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

SECOND-HAND VEHICLE DEALERS (COMPENSATION FUND) AMENDMENT BILL

Second reading.

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

That this Bill be now read a second time.

The Second-hand Vehicles Compensation Fund (the fund) was established under section 28 of the Second-hand Motor Vehicles Act 1983 and continued under the Second-hand Vehicle Dealers Act 1995 (the Act). The fund is administered by the Commissioner for Consumer Affairs (the Commissioner). The fund exists to compensate persons who have suffered loss during a transaction with a second-hand vehicle dealer (a dealer) and who have no reasonable prospect of recovery of that amount.

Claimants on the fund must have purchased a second-hand vehicle from a dealer, or sold a second-hand vehicle to a

dealer, or have left a second-hand vehicle in a dealer's possession to be offered for sale on consignment. Claimants on the fund must satisfy a Magistrate's Court that they have a valid unsatisfied claim against a dealer in connection with such a transaction. A claim may be successful even though the dealer is not licensed. Whether a person is a dealer is a factual question; it does not depend on whether they are licensed.

Licensed dealers must pay an annual contribution of $350 to the fund. Of particular concern to many second-hand vehicle dealers is the issue of whether transactions with unlicensed dealers (or 'backyarders') should be the subject of claims on the fund. The Government is aware of significant industry concerns about the scope and application of the Second-hand Vehicles Compensation Fund. Whilst the Office of Consumer and Business Affairs has been placing significant effort and resources into compliance activity and has had some notable success in prosecuting unlicensed dealers, there remained the need to examine the operation of the fund.

The Government reviewed the operation of the compensation fund provisions in 1998 and developed a series of proposals taking into account responses to a comprehensive Issues Paper which was the subject of wide industry and public consultation. The views of the MTA, the RAA, and vehicle dealers were given careful consideration along with the need to provide adequate consumer protection for the purchasers of second-hand vehicles. As a result of that process, the Government put forward a Bill to give effect to the recommendations of the review and to deal with the primary concerns put to the Government about the operation of the fund. That Bill is currently in the House of Assembly.

Coincidentally, the member for Gordon in another place introduced this measure, which deals, in part, with the issues canvassed by the Government. This Bill mirrors some of the amendments in the Government Bill and incorporates changes to the compensation fund provisions regarding the claim threshold.

A 'dealer' is defined in the Act as 'a person who carries on the business of selling second-hand vehicles.' A person is presumed to be a dealer under the Act if they sell four or more vehicles in any 12 month period. A number of successful claims have been made where the 'dealer' was no more than a person selling stolen vehicles from his or her residential premises. The fund is presently at risk when any person sells four or more vehicles within a 12 month period.

Instead of transactions with all persons selling four or more cars being the subjects of potential claims on the fund, the ability to claim should be limited to transactions with licensed dealers or persons who appear to be licensed dealers. Claims on the fund are limited by the Bill to transactions with persons who are licensed dealers or whom the claimants reasonably believed to be a licensed dealer at the time of the transaction. Where the claimant did not deal with a licensed dealer, the onus will be on the claimant to satisfy the court that the claimant had reasonable grounds to believe they were dealing with a licensed dealer.

As this Bill picks up only one issue of concern in relation to the Second-hand Vehicles Compensation Fund and the Government has identified a range of further issues to be addressed, these additional issues will be the subject of amendments to be moved in the Committee stages of the consideration of this Bill. I commend the Bill to honourable members. I seek leave to have the detailed explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of Sched. 3—Second-hand Vehicles Compensation fund

It is proposed to strike out clause 2 of Schedule 3 and substitute a new clause 2 headed *Claim against fund*.

New clause 2(1) provides that (subject to new subclause (2)) if on the application of a person not being a dealer who has—

- purchased a second-hand vehicle from a dealer; or
- sold a second-hand vehicle to a dealer; or
- left a second-hand vehicle in a dealer's possession to be offered for sale by the dealer on behalf of the person,

the Magistrates Court is satisfied that—

- the person has a valid unsatisfied claim against the dealer arising out of or in connection with the transaction; and
- the person has no reasonable prospect of recovering the amount of the claim (except under Schedule 3),

the Magistrates Court may authorise payment of compensation to that person out of the *Second-hand Vehicles Compensation fund*.

New subclause (2) provides that new clause 2(1) applies to such a claim whenever the transaction to which it relates occurred but only if, at the time of the transaction, the dealer was licensed, or the person making the claim reasonably believed the dealer to have been licensed.

New subclause (2) provides that new clause 2(1) does not apply to a claim prescribed by regulation nor to a claim arising out of or in connection with—

- the sale of a second-hand vehicle by auction; or
- the sale of a second-hand vehicle negotiated immediately after an auction for the sale of the vehicle was conducted,

if—

- the sale was made after the commencement of the *Second-hand Vehicle Dealers (Compensation fund) Amendment Act 1997*; and
- the auctioneer who conducted the auction or negotiated such a sale (as the case may be) was acting as an agent only and was selling the vehicle on behalf of another person who was not a licensed dealer.

Clause 4: Transitional provision

The amendments proposed in clause 3 of the Bill to Schedule 3 of the principal Act will apply only in relation to a valid unsatisfied claim against a dealer if the act or omission of the dealer giving rise to the claim occurs after the commencement of that clause.

The Hon. IAN GILFILLAN: I wish to speak briefly on this Bill. The Attorney has identified part of the history of this Bill. The member for Gordon (Mr R.J. McEwen) introduced a Bill to correct what he saw as a glaring anomaly—and that is clearly so: there has been an abuse of this fund which was set up with a worthy purpose in mind. The fund was being milked to compensate people who had bought a motor vehicle from a so-called part of the industry which has not been recognised and has not contributed to the fund.

It seems strange that we had to wait for an Independent member of the Lower House to pick this up and introduce his own legislation before the Government dealt with it. However, it is better late than never and, whatever the reason, let us not be mealy-mouthed about it. This is an important amending Bill, and it has the support of the Democrats.

I am not sure of the Attorney's intentions. I understood that we would deal with this matter today, but about 10 or 15 minutes ago I was handed a page of amendments to the Bill. I, for one, want to be satisfied that my staff have had a chance to consider these amendments before the Bill goes through its final stages. However, in accordance with our current understanding of the Bill, the Democrats support the second reading.

The Hon. CARMEL ZOLLO: The Labor Opposition also supports this Bill and welcomes the initiative by the member for Gordon in the other place. His concerns reflect those of the Labor Opposition, as outlined by the then shadow

Attorney-General when another amendment Bill to the parent Act was debated in July 1997. At that time, the Bill dealt sensibly with the Kearns fiasco. In spite of the court's interpretation that auctioneers did not and do not contribute to the compensation fund, when Kearns defaulted the court ruled that the people who did not receive the payments from the auctioneer should be eligible to receive compensation from the second-hand dealers fund.

