LEGISLATIVE COUNCIL

Thursday 4 March 1999

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

DRUGS

The Hon. R.I. LUCAS (Treasurer): On behalf of the Premier, I seek leave to table a ministerial statement made in another place today on the subject of the State Premiers' conference and drug reform.

Leave granted.

QUESTION TIME

ELECTRICITY TARIFFS

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Treasurer a question about the Olsen ETSA tax.

Leave granted.

The Hon. P. HOLLOWAY: This morning's media quoted the former Treasurer, Stephen Baker, as stating:

> It might well be (referring to the Government's new priority to spend money). . . and if you decide to spend money you have to raise taxes or build up debt. It is a matter of priorities. Levels of expenditure are significantly above what they were when we delivered the budget in 1997.

Mr Baker also said:

> . . . if they have made that decision. . . it's their choice and they'll be judged on that choice.

Mr Graham Scott, Senior Lecturer in Economics at Flinders University and Deputy Director of the South Australian Centre of Economic Studies, told the media yesterday that the new tax was not financially justified but 'the Government needs something to get itself out of its politically difficult corner that it has got itself into'. Does the Treasurer accept the statement of the former Treasurer and that of two other experts that the $100 million ETSA tax has been caused by the Olsen Government's own financial and political mismanagement and, if not, why not?

The Hon. R.I. LUCAS: This question was asked yesterday, and I am happy to repeat the answer that I gave yesterday and expand on it.

An honourable member interjecting:

The Hon. R.I. LUCAS: Ask the Hon. Terry Roberts; it was his question yesterday.

Members interjecting:

The Hon. R.I. LUCAS: You are one step behind. Ask the Hon. Terry Roberts what his question was yesterday. There is an embarrassed silence from the Deputy Leader of the Opposition. You are only 24 hours behind the Hon. Terry Roberts; he is one step ahead of you. Clearly, I listened to the questions from the Hon. Mr Roberts: the Deputy Leader of the Opposition clearly does not, so let me go over the explanation again.

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: No, I will explain it to you both. The former Treasurer was in charge of the budget in the period leading up to 1997-98. He is not here now confronting the new expenditure priorities and the new priorities of the Government.

The Hon. K.T. Griffin: He would be the first to admit it.

The Hon. R.I. LUCAS: Yes, as he did in his comment in the *Advertiser* this morning. There is another option, as the Hon. Mr Baker has pointed out in the *Australian*, namely, instead of raising revenue the Government could sack 2 000 to 3 000 teachers, nurses and public servants. That is obviously the option supported by the Hon. Mr Holloway, because it is true—

The Hon. Diana Laidlaw: There are choices.

The Hon. R.I. LUCAS: There are choices.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: That's a good start? Is that what you are saying?

The Hon. P. Holloway: No, I said that telling the truth would be a good start.

The Hon. R.I. LUCAS: It is true to say that there are two options. The Government had the option of sacking 2 000 to 3 000 teachers, nurses, police officers and public servants such as those standing on the steps of Parliament House at the moment protesting for increased pay rises. That was an option this Government could have considered. In the last four years, with Stephen as Treasurer and with me as a member of that Cabinet accepting responsibility with him for the decisions that we took, we did reduce by about 12 000 to 14 000 the number of public servants—teachers, nurses and other staff—within the public sector. That was a decision—

An honourable member interjecting:

The Hon. R.I. LUCAS: Yes, it was started by the Labor Government, but we continued it. That was a decision that we took in terms of trying to balance the budget. As I indicated in the budget last year, we had a couple of choices. We indicated that, of those choices, there would be modest expenditure reductions, but we would not continue a reduction in the public sector by some thousands of public servants as we had done in our first four years. So, the Hon. Mr Holloway has the hide and the hypocrisy to stand up in this Chamber today and criticise the Government because we are trying to protect—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: Well, where's your policy?

Members interjecting:

The Hon. R.I. LUCAS: Where is your policy?

An honourable member: I'm asking the question.

The Hon. R.I. LUCAS: I agree—

The Hon. L.H. Davis: Why don't you read out everything that Stephen Baker said? He said that things might have changed.

The PRESIDENT: Order!

Members interjecting:

The Hon. L.H. Davis: This is 2½ years on.

The PRESIDENT: Order!

The Hon. R.I. LUCAS: I agree with Stephen Baker when he says that things might have changed. I agree with Stephen Baker when he says—

Members interjecting:

The PRESIDENT: Order! When the Chair calls for order, members should come to order and stop interjecting. Otherwise, I will be forced to warn members.

The Hon. R.I. LUCAS: I agree with Stephen Baker when he says that the Government has choices. Of course we have choices. We chose not to sack 2 000 to 3 000 teachers, nurses and police officers. We chose to go down a path of generating that $100 million to $150 million through the sale of the electricity assets. We chose to go down that path.

The Hon. L.H. Davis: You're against Hindmarsh Stadium.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: Now that that has been blocked by the Hon. Mr Holloway and others, we have chosen not to go down the path of sacking 2 000 to 3 000 teachers, nurses and police officers but to raise the Rann power bill increase to help fund much needed job creation projects and capital expenditure in these businesses and to ensure that we are not forced to sack 2 000 to 3 000 teachers, nurses and public servants.

The Hon. P. Holloway: No debt; no black hole.

The Hon. R.I. LUCAS: What is the Rann-Holloway solution to debt? Don't do anything! That is the Holloway solution to debt.

Members interjecting:

The Hon. R.I. LUCAS: Yes, it is: ignore it, and hope that it will go away. Close your eyes and hope that it will go away. That is the Holloway solution.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: That is the Hon. Paul Holloway's solution to debt: close your eyes and hope that it will disappear. You do not run budgets like that; you do not run States like that; and you do not run Governments like that.

The Hon. P. Holloway: You don't want to run it like you do, that's for sure.

The Hon. R.I. LUCAS: Well, let's just look at that. The Hon. Mr Holloway asked the question about the Hindmarsh Soccer Stadium. Clearly, the Labor Party is opposing it, and soccer followers throughout South Australia need to know that Mr Foley, on behalf of Mr Rann, has been most critical about the supposed $30 million that is being spent on the Hindmarsh Soccer Stadium. Clearly, the Labor Party is opposing the money being spent on the Hindmarsh Soccer Stadium. I think that the supporters of Adelaide City, of which there are some in the Chamber, and the supporters of West Adelaide, of which there are also some in this Chamber, such as myself, will be very interested to know the Labor Party's position on that issue.

However, let me point out to the shadow Finance Minister that last year's budget papers mapping out the four year financial plan already included the $28 million for the Hindmarsh Soccer Stadium. There has been no blow-out in that $28 million since last year's budget, which has been put down. There has been no—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: Now the honourable member says, 'What about the next one?' The honourable member gets belted around the ears on the Hindmarsh Soccer Stadium. Sooner or later he might guess one. The Hon. Mr Holloway might actually get one correct, but he opens with the Hindmarsh Soccer Stadium and tries to indicate that, since the budget and since we laid out the four year financial plan, there has been some budget blow-out of $30 million, or something. It is in the budget papers: $28 million budgeted for this particular forward estimates period.

As Treasurer, I have not been advised of any blow-out in that cost, and it has been neither publicly nor privately announced or talked about. That is the sum total of stages 1 and 2 of the soccer stadium. For as long as the honourable member wants to trot out these examples by way of interjection, or otherwise, I am happy to bat them away. However, the Hon. Mr Holloway can no longer hide behind the Rann magic pudding budget strategy which, as I outlined yesterday, has him promising to reduce debt and promising 18 per cent pay increases to firefighters and other extravagant claims.

Members interjecting:

An honourable member: Not true.

The Hon. R.I. LUCAS: It is not true? Mr Rann does not support the firefighters' claim?

The Hon. P. Holloway: What you are attributing to him as saying is not true.

The Hon. R.I. LUCAS: Is he supporting the firefighters' claim?

Members interjecting:

The PRESIDENT: Order! This is not a debate: it is for questions and answers.

Members interjecting:

The PRESIDENT: Order, the Hon. Ron Roberts!

The Hon. R.I. LUCAS: I am sure you might have seen the television, Mr President, when the Hon. Mr Rann stood on the front steps of the House two or three weeks ago and was cheered by—I don't know—a couple of hundred firefighters, when he said, 'I'm going to take your—

Members interjecting:

The Hon. R.I. LUCAS: —or whatever the number was. He was cheered for supporting their claim; he was going to take up this issue with the Government; and he would raise the 18 per cent firefighters' claim in the Parliament. Now that he has had that publicity, the Hon. Mr Holloway is a bit concerned about the attitude that his own Leader has adopted on public sector wage claims, and so is Mr Foley in relation to this. So, now Mr Holloway is saying that that is not correct: that Mr Rann was not supporting the firefighters' wage claims. So, I suppose Lea Stevens was not supporting the Nurses Federation wage claim, either, when she went out publicly and was quoted as supporting the Nurses Federation wage claim.

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Ron Roberts was supporting the firefighters' claim. There you are: he is honest—right behind you. The former Deputy Leader is honest enough to stand up and support his own Leader. He is supporting Mike Rann; he is prepared to say he supports the 18 per cent firefighters' claim. Talk to your own colleague; he is behind you, and he is telling you. Listen to him.

The Hon. R.R. Roberts: I'm supporting it.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: I am not distorting the Hon. Mr Ron Roberts: he is talking for himself. I can do a lot of things, but I cannot throw my voice through the body of the Hon. Mr Ron Roberts over there. Let him be responsible for his statements.

The Hon. L.H. Davis: Do you agree with Mr Ron Roberts? Do you agree with him—yes or no?

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: The Labor Party, Mr Rann and Mr Foley are out there supporting these wage claims, saying that they can reduce debt, and they are opposing expenditure reductions. They line up and oppose every school closure or expenditure reduction; the shadow Ministers are out there supporting the protest groups. It does not add up.

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Treasurer a question on the Olsen tax.

Leave granted.

The Hon. T.G. ROBERTS: It is a bit like groundhog day today.

Members interjecting:

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: It is a bit like groundhog day today: even the interjections are the same from over the other side.

The Hon. R.I. Lucas: That's a bit unfair on Paul.

The Hon. T.G. ROBERTS: No, it wasn't; my colleague asked a question and expected—

The PRESIDENT: Order! The Hon. Terry Roberts will ask his question.

The Hon. T.G. ROBERTS: —an answer that suited the detail of the question. I have been informed that members of the public received telephone calls last night from a polling company that asked two questions about the privatisation of ETSA, amongst others. The first question asked, 'If you were given $1 000, what would you do with it—spend it, pay off debt or save it?' Another question was, 'Would you be willing to campaign your local member to sell ETSA?' That means to pressurise him, I assume.

Members interjecting:

The Hon. T.G. ROBERTS: The general—

Members interjecting:

The PRESIDENT: Order! We are still into the explanation.

The Hon. T.G. ROBERTS: The general tactic when you are polled is to try to keep the poller on the phone for as long as you can, if you know it is your opposition (that is, the Government) polling.

Members interjecting:

The Hon. T.G. ROBERTS: No; it was a woman. My questions to the Treasurer are:

1. Is the taxpayer paying for the push polling that occurred last night?

2. How much exactly is the taxpayer paying for this media debate on the sale of ETSA? I understand that $220 000 has been mentioned, but I wonder whether this is included in that.

3. When will the Government put out material on a no sale case to balance the weight of the argument in the community?

The Hon. R.I. LUCAS: I thought the honourable member was very unfair to his Deputy Leader by talking about groundhog day and repeating his question from yesterday by the Deputy Leader today. I have no knowledge of any taxpayer funded market research conducted last evening. I am happy to—

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: I understand that the Democrats were voting on Channel 7, because that turned out to be 50/50, and the Labor Party was voting on the ABC. The question does not refer to the voluntary polls that are being conducted by Channels 7 and 9 and others; obviously it relates to a survey organisation. Does the honourable member know the name of the company?

The Hon. T.G. Roberts: No.

The Hon. R.I. LUCAS: I am not aware of any taxpayer funded market research conducted last evening.

The Hon. L.H. Davis: It could be the Labor Party.

The Hon. R.I. LUCAS: Well, it might be. I will make some inquiries and bring back a reply.

ELECTRICITY, PRIVATISATION

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Treasurer a question about ETSA and taxpayer funded advertising.

Leave granted.

The Hon. R.R. ROBERTS: Since we returned to Parliament, on almost every day we have heard questions from the Government back bench about a whole range of issues involving ETSA. On most occasions, members opposite have successfully wasted half of Question Time with these dorothy dix questions. They keep saying that they want to make a decision about ETSA, but even today I note that the three Bills on the Notice Paper that relate to ETSA have again been adjourned on a Government motion.

We have already touched today on the taxpayer funded advertising campaign that was started last night. My questions are: given that the Premier's latest taxpayer funded advertising campaign in support of the privatisation of ETSA and the new Olsen $100 million ETSA tax states, 'It is time for South Australians to make the choice'—if they bring on these three Bills today, we will make the choice on behalf of the people of South Australia—will the Government now give South Australians the choice that it has so far denied them and call a referendum on whether ETSA should remain the property of the South Australian public; and will the Government provide the Opposition Parties (the Labor Party, the Democrats and No Pokies) with equal funding to put the 'No' case?