At that time, the Democrats and the Opposition also tried to put some retrospectivity in that amendment Bill which, as the then shadow Attorney-General said, would have had the effect of chiselling out of the Government a solution to the problem of backyard dealers. The Opposition tried to introduce an amendment to the schedule of the original Act to insert the words 'ostensibly licensed' in front of the word 'dealers' so that customers of backyard dealers would not have access to the fund. That amendment did not eventuate and, at that time, the Opposition gave an understanding that it would follow up its concerns. As this Bill now ostensibly achieves the same thing, naturally the Opposition is pleased to support it.

The spirit of the original Act was that licensed second-hand vehicle dealers would pay into the fund so that their customers could obtain compensation should the dealer go out of business. The Opposition's understanding of the legislation was that the intention of the fund was to compensate those people who dealt with licensed second-hand vehicle dealers and not that the fund should be of benefit to people who dealt with auction or unlicensed dealers, neither of whom pay into the fund.

I understand that the interpretation of the courts has been that, if people believed they were dealing with a licensed dealer irrespective of whether or not they were licensed, one could have access to the fund. I also see before me some amendments that the Attorney-General has tabled. However, as I have mentioned, the Bill reflects the Opposition's concerns expressed earlier. Naturally, the Opposition is pleased that the Bill sets out to correct schedule 3 and that it will ensure that the fund is available to those people who have dealt with licensed second-hand dealers. The Opposition supports the second reading of the Bill.

The Hon. J.S.L. DAWKINS secured the adjournment of the debate.

EVIDENCE (CONFIDENTIAL COMMUNICATIONS) AMENDMENT BILL

In Committee.

Clauses 1 to 3 passed.

Clause 4.

The Hon. K.T. GRIFFIN: Mr Acting Chairman, I draw your attention to the state of the Committee.

A quorum having been formed:

The Hon. K.T. GRIFFIN: Mr Acting Chairman, I am sorry for the misunderstanding. I gather that members are not ready to conclude the Committee consideration of this Bill, so I move that progress be reported and the Committee have leave to sit again.

Progress reported; Committee to sit again.

STATUTES AMENDMENT (RESTRAINING ORDERS) BILL

Adjourned debate on second reading.

(Continued from 18 February. Page 727.)

The Hon. K.T. GRIFFIN (Attorney-General): As I previously stated, I thank members for their indications of support for this Bill. Before I conclude my remarks and this Bill moves to Committee, I respond to the contribution by the Leader of the Opposition. The Leader of the Opposition referred to comments she received from the Women's Legal Service in relation to this Bill. The Women's Legal Service sought and suggested several changes to the Bill, particularly in relation to court initiated orders, service of variations to restraining orders in circumstances which endanger the complainant, avoidance of restraining orders by disputing a complainant's allegations at the confirmation hearing without showing why the order should not be confirmed, and awarding costs where the court is satisfied that the complainant's application is unreasonable.

The Women's Legal Service drew upon the knowledge and experience of staff within the service and referred to relevant provisions of the model Domestic Violence Laws Discussion Paper that was released for comment in November 1997. At this point I believe it is important to point out that the model Domestic Violence Laws Discussion Paper was released for the purpose of initiating discussion by the domestic violence working group, which is a group of interstate officials charged with the task of developing model domestic violence laws. Their discussion paper does not represent the final recommendations of the working group.

I understand that the working group has not completed its final report. This leads to the question raised by the Leader of the Opposition regarding South Australia's involvement in the domestic violence working group. Officially, South Australia has not been represented on the working group. While there are a number of principles which are likely to be common to all pieces of domestic violence legislation, the Government is not convinced that uniformity or even consistency is necessary. I note that the comments I received in relation to the discussion paper indicate that South Australia's legislation is as good as if not better than the model laws released for comment. However, South Australia has monitored the progress of the report.

I now return to the comments made by the Women's Legal Service. First, the Women's Legal Service expressed concern at the amendment to section 19A of the Criminal Law (Sentencing) Act. Section 19A allows a court to impose a restraining order when remanding a prisoner for sentence or when imposing a sentence. The Bill will amend the provision to require a court to consider whether issuing the order would be counterproductive if the whereabouts of the person for whose benefit the order would be issued are not known. This amendment is proposed on the basis that in some situations a victim, for good reason, will not apply for an order herself or himself because it will place the victim at more risk of harm by alerting the defendant to the victim's whereabouts.

However, this will not be the only factor that the court must consider. When considering whether to issue a restraining order under section 19A, the court must have regard to the matters set out in the Domestic Violence Act and the Summary Procedure Act. It must also be recognised that the victim or the police on her or his behalf will not be prevented from initiating a complaint to obtain a restraining order. The Women's Legal Service suggested that variations to an order should not be served on the defendant in circumstances which endanger the plaintiff. For practical reasons this does not appear to be a feasible option.

In practice, to breach a restraining order the defendant must be aware of the terms of the order, and this includes varied terms of the order. Consequently, the Bill will enact the current practical position with respect to the service of variations to restraining orders. The Women's Legal Service has stated that the legislation should ensure that a defendant cannot avoid a restraining order by merely disputing the complainant's allegations at the confirmation without showing why the orders should not be confirmed. Ultimately the court has the discretion to confirm an *ex parte* restraining order. It is the court's duty to weigh up the factors supporting the confirmation of the restraining order and those factors against in order to come to a conclusion.

However, members will note that I intend to move an amendment that will make it clear that the court has the discretion to confirm a restraining order without receiving any further evidence as to the grounds for the order if the defendant disputes the allegations giving rise to the order but consents to the order. Finally, the Women's Legal Service raised the issue of awarding costs against the complainant. Currently the court may award costs as it thinks fit. As a result a complainant whose application does not succeed may be required to pay the defendant's costs. The proposed amendment will provide that such costs will be awarded only where the complaint was made in bad faith or unreasonably. This amendment will ensure that genuine applications made in good faith are not deterred by the potential costs involved if such an application is still unsuccessful.

With regard to complaints that may be considered unreasonable, it is difficult to say with precision. There is a plethora of cases which discuss the concept of reasonableness and therefore unreasonableness in a variety of contexts. Only one matter is clear: reasonableness or conversely unreasonableness can be determined only with reference to the facts of each case. Obviously what is unreasonable in one situation may well be quite reasonable when applied to another.