The Hon. R.I. LUCAS: The Government's position on a referendum has been put by me and the Premier on a number of occasions. I refer the honourable member to those comments.

ELECTRICITY TARIFFS

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Treasurer a question about Labor Party claims.

Leave granted.

The Hon. L.H. DAVIS: Yesterday, I heard Kevin Foley (the shadow Treasurer), in his capacity as spokesman for the Labor Party, being interviewed on 5AA, but my Vita Brits turned up their toes when Mr Foley claimed that the Government's budget had been put under pressure because of increased wages in the public sector. I will quote Mr Foley correctly. He said, 'They'—that is, the Government—'have wages running ahead of what they expected.'

In addition, Mr Foley and the Leader of the Opposition (Mr Rann) have claimed in recent days that there has been a blow-out in the expenditure for the Hindmarsh Soccer Stadium since the State budget for 1998-99 was brought down by the Treasurer last year. Mr Foley and Mr Rann claim that the power bill increase introduced by the Government recently is due to a blow-out in public sector wages and capital expenditure projects such as the Hindmarsh Soccer Stadium. My question is: will the Treasurer advise whether the claims by the Leader of the Opposition (Mr Rann) and the shadow Treasurer (Mr Foley) that power bill increases are due to a blow-out in the estimates for 1998-99 are correct?

The Hon. R.I. LUCAS: I thank the honourable member for his question. The statement that he has quoted from Mr Foley is one of a number, including some made in the House only this week—

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: Yes—and a number of others, which he has made by way of public media comment which are obviously deliberately misleading. It is patently false, and Mr Foley knows it to be false. I guess that that compounds the sin from that viewpoint—for him to be saying, as he has said on a number of occasions, that the Government has wages running ahead of what it expected. He has obviously misled a number of other members of Parliament who similarly have made claims since Mr Foley and Mr Rann made those claims. Other members of Parliament have been making claims that there has been some wages blow-out in the forward estimates.

I want to make it absolutely clear that in the four year financial plan the Government laid down in May last year we budgeted for a modest, reasonable level of wage increase for our teachers, nurses and public servants. Those budget estimates were incorporated in the forward estimates. We also incorporated (on the revenue side) extra revenue from tax increases, which the Hon. Mr Holloway and the Labor Party say they oppose, and we also incorporated—

An honourable member interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: —some $100 million as a conservative figure in the budget from the asset sale premium from the sale of ETSA and Optima. It was a balanced—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: It was a balanced budget and the Government, through me, as Treasurer, today reports that we have not blown out the wages estimates incorporated in those documents. We are in fact fighting wage claims from teachers, public servants (as we saw today at Parliament House) and firefighters who want us to blow our budget on reasonable wage escalation over the next three to four years.

As I said in response to an earlier question, those unions and union leaders are being supported by Mr Rann and Mr Foley—and Mr Ron Roberts puts his hand up to say that he is supporting them. The Hon. Mr Holloway? Well, one does not know. The Hon. Mr Holloway knows what he should say as shadow Finance Minister, but he knows the gross irresponsibility of his leader and shadow Treasurer in relation to these wage demands. It is hypocrisy in the extreme for Mr Foley, Mr Rann—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: Here it is: 'It has not been properly and adequately provided for in the budget. They have wages running ahead of what they expected.' This is a direct transcript of Kevin Foley, and the Hon. Mr Holloway says that he is being misquoted.

The Hon. P. Holloway: I said you were misquoting—

The Hon. R.I. LUCAS: I am misquoting?

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: So, it is only Foley saying this; Rann is not? I tell you what! I advise the Hon. Mr Holloway not to interject because he just gets himself into more trouble. What he is suggesting now is that I am misquoting Mr Rann but that I am fairly quoting Mr Foley: Foley and Rann have different views on the wages issue is the suggestion from the Hon. Mr Holloway. The Hon. Mr Holloway should keep interjecting because he digs a bigger hole for himself, his Leader and his shadow Treasurer in relation to this. That is a direct quote—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: —from Mr Foley. I am sure that even the Hon. Mr Holloway is not suggesting that the Government has made up that quote from Mr Foley, a direct quote from the transcript. I want to make it clear that there has been no blow-out, and from the Government's viewpoint we will be fighting those wage demands to keep them within the reasonable expectations of the budget estimates as mapped out in May last year.

As I said, a number of other claims have been made by Mr Rann and Mr Foley in relation to the Rann power bill increase in trying to deflect attention from the real reason for it. They will come to nothing because the reality is that the Government's wage expectations are wholly and solely within its forward estimates.

WETLANDS

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning, representing the Minister for the Environment, a question about South Australia's wetlands.

Leave granted.

The Hon. M.J. ELLIOTT: South Australia's 1998 State of the Environment report indicated that over 50 per cent of our State's wetlands have been lost and little is known of the condition of the remaining wetlands. Wetlands loss in the agricultural regions is even higher, and less than 1 per cent of the Mount Lofty wetlands, for instance, remain intact. Only the Bool and Hack's Lagoon Ramsar site has a current management plan: the other three South Australian Ramsar sites do not. This is despite the fact that the federally funded National Wetlands Program provided $56 000 in 1996-97 and $75 000 in 1997-98 for management planning for the Coorong. That is $131 000 spent since 1996 with no results. The National Wetlands Program also provided $45 000 in 1994-95 and a further $55 000 in 1995-96 for management planning for the Coongie Lakes Ramsar site. That is $100 000 since 1994, yet still no plan has been produced.

The 1997 Liberal Party policy statement noted its support for management planning and implementation at both the Coorong and Coongie Lakes Ramsar sites. The statement also said that the Party would investigate legislative opportunities to provide greater protection to wetlands. No new Ramsar sites have been listed in South Australia since the Ramsar Convention of Participants in 1998. This comes despite a 1997 Liberal commitment to nominate parts of the Gulf St Vincent as a new Ramsar site. The Federal Government through the National Wetlands Program has also provided $80 000 for South Australia to develop a wetlands policy basis and a three year action plan on wetlands. My questions are:

1. When does the State Government expect to have management plans in place for the Coorong and Coongie Lakes Ramsar sites, considering the time and expenditure so far involved?

2. When will the State Government, as promised, nominate parts of Gulf St Vincent as a new Ramsar site?

3. What is the time frame for release of the management plan for that area?

4. What other areas are being investigated for Ramsar site nomination?

5. Will the Minister inform this place as to what is being done in areas where there is a clear deficiency of wetlands, for instance, the Mount Lofty Ranges?

The Hon. DIANA LAIDLAW: I suspect the answer to the question is 'When we can sell ETSA,' but I will seek to establish those agreements. That is the question and that is my answer, but I will seek further advice by referring the question to the Minister in the other place.

NATIVE VEGETATION

In reply to **Hon. M.J. ELLIOTT** (9 December 1998).

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

The Native Vegetation Council and the Department for Environment, Heritage and Aboriginal Affairs are aware of the area of native vegetation at the Kanmantoo mine site. The Department has undertaken a lengthy investigation into the recent grazing of the area by cattle, and has concluded that, in the particular circumstances of the case, the most productive outcome will be achieved by continuing negotiations with the landholder with a view to securing a protective Heritage Agreement over the significant native vegetation. This is a positive approach to the situation which has the Minister for Environment and Heritage's support.

CYCLISTS, SAFETY

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

The Hon. DIANA LAIDLAW: Further to my advice on 26 November 1998 regarding cyclist safety on rural roads, a representative from Transport SA's BikeSouth Section has met with the Executive Director of the South Australian Road Transport Association (SARTA) to canvass the relevant issues. As a result of these initial discussions, SARTA will be working with BikeSouth on a number of initiatives relating to cyclist safety, including—

1. The Share the Road Campaign, which aims to provide the message to all road users about how they can better share our roads. At various stages through the campaign, specific messages are being provided to target road user groups, including heavy vehicle drivers. I understand that the phase of the campaign which focuses on cyclists and heavy vehicle drivers will be undertaken early in the next financial year. SARTA will be working with Transport SA and the consultants on developing this phase of the campaign;

2. In the interim, Transport SA will be working with SARTA to spread the Share the Road message through the SARTA newsletter;

3. Further, the Executive Director of SARTA represented the heavy vehicle industry at the recent VelOZity—Australasian Cycling Conference—held in Adelaide on 17-19 February. This forum provided the opportunity to discuss issues relating to heavy vehicles and cyclists sharing the roads safely; and

4. Finally, to raise the awareness of touring cyclists—particularly international tourists—safety will be an integral part of the Cycling Tourism Strategy which is currently being developed by the SA Tourism Commission.

ELECTRICITY TARIFFS

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Treasurer a question about ETSA.

Leave granted.

The Hon. CARMEL ZOLLO: Given recent comments made by both the member for Gordon and the member for Chaffey, does the Treasurer agree with the member for Gordon's comment that the ETSA tax proposal is blackmail and the member for Chaffey's comment that the Government's tax proposals have nothing to do with the sale of ETSA but are the result of budget mismanagement?

The Hon. R.I. LUCAS: No, and, as I have indicated, I believe that statements made by Mr Foley and Mr Rann have seriously misled the community and some members of Parliament. I am indebted to my colleague, the Hon. Mr Davis, for his earlier question. Statements made by both Mr Foley and Mr Rann have seriously misled people, such as Ms Maywald and others in the community, by indicating since the budget last year that there has been a wages blow-out—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: So, Mr Rann does not support Mr Foley at all?

The Hon. P. Holloway interjecting:

The PRESIDENT: Order! The Hon. Mr Holloway will come to order. It is not a debate.

The Hon. P. Holloway interjecting:

The PRESIDENT: Order! I warn the Hon. Paul Holloway.

The Hon. R.I. LUCAS: Members of the Labor Party have been seriously misleading the community and members of Parliament. They have been making outrageous claims about wage cost blow-outs—

The Hon. R.R. Roberts interjecting:

The PRESIDENT: Order! It is not a debate. The Hon. Ron Roberts will resume his seat.

The Hon. R.I. LUCAS: They have been making outrageous claims that there has been a budget blow-out in relation to Hindmarsh Stadium. It is simply not true.

CORRECTIONAL SERVICES, WORKERS' COMPENSATION CLAIMS

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Correctional Services, a question about workers' compensation claims for correctional services staff.

Leave granted.

The Hon. J.F. STEFANI: The Government itself is an insured employer agency and all Government agencies operate under this scheme. My questions are:

1. How many workers' compensation claims have been lodged by the employees of the Department for Correctional Services for the past 12 months?

2. What has been the total cost of these claims?

3. What was the amount paid by the Department for Correctional Services for the past 12 months to independent medical examination centres?

4. What was the total amount paid by the Department for Correctional Services during the past 12 months to various legal firms engaged to handle workers' compensation matters?

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

BUSES, PUBLIC

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

Leave granted.

The Hon. T.G. CAMERON: The February 1999 edition of *Consumers Voice*, a paper published by the Consumers Association of South Australia, contains the results of a telephone poll conducted by the association of Adelaide's public transport system. The results of the telephone survey, I am sorry to say, were disappointing. Just 10 per cent of callers said that they were happy with the transport service they used and, of those, most had comments as to how the service could be improved. I will ensure a copy of the paper is sent to the Minister for her perusal.

A high proportion of the calls were from the elderly who need to use public transport or who would prefer to use public transport if it was available. The poll showed that many

people, particularly the elderly, felt isolated because of the curtailment of weekend routes and poor bus connections—

The Hon. Diana Laidlaw: By the former Labor Government.

The Hon. T.G. CAMERON: The Minister will get an opportunity to answer in a minute, and I am sure that she will outline who was responsible. The poll also showed that the need to travel into the city to connect to buses to go elsewhere was often a problem, with journeys often becoming too long compared with driving direct. The present two hour multitrip ticket was seen as inadequate. It was suggested a cheaper one day ticket would be helpful. Many callers thought the present buses were far too large for the number of passengers using the service at certain times of the day, and that the introduction of mini buses would allow more frequent service. My question to the Minister is: in order to provide an improved service for customers, and considering her recent moves to allow bikes onto trains for free during off peak hour services—a move I flagged before the last State election and fully support—will the PTB now investigate the benefits of introducing cheaper one day tickets as well as more mini buses to the transport system?

The Hon. DIANA LAIDLAW: There is currently a day trip ticket which provides unlimited travel across the system for just over $5. It allows people to take young children, I think under 12 years of age (but I better check that), free of charge. That ticket offers plenty of opportunity for access whether to the beach in summer, to the hills, to shopping in the city, and a whole range of other journeys. I am not sure whether the honourable member is suggesting that we work on the basis of that ticket and reduce the price of that ticket, which I understand offers very good value compared with similar arrangements interstate. I might explore that further with the honourable member.