However, it must be recognised that cost orders are not a penalty. They are awarded to compensate a successful party to proceedings for its party-party costs. While there are reasons for restricting when cost orders are made, there are no grounds for making it unduly difficult for a defendant to obtain an order for costs where in the circumstances the application was not reasonable. I understand that most applications for restraining orders are undertaken by the police on behalf of the intended protected person without cost to that person. If the complaint is unsuccessful and costs are awarded, the police will absorb the costs. However, if an application is made privately, lodgement of the application will cost $80 and, if the complainant loses the case, the complainant may be ordered to pay the defendant's costs, which are indeterminate.

Bill read a second time.

In Committee.

Clause 1.

The Hon. CAROLYN PICKLES: I thank the Attorney for responding to the issues that were raised by the Women's Legal Service. Certainly, I believe that he has addressed some of my concerns quite satisfactorily and therefore we will not be proceeding with any amendments.

Clause passed.

Clauses 2 to 4 passed.

Clause 5.

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

Page 2, line 4—After 'amended' insert:

(a) by striking out from subsection (2)(c) 'so as to reasonably arouse a family member's apprehension or fear' and substituting 'so as to reasonably arouse in a family member apprehension or fear of personal injury or damage to property or any significant apprehension or fear';

The purpose of this amendment is to restate Parliament's original intention in the enactment of section 4(2)(c) of the Domestic Violence Act. Currently section 4(2)(c) provides that domestic violence will be committed if on two or more separate occasions the defendant carries out specified acts, such as following a family member or loitering outside the family member's residence or place of work so as to arouse the family member's apprehension or fear. Last year a case of Sleeman and the police was considered by the Supreme Court. The court concluded that the words 'apprehension or fear' could not stand alone but had to refer to apprehension or fear of something. To this end it was held that it must be apprehension or fear of personal injury or damage to property. This interpretation results in paragraph (c) being a mere restatement of section 4(2)(a) and (b). Clearly this was not intended by Parliament.

In the second reading explanation for the Domestic Violence Bill 1994 it was recognised that domestic violence is not only physical violence but includes verbal abuse, threats, intimidation and other acts to create fear. The dictionary also confirms that the words 'fear' and 'apprehension' may sensibly refer to a sensation of dread or unpleasant anticipation. One can have an unformulated, unspecific feeling of fear of the unknown. This is contrary to the view that the phrase 'apprehension or fear' cannot stand alone. The amendment therefore will clarify Parliament's original intention.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

Amendment carried.

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

Page 2, after line 11—After proposed subsection (3) insert:

(4) If a defendant disputes some or all of the grounds on which a domestic violence restraining order is sought or made but consents to the order, the Court may make or confirm the order without receiving any further submissions or evidence as to the grounds.

The Magistrates Court has advised that on many occasions a defendant will consent to the imposition of a restraining order, even though he or she denies the grounds on which the restraining order is sought. This amendment makes it clear that the court has the discretion to confirm a restraining order without receiving any further submissions or evidence as to the grounds for the order if the defendant disputes the allegations giving rise to the order but consents to the order.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

The Hon. A.J. REDFORD: I wish to make a couple of comments about this, because I have had some experience in relation to these matters, not just in my capacity acting on behalf of people. There have been occasions since my being elected to this place when I have been asked to observe the process in which a restraining order is applied for in these circumstances. On the whole I must say that the prosecutors and police have been very good and sympathetic in relation to dealing with these applications, but in my experience there have been some exceptions to that.

I am not saying that I oppose this clause, because there are some benefits, but what concerns me about this is that it is all too easy for some defendants who have been involved in domestic violence or who have perpetrated some apprehen-

sion or fear to deny the allegations. In some respects, with the addition of this clause, it may well be temptingly easy for a court and the police to apply pressure on a complainant by saying, 'We don't want you to proceed with this; we don't want you to have your day in court. You will get your restraining order; what are you really worried about?' That may well have some impact on a subsequent breach of that restraining order.

I am not sure how a magistrate is likely to deal with a prosecution for a breach of a restraining order if the defendant turns up to the court and says, 'Yes, I did breach the restraining order, but it was a minor breach,' yet the initial facts—albeit in dispute—which were alleged and which led to the imposing of the restraining order may well subsequently come into dispute. I am not expressing myself very clearly; perhaps I can put it this way—and this has occurred to me only after reading it in the past 10 or so minutes. You may well have a situation where a defendant says, 'I did not do anything but I will cop this restraining order for the sake of saving everybody time and expense. Later, they go to court for an alleged breach, and let us say that the breach is proven. When it comes to assessing penalty, the magistrate will (I would hope) take into account the nature of the conduct which led to the imposition of the initial restraining order. What concerns me is how the magistrate will deal with that situation.

I do not suggest that we oppose this clause, but I would like to hear an answer to that, and I would hope that the way this clause operates is monitored pretty carefully. I well understand that, for a busy court with busy prosecutors and busy magistrates, this is the easy way out. Some might say it is a bit of a cop-out. I would also say that in the case of victims they do like to know that their complaint—their assertion of fact—has been vindicated and that they have received some moral support in relation to the assertions and allegations they have made. This avoids that and may well create some additional stress or distress to the complainant. I am interested to hear the Attorney's comments in relation to that.

The Hon. K.T. GRIFFIN: I am not sure what the answer to that is; I can only really speculate. If there is a breach of a restraining order, that is an offence, and that has to be proved beyond reasonable doubt. One would presume that all the factors relevant to the making of a restraining order, but more particularly to the particular breach, would be taken into consideration in, first, the police determining whether or not to prosecute, and, secondly, the court determining whether or not convictions should be recorded and, ultimately, what penalty should be imposed.

I understand the point the honourable member is making, but I would have thought that regardless of this amendment the problem has always been there. There has always been the potential pressure for a defendant to accede to a restraining order even though the defendant says, 'Look, I do not agree with all of that,' referring to all the facts that might have been presented. But that may be an intimation to the court, in which case you have the situation where magistrates may hear further evidence, or it may be that it is not referred to in open court and is merely something which the defendant asserts to the prosecutor or to the complainant's representative.

I would have thought that the sorts of issues to which the honourable member refers are not new. Really, this amendment does nothing more than to confirm that it is not necessary for the court to go back and hear further submissions or evidence as to the grounds if the defendant says, 'Look, I do not agree with all of them.' I cannot really take it any further than that. It is ultimately left to the court, and each case has to be looked at in accordance with the circumstances in which it has arisen.

The Hon. A.J. REDFORD: I am grateful for the Attorney's response. I must say that I had not seen this amendment, as I said, until today, and it certainly has not been discussed in any other forum. I acknowledge and accept the Attorney's assertion that the problem has always been there: a distressed victim, who is under enough pressure as it is, has to go to court and then go through the process of proving the allegations. That is always a very difficult situation and, on the whole, is well managed by our prosecution services.

However, I just wonder (and I ask this rhetorically) whether this is the most appropriate way to deal with that problem. I say that because it may well be pushing the problem further back down into the process. I say that for this reason: if in fact a magistrate is confronted with a defendant who has been convicted of breaching a restraining order and the submission comes from the solicitor, 'Look, this is the first time he has done anything wrong; he has been a proper law abiding citizen; this is the first dispute that this court has had to resolve,' that defendant would be treated in a certain way and, I would suspect, with a great deal of leniency.

On the other hand (and I have had experience of this), there are victims who come in with affidavits and histories of considerable abuse over an extensive period of time. It is probably the first occasion on which they have had the courage—and I do not use that word lightly—to go to the police, a foreign environment, and raise what might be a fairly serious course of conduct in relation to domestic assault.

I digress by saying that the authorities are not exactly prone to proceeding with assault charges on those sorts of occasions. I have yet to see the police say, 'Well, your statement is so serious and alleges such a serious course of conduct in relation to domestic assault that we will not go for a restraining order in this; we believe this man ought to be prosecuted.' I have never seen that happen. This is the only time that these people seek the assistance of the authorities. It is all too easy for the authority in that case to dismiss all the allegations and endeavour to do a deal, thereby undermining the seriousness of the course of conduct alleged by the victim.

The other issue that concerns me, if there has been in an affidavit an allegation of quite serious criminal conduct, with persistent assaults of a victim over a considerable period, is where in a lot of cases a lawyer might say to a defendant, 'Look, there is some pretty strong evidence against you, but I can obviate against that; we will just use this clause; we will allege a dispute; we will say that none of this happened, that it is all rubbish; but we will consent to an order,' and then an order is made and a week later the defendant breaches that order. The magistrate is confronted with what I would say, not in any technical sense, is almost a first offender. I would have thought that on any principle that that offender in those circumstances would be treated leniently.

That concerns me in relation to the treatment of these offenders—and it concerns me significantly. As I said, I will not oppose the insertion of this clause, but I would very much like to be assured that the use of this clause will be monitored very closely over the next 12 months and that some form of report will be given back to this Parliament on how this clause is working. I would like the WEL and the other

interest groups to be in a position to comment on how this clause works. I have no factual basis upon which to make this assertion, but I am a little disturbed that this clause might be used as a cop-out and that it may well undermine the perception in the eyes of the community—and, just as importantly, in the eyes of magistrates and some police prosecutors—about the seriousness of domestic assault and how this Parliament treats it seriously.

I ask the Attorney whether it can be monitored closely and whether in making any statement about this clause that it is not meant in any way to undermine the Parliament's attitude about the seriousness with which it views domestic assault. This clause does have the capacity to sweep it back under the carpet where it so long resided before we took office in 1994 and made some terrific legislative initiatives with the support of the Opposition—and I acknowledge that.

The Hon. K.T. GRIFFIN: With some regret, I advise the honourable member that I do not agree with him that this has the capacity to undermine the seriousness of domestic violence assault. This amendment relates to a set of circumstances where a defendant is at court, there is a dispute about some of the grounds on which the restraining order is sought, but nevertheless consent is given, perhaps recognising that fear and apprehension might be created. In those circumstances the court can confirm it without any further submissions or evidence as to the grounds. I do not think that there is anything in it that undermines any of the significance of the domestic violence assault provisions. In any event, the courts are already doing that, but there is doubt about—

The Hon. A.J. Redford interjecting:

The Hon. K.T. GRIFFIN: Yes, but the courts are already doing it. Maybe they should not be, but when it was drawn to my attention I took the policy decision that I would propose to Parliament, through amendments to the Bill, that we would validate the way in which the courts deal with it. The Committee can reject the clause, and that may in itself send a signal that the courts have to hear more submissions in every instance, even where there is a consent for a restraining order, but my judgment is that to do it this way is a sensible way to go. I recognise the issues raised by the honourable member although I do not agree with every aspect of what he said. They are matters which it would be reasonable to attempt to monitor. I cannot give a commitment that they will be monitored because I do not know how difficult that would be.

It may mean that, in every Magistrates Court in which there is an application for a domestic violence restraining order, we have to find some mechanism for ensuring that the magistrate, the clerks and police keep some records in some form which can then be collated centrally. I am just not prepared on the run to give a commitment that these will all be monitored in that sort of way. If it is possible to do some monitoring and to report, then I will endeavour to ensure that that will be done, but I am not prepared to give a commitment that it will be done without at least informing myself of all the potential consequences or difficulties involved in doing it.

The Hon. A.J. REDFORD: I understand the position that the Attorney is in and I understand that this has been inserted mostly at the request of the judicial arm of government. I have seen this happen: in a busy court when a matter is set down for hearing, a new prosecutor or a prosecutor who has not been involved before goes up to the victim and asks, 'Are you sure you want to go ahead with this?' and the victim is put under some pressure. Then the prosecutor goes to the defendant and says, 'We will only allege the most minor of these in order to get rid of this matter.' I have seen magistrates be party to that pressure and I would not like to see this clause used by busy magistrates and busy prosecutors to avoid dealing with the difficult issues of domestic violence and the finding of assaults, which happens all too often by a court. I understand the difficulty in monitoring and all I can say is that I have seen it happen. I assure the Attorney-General that, in my experience—not that I go to court that much nowadays—

The Hon. Carolyn Pickles: Is that your second job, is it?

The Hon. A.J. REDFORD: The last four times that I have been in court on a matter like this has not been for any remuneration. I have been in court at the request of women and, in two cases, women's groups to monitor what is going on in relation to a particular victim. The Hon. Carmel Zollo looks cynical about that, and well she might. I have never tripped over her down there. I have been down there and these women are put under some pressure, and it worries me.

The Hon. Carolyn Pickles: Are you referring to me?

The Hon. A.J. REDFORD: No, I was referring to the Hon. Carmel Zollo. If I see it, I will bring it back to this place because I have some misgivings.

The Hon. CAROLYN PICKLES: The Hon. Mr Redford has raised some misgivings about this amendment. One would have thought that, if his misgivings were so grave, he would move an amendment or oppose the amendment. Although the Attorney has not given an assurance, he has said that he will look at the possibility of ensuring that this amendment is dealt with properly. On balance the Opposition is satisfied that it will be looked at, and as a difficulty it will be highlighted and brought to the attention of the Government or the Opposition at some later stage if it is misused in any way.

Amendment carried; clause as amended passed.

Clause 6 passed.

Clause 7.

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

Page 3, line 14—After 'summoned' insert:
, or the adjourned hearing.