In terms of there being too many large buses, I would agree wholeheartedly. It was a matter that we all addressed when Parliament agreed to amend the Passenger Transport Act last session, because unwittingly, and in good faith, we reinforced the need for larger buses by including in the Passenger Transport Act a requirement for a maximum of 100 passengers per bus. Therefore, there was little flexibility for bus operators to provide smaller buses without limiting the number of people they could take on those buses. Since the contracts to the operators provide incentives for them to go out and attract business, it was not in their interest to limit their fleet or reduce the size of buses.

I think we will see a big change in the configuration of the bus fleet arising from the actions of this Parliament last year and from the call for the new round of competitive tenders that the PTB issued last month. I should alert the honourable member that the expressions of interest called by the PTB did close on Monday this week. So, it may be something that we can follow up.

In terms of people who are older, the elderly and accessible buses, the honourable member would know that we have introduced about 101 all new buses that are fully accessible in terms of ramps. We have another 53 buses on order which we have not yet received because of difficulties with Austral Pacific. I hope that that will be resolved very quickly not only for the work force but for the replenishment of our bus fleet.

We are also addressing the issues for older people by spending a lot of money on raising the platforms at railway stations to the same level as the railcars. The national road law that I will introduce in a couple of weeks for debate later this session will provide for much greater space for buses entering a bus zone. This will mean that the bus operator will be able to get much closer to the bus stop and the kerb. If there is no ramp to a bus, that is a big issue for older people in terms of how they ascend those stairs.

In the future we will make it much easier for older people or people with disabilities. I appreciate the support from the Hon. Robert Lawson as the Minister for Disability Services. I have received a copy of the *Consumers Voice*. I understand that the PTB is working through the issues with the association in terms of the feedback. Of course, we can always seek to improve—and we do wish to improve—our services to customers.

Finally, I accept that the services in the evening, on weekends and on public holidays are not at an acceptable level. However, this Government has not cut one service in terms of weekends, after hours or public holiday services. They were cut by Labor; in fact, we have increased those services.

The Hon. T. Crothers interjecting:

The Hon. DIANA LAIDLAW: I appreciate that interjection from the Hon. Mr Crothers, because we have increased a number of those services; but we have certainly not cut even one service from what we inherited from the former Labor Government. In 1991 nearly half of night, weekend and public holiday services were cut out. We have not been able to reinstate all of those. In some areas there is not a demand to do so, but our goal—and this will be outlined in our public transport infrastructure investment plan later this year—is to increase the frequency of services. It is critical in terms of encouraging people back to public transport, and it will be a focus of our longer term investment plan.

TRANSPORT, COMMUNITY SCHEMES

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 community transport schemes.

Leave granted.

The Hon. J.S.L. DAWKINS: Most members would be aware of recent initiatives by the Government to aid the establishment of community transport schemes in various regional areas of the State. Last year, I was privileged to attend the launch of such a scheme by the Minister for Disability Services in the Riverland. Funding for this passenger scheme was provided by the Passenger Transport Board and Home and Community Care (HACC). It is administered by the Berri Barmera Council on behalf of other local government bodies in the Riverland.

In more recent times I have had the opportunity to lead the Government's Rural Communities Reference group in a visit to the Riverland Community Transport Scheme at its headquarters in Barmera. We were pleased to witness the high involvement of volunteer drivers in this community service. Will the Minister tell the Council about the level of participation in community transport schemes in regional areas, particularly in relation to the Riverland scheme?

The Hon. DIANA LAIDLAW: I appreciate the support that the honourable member has given both to the volunteer drivers and people using the Riverland service in particular. It is one of seven that have been established across the State: the Barossa, Murray-Mallee, Mid-North, Riverland, Victor Harbor, Goolwa area and the South-East. As the honourable member said, they are joint ventures between the PTB and the HACC program. There are plans for more networks. The

Hon. Ron Roberts will be particularly pleased that one such network is being considered at the present time in the Port Pirie region; also, Eyre and Yorke Peninsulas, Kangaroo Island and the Adelaide Hills. All those regional networks will be joint ventures between the State Government, PTB, HACC and the local communities.

We are heavily dependent for the operation of these networks on volunteer bus drivers. In the Riverland alone there are 26 drivers, which is a sensational effort. In one year alone they have transported people on 2 000 journeys, a service that was just not available in the local area one year ago. Therefore, people who are aged or young and with a disability who did not have access to a car or friends just could not leave their home or go to various activities. So, it has certainly been well received. Last financial year, 25 000 journeys were undertaken through the network of regional services, a 49 per cent increase on the previous year. We are very optimistic that, again this financial year, we will receive a further substantial increase in the usage of these important services.

POKER MACHINES

The Hon. NICK XENOPHON: I seek leave to make a brief explanation before asking the Treasurer a question about poker machine promotions.

Leave granted.

The Hon. NICK XENOPHON: On Wednesday 24 February 1999 an advertisement appeared on page 24 of the *Advertiser* headed 'Get Lucky Southern Star Pokies'. It was a promotion for the Frostbites venue on the corner of South Terrace and Pulteney Street in the city. The promotion included the following statement:

> Return this coupon for entry in $1 000 draw, $5 pokie change or bottle of champagne.

I have been contacted by two people who telephoned the venue after the advertisement appeared and were told the promotion would continue until 30 March. However, these two individuals have complained to me that, while coupons were honoured on Monday and Tuesday of this week, the venue refused to accept coupons on Wednesday, with the excuse that the promotion was for only seven days. In the context of the voluntary code of practice for gaming machine advertising and promotion launched by the Treasurer last June, my questions are:

1. Will the Treasurer direct an investigation into any breaches of the code or any applicable laws in relation to the subject advertising?

2. If an investigation indicates that there has been a breach of the code, what sanctions are available against the venue and what remedies are available to any aggrieved consumers?

3. Since the inception of the voluntary code, how widely has it been publicised; how many complaints have been dealt with, including the substance of those complaints; and what have been the results in dealing with such complaints?

The Hon. R.I. LUCAS: I am not aware of the advertisement. I will take advice on the question and bring back a reply.

JULIA FARR SERVICES

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Disability Services a question about budgetary cuts to Julia Farr Services.

Leave granted.

The Hon. SANDRA KANCK: According to its latest annual report, Julia Farr has achieved $11 million in savings in the past five years. The expenditure cut strategy was implemented by the last Labor Government and continued by the Liberal Government. The Government has budgeted for a further $1.9 million reduction this year. According to Julia Farr Services Chairman of the Board, Richard Krantz, patient care must be compromised to implement these savings.