Currently it is within the court's discretion to adjourn a hearing to which the defendant is summoned in certain circumstances. However, it is currently unclear whether the interim or telephone application order will continue in force after the conclusion of the hearing to which the defendant is summoned if that hearing is adjourned and therefore the order is not confirmed. This and the following four amendments to clause 8 are a package of amendments which make it clear that a restraining order will continue in force until the conclusion of an adjourned hearing.

Amendment carried; clause as amended passed.

Clause 8.

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

Page 3, line 25 to page 4, line 3—Leave out paragraphs (a) and (b) and insert:

(a) by striking out subsection (2) and substituting the following subsection:

(2) A domestic violence restraining order may be made in the absence of the defendant and despite the fact that the defendant was not summoned to appear at the hearing of the complaint, but in that case, the Court must summon the defendant to appear before the Court to show cause why the order should be not confirmed.

Lines 15 and 16—Leave out proposed subsection (6) and insert:

(6) A domestic violence restraining order made under subsection (2)—

(a) continues in force until the conclusion of the hearing to which the defendant is summoned or, if the hearing is adjourned, until the conclusion of the adjourned hearing; but

(b) will not be effective after the conclusion of the hearing to which the defendant is summoned, or the adjourned hearing, unless the Court confirms the order—

(i) on failure of the defendant to appear at the hearing in obedience to the summons; or

(ii) having considered any evidence given by or on behalf of the defendant; or

(iii) with the consent of the defendant.

(7) The Court may confirm a domestic violence restraining order in an amended form.

(8) If a hearing is adjourned under this section, the Court need not be constituted at the adjourned hearing of the same judicial officer as ordered the adjournment.

Both amendments to this clause are consequential. The first operates in conjunction with the second to restructure existing clause 8 for the purpose of drafting clarity. The second will also insert a new subsection (8) in existing section 9 to make it clear that if a hearing is adjourned the same judicial officer as ordered the adjournment need not constitute the court at the adjourned hearing. A similar provision can be found in existing section 8 of the Domestic Violence Act.

The Hon. CAROLYN PICKLES: The Opposition supports the two amendments.

Amendments carried; clause as amended passed.

Clause 9 passed.

Clause 10.

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

Page 4, line 29—After 'order' insert 'is confirmed in an amended form or'.

Again, this amendment is consequential on the previous amendments in that it inserts words to make it clear that a restraining order will continue in force until the conclusion of an adjourned hearing.

Amendment carried; clause as amended passed.

Clause 11.

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

Page 5, line 20—After 'amended' insert:

—

(a) by inserting after subsection (1) the following subsection:

(1a) An application for variation or revocation of a domestic violence restraining order may only be made by the defendant with the leave of the court and leave is only to be granted if the court is satisfied there has been a substantial change in the relevant circumstances since the order was made or last varied.

The purpose of this amendment is to insert a new provision in the Domestic Violence Act. The new provision will require a defendant to seek leave of the court and to show that there have been substantial changes in the relevant circumstances since the restraining order was made or last varied prior to making an application for variation or revocation of a restraining order. I am advised that some respondents bring endless applications for revocation of restraining orders often immediately after an order adverse to their position has been confirmed.

The intention of the provision is to prevent a defendant from harassing and intimidating a protected person and from wasting valuable court time by making regular applications for revocation or variation of a restraining order without grounds. Members should note that a similar provision has already been adopted in the relevant legislation in Western Australia, and I am informed that it is working to good effect there.

The Hon. CAROLYN PICKLES: The Opposition supports the amendment.

Amendment carried; clause as amended passed.

Clause 12 passed.

Clause 13.

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

Page 5—

After line 30—insert:

(aa) by striking out from subsection (2)(c) 'so as to reasonably arouse the person's apprehension or fear' and substituting 'so as to reasonably arouse in the person apprehension or fear of personal injury or damage to property or any significant apprehension or fear';

After line 38—After proposed subsection (2a) insert:

(2b) If a defendant disputes some or all of the grounds on which a restraining order is sought or made but consents to the order, the court may make or confirm the order without receiving any further submissions or evidence as to the grounds.

These amendments mirror the amendments that I moved previously. In this instance, they are amendments to the Summary Procedure Act. The earlier part of the Bill amends the Domestic Violence Act. These amendments will ensure that consistency between the Domestic Violence Act and the Summary Procedure Act is maintained.

Amendments carried; clause as amended passed.

Clause 14.

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

Page 6, line 34—After 'summoned' insert ', or the adjourned hearing,'.

This amendment is similar to earlier amendments. It will make it clear that a restraining order will continue in force until the conclusion of an adjourned hearing.

Amendment carried; clause as amended passed.

Clause 15.

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

Page 7—

Lines 8 to 17—Leave out paragraphs (a) and (b) and insert:

(a) by striking out subsection (2) and substituting the following subsection:

(2) A restraining order may be made in the absence of the defendant and despite the fact that the defendant was not summoned to appear at the hearing of the complaint, but in that case, the court must summon the defendant to appear before the court to show cause why the order should not be confirmed.

Lines 29 and 30—Leave out proposed subsection (6) and insert:

(6) A restraining order made under subsection (2)—

(a) continues in force until the conclusion of the hearing to which the defendant is summoned or, if the hearing is adjourned, until the conclusion of the adjourned hearing; but

(b) will not be effective after the conclusion of the hearing to which the defendant is summoned, or the adjourned hearing, unless the court confirms the order—

(i) on failure of the defendant to appear at the hearing in obedience to the summons; or

(ii) having considered any evidence given by or on behalf of the defendant; or

(iii) with the consent of the defendant.

(7) The court may confirm a restraining order in an amended form.

(8) If a hearing is adjourned under this section, the court need not be constituted at the adjourned hearing of the same judicial officer as ordered the adjournment.

The first amendment is consequential upon the previous amendment. It will also operate in conjunction with the next amendment to restructure existing clause 15 of the Bill for drafting clarity. Similarly, the second amendment to clause

15 is consequential. It makes it clear that an adjourned hearing does not need to be presided over by the same judicial officer who ordered the adjournment, and that makes it consistent with the existing provisions of the Summary Procedure Act.

Amendments carried; clause as amended passed.

Clause 16 passed.

Clause 17.

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

Page 8, line 12—After 'order' insert 'is confirmed in an amended form or'.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clause 18.

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

Page 8, line 36—After 'amended' insert:

—

(a) by inserting after subsection (1) the following subsection:

(1a) An application for variation or revocation of a restraining order may only be made by the defendant with the leave of the court and leave is only to be granted if the court is satisfied there has been a substantial change in the relevant circumstances since the order was made or last varied.

The purpose of this amendment is to insert a new provision in the Summary Procedure Act to require a defendant to seek leave of the court prior to making an application for variation or revocation of a restraining order.

Amendment carried; clause as amended passed.

Clause 19 and title passed.

Bill read a third time and passed.

CRIMINAL LAW CONSOLIDATION (CONTAMINATION OF GOODS) AMENDMENT BILL

Consideration in Committee of the House of Assembly's amendments:

No. 1. Clause 2, page 1, lines 16 and 17—Leave out 'CONTAMINATION OF GOODS AND OTHER ACTS PREJUDICING PUBLIC HEALTH OR SAFETY' and insert: GOODS CONTAMINATION AND COMPARABLE OFFENCES

No. 2. Clause 2, page 2, lines 6 and 7—Leave out 'in a way that prejudices or could prejudice the health or safety of a consumer'.

No. 3. Clause 2, page 3, after line 5—Insert:

(3) In this section, a reference to the contamination of goods is limited to contamination in a way that prejudices or could prejudice the health or safety of a consumer.

No. 4. Clause 2, page 3, after line 5—Insert new section:

Goods contamination unrelated to issues of public health and safety

261. A person is guilty of an offence if the person—

(a) contaminates goods; or

(b) makes it appear that goods have been, or are about to be contaminated; or

(c) threatens to contaminate goods; or

(d) falsely claims that goods have been or are about to be contaminated,

intending—

(e) to influence the public against purchasing the goods or goods of the relevant class or to create an apprehension that the public will be so influenced; and

(f) by doing so—

(i) to gain a benefit for himself, herself or another; or

(ii) to cause loss or harm to another.

Maximum penalty: Imprisonment for 5 years.

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

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

These amendments were inserted in the House of Assembly as Government amendments, and they pick up an issue that was raised during the consultation process. There was a concern about goods contamination unrelated to issues of public health and safety, remembering that the Bill as it left the Legislative Council focused upon a person who committed an act intending to cause prejudice, or to create an apprehension of a risk of prejudice, to the health or safety of the public.

There are some instances where it may not be with that intention of creating an apprehension of a risk of prejudice to the health or safety of the public that a person undertakes a malicious act of contamination of foodstuffs. Having had that matter drawn to our attention, the amendments which have been moved by the House of Assembly are directed to overcome that potential loophole in the legislation.

Motion carried.

CRIMINAL LAW CONSOLIDATION (INTOXICATION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 18 February. Page 736.)

The Hon. IAN GILFILLAN: The Democrats support the second reading of the Bill. There is a public perception that our criminal law contains something called the drunk's defence. The idea seems to be that if you get very drunk, so drunk that you do not know what you are doing, you will not be held criminally responsible for what you do in that condition. Supposedly, if you are 'blind drunk', you are therefore incapable of forming any intention to commit a crime. If you have no intention, then you could not have meant to do it, and we do not punish people for what they do not intend to do. You do not punish people for accidents or honest mistakes. Therefore, drunks can get acquitted. That, according to some, is supposed to be a statement of the law.

However, a campaign of fear has been whipped up in our community based on that sort of argument and it has produced pressure for changing the law. But I am not persuaded that the reality of criminal prosecutions in our courts matches the theory, certainly not on a day-to-day basis. I believe that the argument based on fear and the so-called drunk's defence is almost totally unsubstantiated.

I have studied closely the argument about this issue, which has been raging since the *Nadruku* case of October 1997 in the ACT. In that case a well-known Rugby League player was acquitted of serious assault charges after successfully pleading the so-called drunk's defence. I note that the Attorney-General objects to the term 'drunk's defence': he says that it does not exist. Despite the verdict in the *Nadruku* case, I agree with the Attorney-General on this matter. There is no such thing as a drunk's defence.

Nevertheless, I do need to qualify that statement. It is open for a criminal defendant to argue, as Noah Nadruku did, that he or she was so drunk that they did not know what they were doing. It is a very small window of opportunity through which a defendant may be inclined to climb, as a person trapped by fire on the upper storeys of a building might try to escape out a window. But to climb through that window will expose a defendant to the near certainty of a big drop, a fall out of the window onto the hard ground of a conviction.

That rather colourful analogy points out that the fact is that such a plea will almost certainly backfire on a defendant. Judges and juries are not fools: they know that if you can form the intention to swing your arm about in the general direction of another person then you have almost certainly

also formed the intention to hit that person with your arm. This sort of excuse almost always fails, and rightly so. Therefore, very few defendants even try it on. Of those who do try it on, hardly anyone has ever succeeded.

In South Australia there has been one case identified by the Opposition in which the drunk's defence produced an acquittal—the case of *Gigney*, decided by a judge alone, in the District Court in May 1997. Despite the fact that the Labor Party has been agitating for reform in this area and whipping up fear about the issue for more than a year now, the Opposition has produced only one example in South Australia's entire legal history of any defendant ever winning an acquittal on this basis.

How many people affected by alcohol must have come before South Australian courts in the legal history of this State? It must be many thousands—and it is many thousands, we know that. How many have been acquitted because they were drunk? According to the Opposition, a maximum of one. It seems to me that if there really is a drunk's defence it is not much of a defence and not much of a hope to anyone who commits a criminal act while under the influence.

In more than 99.99 per cent of cases, if the Opposition's single example is all we have to rely on, it either backfires or it is of no use to a defendant. On the other hand, the fact that hundreds—indeed, thousands—of people affected by alcohol are convicted year after year is evidence that this aspect of our criminal law is working well and does not need to be tampered with.

Nevertheless, it may be that the single example of *Gigney* in South Australia and *Nadruku* in the ACT is enough to persuade some people that the law must be changed. Perhaps these two isolated cases or the faintest possibility that there might one day be another similar verdict so outrages some people that they feel a change is essential. If the use of the so-called drunk's defence, which seems to work against drunk criminals more than 99.99 per cent of the time, is so outrageous to our community, then we must ask the question, 'What should stand in its place?'.

In December 1997 in the other place the shadow Attorney-General introduced a Bill which would have abolished even the option to plead the drunk's defence. His initial Bill would have had the effect of reversing the onus of proof for anyone who had even had one drink and then been charged with a crime. Such a person would have been presumed guilty because of the alcohol consumption and then had to prove that they did not commit a crime rather than the other way around.

When the problems with that approach became apparent, the shadow Attorney-General switched tack and put forward a different Bill, one substantially borrowed from a discussion paper issued by the Attorney-General. The shadow Attorney-General's second attempt at a Bill, which passed the other place in August 1998, did not outlaw the drunk's defence; rather, it provided that anyone who successfully argued the drunk's defence would be convicted of a new offence, that is, causing harm through criminally irresponsible drug use. That may have a superficial attraction. However, I believe that approach would also create more difficulties than it would solve.