In September 1998, Julia Farr Services sent a letter to the Disability Services Office outlining possible strategies on how to achieve these further cuts. This letter was followed up with telephone calls and meetings with the Minister, but six months later there has been no formal response from the Government. The best response appears to have been a letter printed in the *Eastern Courier* Messenger dated 24 February, which reads:

> The Government and the (Human Services) Department are aware that Julia Farr faces particular service and funding pressures and, like other public units, are expected to be developing strategies to meet their service obligations from within the considerable public resources available to them.

To meet service obligations Julia Farr can ill-afford any other budget cuts. The $11 million savings over the past five years has already seen a waiting list emerge for extended care. 'Extended care' means long term or for the rest of the patient's life. Some patients have been waiting since last July and, in the meantime, these people are occupying acute hospital beds at a higher cost than that of Julia Farr. In addition, the Government has reduced the number of bed licences at Julia Farr, further restricting the centre's capacity to generate income.

It is now too late for any strategy to make an impact on the budget this year. It is too late for Julia Farr Services to plan for a further $1.9 million cut, which would see patient care compromised and waiting lists grow longer. As the *Eastern Courier* Messenger states:

> So, just being sick, very sick, is not enough to get you into the State's peak trauma rehabilitation and high support centre.

My questions to the Minister are:

1. When will the Government respond to Julia Farr Services' submission about strategy and directions for budget savings?

2. How does the Government expect Julia Farr Services to meet its service obligation to the community when there is already a waiting list resulting from previous budget cuts?

3. When Julia Farr Services comes over budget for the second year in a row, what action will the Government take against Julia Farr Services?

4. Considering the $1 million extra funding allocated for disability services in the 1998-99 budget, and the $11 million savings from Julia Farr Services since 1993, why is the Government insisting on more cuts from Julia Farr Services?

The Hon. R.D. LAWSON: The honourable member's first question related to when the Government will respond to a proposal put by the board of Julia Farr Services. Shortly after that letter was dispatched to the Department of Human Services, I saw both the Chairman and Chief Executive Officer of Julia Farr Services, and on that occasion we went through the various options presented by the board. There is in place, and has been for some time, a standing committee called the Change Management Strategy Committee comprising representatives of Julia Farr Services, as well as of the Disability Services Office, including the Associate Executive Director of the Department of Human Services, Mr Richard

Deyell and, prior to him, the head of the Disability Services Office, Lange Powell.

That committee has been meeting for some considerable time in an effort to devise an appropriate change management strategy. I think it is worth remembering that, when the honourable member says that $11 million has been taken out of the budget of Julia Farr Services over the past number of years, it ought be remembered that Julia Farr once had on its Fullarton campus over 700 residents. There are now 220 residents at Julia Farr Services, and the Government's contribution annually to that service is $25 million for those 220 resident patients. There has been no cut to the monetary budget of Julia Farr Services in recent years. By the same token, there has been no substantial increase; but there has been no change in the past couple of years in the number of persons at Julia Farr Services.

I do not wish in any way to be seen to be derogating the wonderful work that is done at Julia Farr Services for a very significant group of South Australians who need support. The strategy which led to the savings being made on the Julia Farr campus is that of moving a large number of people out of the institution and into community settings—back home to families, and the like.

The honourable member may be interested to know that the very substantial facilities on the Fullarton campus of Julia Farr Services are as a result of a considerable investment by the South Australian community over a large number of years—not only the South Australian Government but also the community generally. Some of the buildings there are now not even occupied. One substantial building is over five storeys, which has been vacant for, I am told, seven years. It remains there and the Government has not yet received from Julia Farr Services any plan for the use of that site into the future because that site represents a considerable community asset.

In addition, Julia Farr Services was fortunate to be the recipient of a legacy of several million dollars from the late M.S. McLeod. Mr McLeod, in his generous will, gave a significant proportion of his estate to Julia Farr Centre, as he described it (now, of course, Julia Farr Services), to assist in the work of the services. The board is not bringing into account that several million dollars that it has received in developing a strategy into the future. There seems to be an attitude that the Fullarton site belongs to and is controlled by the board and that the M.S. McLeod millions of dollars belongs to the board, and that that is the board's business.

It is simply the business of Government to find money to meet the budget of Julia Farr. Now, we do find money: we are finding $25 million a year to meet the services. All State budgets are, as every member of this Chamber would know, under considerable pressure—thank you to the attitude of the Opposition and others to the sale of our electricity assets.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.D. LAWSON: The honourable member mentioned budget overruns. Julia Farr Services, as are other health units within the Department of Human Services, is required to meet annual budgets. Budgets are set and budgets are expected to be met. If budgets are overrun, there is a requirement to devise strategies to meet the budgets that the board sets for itself. If there is an overrun, we expect some discipline in these organisations.

The honourable member also mentioned waiting lists. There are no significant waiting lists at Julia Farr Services. I do admit that in some services a small waiting list has developed, but it is not yet a matter of grave concern. I will examine the other aspects of the honourable member's question and bring back a more detailed reply if one is required.

PAYROLL TAX

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Treasurer a question about payroll tax.

Leave granted.

The Hon. CAROLINE SCHAEFER: I read in yesterday's *Financial Review* an article which states that the New South Wales Treasurer, Mr Michael Egan, has promised to slash payroll tax by .45 per cent in a new plan for distributing funding to the States approved at April's Premiers' Conference. Under a new Commonwealth Grants Commission blueprint for distributing the Federal Government's $22.5 billion in untied grants to the States, New South Wales would receive $170 million more, while Victoria would have its funding cut by $95 million. Mr Egan said:

> If we get $170 million the payroll tax rate will come down to 6.4 per cent from the current 6.85 per cent. If we get $110 million then the rate would come down to 6.5 per cent.

What effect would any lowering of payroll taxes in other States have on the economy of South Australia?

The Hon. R.I. LUCAS: This is an issue that the Premier has addressed on a number of occasions, although not within the context of the Commonwealth Grants Commission. The honourable member's comments could equally be applied to the circumstances that might confront South Australia where other States have managed to pay off their debt, their interest payments costs have significantly reduced and they are therefore able to compete against other States by reducing their payroll tax.

One can look at the impact of the national tax reform debate and the flow-on effect from the GST, where Queensland will benefit by some $400 million to $600 million annually through the GST arrangement. If we add to that the fact that Queensland is also debt free (as the Hon. Mr Davis has pointed out in recent questions) and the benefits that other States get through the Commonwealth Grants Commission, such as the New South Wales example, we may well have a situation where in South Australia we have to spend a lot of our money on repaying the debt.

Again, the Hon. Mr Davis's fact yesterday would indicate that, if New South Wales sells its electricity assets, South Australia will have 43 per cent of all the debt of the States and Territories. That is an indication of the disproportionate effect that we would feel in South Australia on our State budget. So, we could have a situation where, for a variety of reasons, including national tax reform, Commonwealth Grants Commission relativities, their own privatisation and debt reduction strategies, other States are able either significantly to reduce payroll tax or perhaps even get rid of it completely—but certainly significantly reduce payroll tax. If that occurs, where new investment decisions are taken by companies Australia-wide and boards are looking at where they will establish their business and, if a State such as Queensland or New South Wales is able to offer a payroll tax of 2 per cent to 4 per cent, and we have a payroll tax of 6 per cent or above because we have to generate the money to pay the interest to pay off the debt, then it will be the unemployed South Australians who will suffer because of the decisions taken by Mr Bannon, then Mr Rann, Mr Foley and the

Hon. Mr Holloway in opposing the sale of our electricity assets here in South Australia.

NURSES BILL

Adjourned debate on second reading.

(Continued from 17 February. Page 707.)

The Hon. A.J. REDFORD: I support the Bill, which is an important reform. I must say that I listened with a great deal of interest the other evening to the Hon. Sandra Kanck's contribution, and I go on record as congratulating the Hon. Sandra Kanck on the work she has put in. It is clear that she has done a lot of work. When we come to vote on various issues we may not agree, but she certainly deserves credit for the amount of work she has done and the genuine and open approach that she has adopted in dealing with Bill.

I do not want to go through the Nurses Bill itself in any detail, but I do want to talk in brief about the situation in relation to nursing and respite care for our aged citizens. I understand that 1999—this year—is the United Nations International Year for Older Persons. I also note that in its infinite wisdom the Government has appointed a Minister for the Ageing and the Hon. Robert Lawson holds that position, and the Government is to be congratulated on devoting that sort of attention to our elderly.

In last Tuesday's *Border Watch* the front page carried an article headed, 'I just want to go home: no aged care bed here for a former leading citizen'. The *Border Watch* reported on the fact that Mr Malcolm Morrison, a former Tarpeena resident, was now a resident at a Portland nursing home. For members who are not familiar with the demography of the South-East, Tarpeena is about 10 kilometres north of Mount Gambier, and Mount Gambier is about 100 kilometres away from Portland, so he is a good hour's drive away from his home.

There are a lot of stories in the news that touch us all personally, but in this case Mr Morrison's plight touches me personally. I have known Mr Morrison since I was about 12 years old. I met him when I played junior cricket for Kalangadoo. In fact, he was a coach of the Tarpeena junior cricketers, and his son, who was a talented cricketer (certainly more talented than I), was playing for Tarpeena. Over my teenage years I formed a friendship with his son, Robert. Indeed, with the fluctuation of fortunes of country towns, at one stage Tarpeena did not field a junior cricket team and Robert came and played with Kalangadoo. I have to say that as captain at the time I was very pleased to have him: he won a couple of games for us.

I well remember Mr Morrison. He invariably attended all games in which his son was involved, and he coached the team. I know he was busy with other community activities, which I will outline later. Mr Morrison was an excellent junior coach. Not only did he provide advice on batting and bowling and other techniques of the game but also, more importantly, he provided life advice and advice on sportsmanship and other important issues and benefits that are associated with being involved in a sporting club in a rural community.

An honourable member interjecting:

The Hon. A.J. REDFORD: The honourable member makes a pertinent interjection and I agree wholeheartedly with that. Mr Morrison was an important influence on youth in Tarpeena and surrounding areas for many years. I know that, despite the fact that he might have coached a team for which I was not playing at one stage, he was ready and available to give advice to all young sports people. That advice was well put and timely, and in fact I remember some of the advice he gave me. He was an outstanding sportsman in his own right, and I know that my father, who played sport with and against him, developed a good friendship and a very strong respect for Mr Morrison.

Mr Morrison was also a leading citizen in other areas. Indeed, the *Border Watch* reports that he was a past manager of the SAPFOR mill at Tarpeena and that he helped to raise thousands of dollars for charity and boasted decades of service to Rotary and the district's football, cricket and golf competitions. The article understates significantly the contribution that Mr Morrison made to the local community. It is distressing to read this comment in the *Border Watch*:

> His only visitors in the past month have been his wife, Joan, and son, Robert, who can only drive down once a fortnight when Robert travels over from Melbourne. By his own admission he is deeply depressed, eats little and feels desperately lonely. 'Life's not worthwhile. I just want to go home,' he said on Friday.

Mr Morrison is not so unfit as to require to be in a nursing home full time. It seems to me that improved nursing and respite care would provide him with a more substantial lifestyle, one which he deserves after giving some commendable service to the local community over his 73 years. The *Border Watch* reports:

> Visiting daily carers helped him remain at his Tarpeena address, but he had to move into a nursing home earlier this year when his wife became ill and had to go to hospital.

In this article, Mr Morrison says that he is still an active man and that in his mind he is only in his early retirement years. From my recollection he was always a very fit and active man. The article states:

> It frustrates him that authorities deem it impossible for him to stay at home with some help and it confuses him that there is no room for him in Mount Gambier or even Penola. 'It's bloody ridiculous,' Mr Morrison said.

If anyone knew Mr Morrison, that is about as hard as he gets in terms of language, and it indicates a sense of real frustration. He goes on to say:

> 'You feel life's not worth living. You're locked away and forgotten. The big problem is there's just no people here I know. The last few months have been the biggest disappointment of my life. I've just got no friends here.

The article goes on to report some of the things he did while he was a young person and how active he was in the community. Indeed, the *Border Watch* did not need to look beyond its own pages and records which provide adequate testimony to the contribution that he made to the community. The *Border Watch* states:

> His picture appeared regularly in the paper and he could remember winning three successive cricket premierships with Tarpeena's A grade side and taking five wickets in five balls during his last match.

I digress by saying that if anyone knows anything about Tarpeena they would have to acknowledge that that is a remarkable achievement, particularly when one looks at the current performance of the Tarpeena Football Club which is perennially at the bottom of the table. That would not occur if Mr Morrison was younger and exercising his influence.

The article relates not only to his sporting achievements. It states:

> The Gambier West Rotary Club made Mr Morrison an honorary member.

Anyone who has had any association with Rotary would know that you do not become an honorary member of a Rotary club lightly. Mr Morrison received an international Rotary award, the Paul Harris Fellowship, and, as I said, anyone who knows anything about Rotary would know that you do not receive those awards lightly, they are only given when you make a significant contribution to the community. The article states further:

> Mr Morrison was also one of the driving forces behind the now defunct Community Chest which helped raise money for Mount Gambier people facing hardships because of medical problems.