The Attorney-General, in his second reading explanation of this Bill on 9 December 1998, outlined a catalogue of complexities, difficulties and absurdities which would be produced by the Atkinson Bill. I need not repeat them all here. I merely endorse the Attorney-General's summary of the likely effects of the Atkinson Bill. First, it would encourage compromise jury verdicts; secondly, it is impossible properly to align any appropriate penalty with any rational scale of offending; thirdly, it would engender more trials and more issues at trial; fourthly, it would lead to an increase in the necessity for expert evidence on behalf of the prosecution and hence the defence; fifthly, it would be likely to require the prosecution to prove a causal link between the intoxication and the crime; and, sixthly, it lacks any coherent penal rationale because self-induced intoxication is simply not a reliable index of criminal blameworthiness.

I accept the Attorney's reasoning on this matter. It would appear that the Atkinson Bill on intoxication would end up creating far more problems than it would solve. It would create more different injustices in a variety of new ways. As the Attorney has pointed out, the debate over this issue is not new; it has been going on for more than a century and may well continue to rage for another century, or more—that is, if it is stirred up from time to time, particularly by publicity-seeking proponents. In recent years we have had two decisions: one in the ACT and the other in South Australia in which the application of the so-called 'drunk's defence' seems to have produced an unjust result, and I say 'seems'.

Let us not ignore that but, on the other side of the ledger, we know for a fact that the vast majority of people who face trial for crimes committed while intoxicated do not escape punishment by claiming the drunk's defence; therefore, there is no need for change. I certainly am not persuaded and would not support any radical proposal for change. The Attorney-General has put forward this Bill which does not claim to address comprehensively this area; nevertheless, it covers two possible scenarios in which alcohol might be a factor in a criminal trial. The Attorney's Bill provides that the 'drunk's defence' is not available to someone who has voluntarily become intoxicated for the purpose of getting so-called 'Dutch courage' to carry out a crime.

Further, it removes from the defendant the option of raising intoxication as an issue in an appeal if the issue was not used as a defence during the trial. These are not radical departures from the law. In my opinion they are sensible initiatives which will advance the cause of law and order and will not, so far as I can see, create new or additional injustices in the criminal law. The Democrats will support this Bill and commend the Attorney-General for resisting the temptation to go for a quick, drastic change in response to the politics of unsubstantiated fear.

The Hon. T.G. CAMERON: I intend to make only a brief contribution in relation to this Bill. It will be pretty hard to top the Hon. Ian Gilfillan's effort as he has just outlined to the Council.

The Hon. Ian Gilfillan: As long as you agree.

The Hon. T.G. CAMERON: I find myself agreeing with most of what the honourable member says; it is just on the bits with which I disagree that we seem to disagree, if the honourable member can follow that. The current law on the impact of intoxication by drink or drugs in South Australia requires the prosecution to prove criminal fault as well as the behaviour forbidden by the law. The O'Connor 1979 case decided that intoxication can be relevant evidence that the accused did not have the required intention or knowledge.

The Government has rejected the Labor Atkinson Bill. This Bill would have created a new offence of causing harm through criminally irresponsible drug use. Under the Bill a person found not guilty of an offence due to the effects of self-induced intoxication would have been found guilty of

this offence instead and received penalties amounting, in most cases, to two-thirds of the penalty for which they were acquitted. The Government argued that this would have meant that intoxicated offenders stood a good chance of being treated more leniently than they are at present. Not being a lawyer, it is difficult for me to form a precise view on that, but I have been persuaded by the arguments put forward by the Government, as well as by an opportunity I took to discuss this matter with the Attorney-General.

I do not think that anyone would want to see a situation arise where intoxicated offenders are treated more leniently than they are at the moment. Instead of proceeding with the Labor Atkinson Bill the Government has introduced its own Bill, which I believe has two main purposes: first, it makes clear that common law principles do not apply if a person becomes intoxicated in order to strengthen their resolve to commit an offence; secondly, the Bill contains a provision that says that a trial judge should direct a jury on the effects of intoxication only on fault where the defence specifically requests it to be done.

This will ensure that, if the defence wants to deny guilt because of intoxication, the case must be run on that basis the first time around and not on appeal—a fairly persuasive argument in support of the Bill we have before the Council, I would have thought. This will have the effect of saving resources by cutting down the number of appeals for a new trial based on intoxication. However, I am of the view—and, if my opinion is wrong, I am sure the Attorney-General will correct me—that, whilst that is a consideration in the amendments before us, I do not think that that is the prime motivating reason for this Bill. I support the second reading.

The Hon. J.S.L. DAWKINS secured the adjournment of the debate.

LISTENING DEVICES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 16 February. Page 680.)

The Hon. T.G. CAMERON: This Bill makes a number of amendments to the Listening Devices Act 1972 as a result of the police experiencing practical problems when using electronic surveillance in criminal investigations. It attempts to balance the public interest between effective law enforcement with the right to be free from undue police intrusion. This Bill updates the provisions of the current Act taking into account technological advances. The Bill attempts to increase the protection of information obtained by the legislation and to increase the level of accountability.

Currently the Listening Devices Act 1972 allows for an application by a member of the police force or by a member of the National Crime Authority to a Supreme Court judge for a warrant to authorise the use of a listening device, but it does not allow video recording or tracking devices or allow for entry on to private premises to set up such equipment. This Bill will allow officers to obtain authorisation and to use and install such devices. The essential clauses in the Bill are, first, clause 8, which makes it an offence to publish information derived from a listening device, except in accordance with the Act.

Clause 8 allows a judge to authorise the installation, maintenance and retrieval of devices from premises, vehicles or items where consent for the installation has not been given. Clause 8, under new section 6 (7b), authorises a warrant holder to enter any premises or interfere with any vehicle for the purpose of recording the conversation of a person who is suspected of having committed or being likely to commit a serious offence; gain entry by subterfuge; extract electricity; take non-forcible passage through adjoining or nearby premises; use reasonable force; and seek and use assistance from others as necessary.

New section 6AC specifies that the Commissioner must keep information gained in a register. New section 6B(1b) and new section 6C regulate the control of information or material obtained and guard against improper use. New section 6D requires the Police Complaints Authority to inspect the records once every six months and report the results of the inspection to the Minister. I do not know whether I have said it in this Council previously but I have reservations with respect to the whole operation of the Police Complaints Authority. I support that work being handed out to some other independent tribunal or body, perhaps headed by a retired Supreme Court judge, or something like that. I certainly—

The Hon. Ian Gilfillan interjecting:

The Hon. T.G. CAMERON: The honourable member has already raised that matter with me. I told the honourable member my thoughts on that. Do not try to get them down on the transcript. I do have reservations about the message that we send to society when we have police investigating police. I know that is a simple slogan, but it is of concern to me. Clause 14 repeals existing section 10 and inserts new sections 9 and 10. New section 9 of the legislation authorises police to search and seize listening devices which are in a person's possession without the consent of the Minister, while new section 10 allows for the Police Commissioner or a member of the NCA to issue a written certificate setting out the facts and execution of the warrant. The Bill also introduces a number of minor amendments for drafting clarity.

This Bill triggers off a number of issues. I raise a question about the wide ranging nature of the provisions contained in new section 6(7b): how will this material eventually be disposed? This raises a question, and I ask the Attorney to consider the rights of other people who may inadvertently get caught up either on a listening device or on video—people who have no relationship whatsoever to the serious offence or suspected offence that the police are monitoring. What protections will innocent parties have who are caught on videotape or audio tape but who have no relationship whatsoever with the investigation? For example, what protection will they have from the threat of ending up on illegal tapes? I guess we have all heard before that increasing police powers only results in those powers being abused at some later date.

I am sure that most members would be aware that remarkable advances have been made even over the past few years in relation to the technological sophistication of some of the listening devices that are available. As I understand it, people can merely place a beam on your window from up to 400 or 500 metres away and can hear every word that is being spoken in the room. At this stage I support the second reading, but I still need some convincing in relation to what protection exists for people who may be inadvertently picked up either on video or audio, and I will raise a couple of those queries during the Committee stage.

The Hon. J.S.L. DAWKINS secured the adjournment of the debate.

STATUTES AMENDMENT (COMMUTATION FOR SUPERANNUATION SURCHARGE) BILL

Adjourned debate on second reading.
(Continued from 16 February. Page 677.)

The Hon. T.G. CAMERON: This Bill seeks to amend the Judges Pension Act 1971, the Parliamentary Superannuation Act 1974, the Police Superannuation Act 1990 and the Superannuation Act 1988 to deal with an issue which arises as a consequence of the imposition by the Commonwealth of the superannuation surcharge. The surcharge is in addition to normal taxes applied to superannuation benefits. The amendments in this Bill relate to superannuation schemes such as those established by the State Government. While a member has the option to pay the debt as it accrues or defer payment until retirement, the debt accrued can be substantial. A major problem facing people with a surcharge debt is that at retirement a person must pay an accumulated surcharge debt within three months of being advised by the Taxation Office, even though it may be up to 18 months after retirement before the person is aware of the extent of the total surcharge debt.

The amendments contained in the Bill aim to ensure that persons with an accumulated surcharge debt with the Taxation Office have at retirement a method of obtaining a lump sum to erase their debt by allowing pensions to be commuted to a lump sum under special terms and conditions. As the lump sum is to be used solely for the purpose of paying off a Commonwealth tax, the conversion factors used will be determined on a full actuarial basis, and I support that. I understand that the Public Service Association, the Australian Education Union, the Police Association, the Chief Justice and the superannuation boards have all been fully consulted on the Bill and support the provisions contained in it. I support the legislation.

The Hon. J.S.L. DAWKINS secured the adjournment of the debate.

MANUFACTURING INDUSTRIES PROTECTION ACT REPEAL BILL

Adjourned debate on second reading.
(Continued from 18 February. Page 738.)

The Hon. T.G. CAMERON: Under the competition principles agreement of 1995 the State Government is committed to reviewing and reforming legislation which restricts competition—well, when it wants to it will do it. I think we have already had the Minister for Transport and Urban Planning this afternoon hedging her bets in relation to introducing full competition into the taxi and hire car industry, but time will tell. The provisions of the Environment Protection Act 1993 and the Occupational Health, Safety and Welfare Act 1986 incorporate standards of design and operation for plant and machinery in industry. These provisions cover the purposes of the Manufacturing Industries Protection Act 1937.

The Act which we are repealing provided certain provisions for the protection of proprietors of factories. It allowed the proprietor and the occupier of a factory in any area to seek the Governor to declare by proclamation that an area is protected. Such a proclamation would have meant that no person would be entitled to a civil action on the basis of any noise or vibration arising from any factory within that area. However, the State occupational health and safety legislation does ensure that the health, safety and welfare of workers and the public in relation to noise, vibration, dust, fumes, etc. are protected. As there are no regulations under this Act and no proclamations have ever been made, no consultations have occurred beyond Government during the review process. As I understand it, the legislation has never been used. I support the Bill.

The Hon. T.G. ROBERTS: I indicate that the Opposition supports the Manufacturing Industries Protection Act Repeal Bill 1999 as indicated in another place, but I have had some personal experience with what would be regarded as a potential use for the Bill. I notice that it has not been used since 1939, as mentioned in another place, but the presence of the Bill may have assisted in a negotiated settlement between people who had a grievance with noise emanating out of manufacturing premises and householders within a 5 kilometre range, which is quite a range. This was in a regional area, and it was not so much to do with the volume of noise but more to do with the pitch of a noise that was aggravating and disturbing those householders.

As I said, there was a negotiated settlement, and I hope that the other Acts under which people would seek some protection, namely, the Acts covering occupational health and safety and noise pollution would cover those same circumstances. As I said, it is a difficult circumstance for people living in proximity to various industrial centres, particularly where various noises carry certain distances and where aggravating pitches interfere not only with people but, sometimes, animals. I understand that this section of the Manufacturing Industries Protection Act has not been used. As the honourable member said, the Federal position in relation to elimination of uncompetitive practices is being used to streamline much of the legislation by which State Acts are governed and is one of the driving forces behind this.

I am not quite sure how that applies but, when you read the second reading contributions made in the Lower House, you see that even the Minister responsible for this Bill says that the second reading explanation does not explain properly the intentions behind the repealing of this Act. I can only assume that his subsequent contribution gives a better explanation than did his second reading explanation. I suspect that convinced members in another place that that would be the case. With those few words, we support the Bill.

The Hon. M.J. ELLIOTT: I rise on behalf of the Democrats to indicate support for this Bill. In effect, the passage of other legislation since this Act was promulgated has made it redundant. The important provisions contained within it are now covered by a range of other Acts. In those circumstances, the Democrats are prepared to support the repealing Bill.

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their indications of support for this Bill. No issues of contention have been raised, and that will therefore enable us to dispense with it in record time.

Bill read a second time and taken through its remaining stages.

ADJOURNMENT

At 6.19 p.m. the Council adjourned until Wednesday 3 March at 2.15 p.m.