It is not often that I quote from editorials in the *Border Watch*, because on occasions they tend to be overstated, but on this occasion the *Border Watch* editorial hits the nail on the head: it is understated but its force lies in the words that it uses. It refers to the shortage of beds in Mount Gambier for aged care and the shortage of support and nursing care. The editorial states:

> When a city the size of Mount Gambier is under siege when needing beds for frail and sick elderly, then the system is wrong. And it's about time politicians started listening to what their communities are saying.

The final words are to the point without being overstated:

> If we can only make them listen.

The Hon. Carmel Zollo: What does this have to do with nursing conditions and this Bill?

The Hon. A.J. REDFORD: I am sure that the Hon. Carmel Zollo is wondering what on earth this has to do with nursing, but if Mr Morrison had respite and nursing care he would not need to be in Portland away from his family and the community which he so capably served for many years.

The Hon. Carmel Zollo: This is a funding issue!

The Hon. A.J. REDFORD: Despite the Hon. Carmel Zollo's interjections, I will not be silenced on this issue. An important issue has been raised about the availability of nursing resources and daily carers in an important regional part of this State. Indeed, I think many commentators in the past have said that a community—

The Hon. Carmel Zollo: Is your Minister listening?

The Hon. A.J. REDFORD: Will you stop interjecting! The community is judged by how we treat our aged people and how it can repay what the elderly, such as Mr Morrison, did for us when we were children. I hope that a lot can be done to help Mr Morrison, that we can increase nursing resources for home care, and that we can put aside the differences between State and Commonwealth Governments and do something for people such as Mr Morrison.

I do not think that the community expects the Government—and it is difficult for a State Government—to engage in slanging matches about who has the responsibility. The community expectation is that we should do something to fix the problem. I hope that those who read this contribution will take it on board and do something to help important citizens such as Mr Morrison in their twilight years, because at the end of the day our children will also judge us.

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

LISTENING DEVICES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 3 March. Page 799.)

The Hon. IAN GILFILLAN: Yesterday, I sought leave to conclude my remarks. I had been quoting from a submission from the Law Society of South Australia on this Bill. The drafting comments contained in that submission are as follows:

> 11. The definition of 'relevant proceeding' should cover all proceedings under the Bail Act if it is to cover any and accordingly should be amended.
>
> 12. Clause 6B(1)(b)(i) should refer to 'information or material', rather than just 'information', as this is the phraseology used in all others parts of the Act.
>
> 13. Clause 6B(1b) should delete any reference to 'determinations of the Minister'. It would be inappropriate to allow the Minister by determination to restrict, change or prescribe the manner and criteria for the Commissioner of Police to report. Allowing the Minister to determine these matters on a case-by-case basis could open the Minister up to accusations of manipulating the reporting for political purposes or for some other reason. There is no basis for allowing the Minister to make such determinations.

That completes the submission by the Law Society of South Australia which has been made available to me. There are two other matters not mentioned by the Law Society which nevertheless are of concern to me. I note that when a judge is considering whether or not to grant a warrant for a surveillance or listening device that he or she will receive a submission from only one person, that is, a police officer. Nobody will be assigned to put to the judge any argument as to why a listening or surveillance device should not be used. Nobody will be arguing for the rights of privacy for those who may be inadvertently videotaped or overheard by police.

The President of the Australian Council of Civil Liberties, Terry O'Gorman, in the *Advertiser* of 4 January 1999, said that he knew of one case where women in a house under surveillance were filmed walking around naked. He said that he would write to the Attorney-General urging him to appoint a 'public interest monitor', a legal practitioner who would be present when police request a surveillance warrant from a judge. He said that a monitor's position was created in Queensland 12 months ago.

As I mentioned earlier, the Police Complaints Authority is to be directed to audit surveillance and eavesdropping operations at least once every six months. However, the Government has not suggested that the PCA will get any extra resources to enable it to perform this function. In practice I suspect that this work of the PCA, like a lot of its work, will be delegated to the Police Internal Investigations Bureau. If so, the only check on the abuse of this system will be that of police investigating police, and I have long maintained that that arrangement is insufficient for the public to have adequate assurances about the impartiality of review.

In summary, I give notice that I will be moving amendments to achieve, at a minimum, the following aims: to reinstate privacy as a relevant consideration for a judge considering a warrant application; to ensure that surveillance material collected illegally cannot be used as evidence without an exceptional reason; to ensure that surveillance warrants can be issued only for investigation of serious offences (the definition of 'serious offence' may need to be widened for this purpose); to ensure that police applying for a surveillance warrant must keep a record of the warrant and their supporting reasons; and, the appointment of a public

interest monitor to appear before judges whenever they consider applications for surveillance or eavesdropping warrants. With those qualifications, I indicate that the Democrats support the second reading.

The Hon. R.D. LAWSON (Minister for Disability Services): I support the second reading of the Bill. As the Attorney noted in his second reading explanation, since the Listening Devices Act 1972 was passed there have been very many significant advances in technology relating to the surveillance of persons. Surveillance and tracking devices facilitate the effective investigation of criminal conduct, and having regard to the public interest and the suppression and detection of crime I think it is commendable that the legislation enables our crime detection authorities—namely, the police force, the National Crime Authority and other bodies—to obtain appropriate evidence by the latest scientific means available.

I think it is worth remembering that our current legislation is now quite old in terms of the technology. It is worth reflecting upon the second report of the Criminal Law and Penal Methods Reform Committee of South Australia which was published in 1974. That committee was chaired by Dame Roma Mitchell and had as its members a number of other significant criminologists and consultants. In relation to listening devices, the committee noted that the South Australian Listening Devices Act 1972 was at that stage a fairly new piece of legislation: it came into operation on 2 April in the following year. At page 140 of the report the committee wrote:

> The committee shares the view held by many in the community that the monitoring of private conversations by means of listening devices is a practice greatly to be deprecated and that it should be available to the police only in circumstances in which there is reason to believe that it will enable the prevention of the commission of a serious crime or the detection of a serious crime already committed.

I think that those sentiments would remain widely held in the community. The actions of Ms Linda Tripp in the celebrated Monica Lewinsky case, which is still unfolding in the United States, has provoked a good deal of public abhorrence of the secret taping of conversations by someone who was allegedly befriending another. I think that that event has focused public mind on this issue.

I do not want to dilate upon the provisions of the legislation, but there is one matter that I would like the Attorney to place on the record in his response. It arises out of the difference which will now appear and which has appeared for some time in the Commonwealth Telecommunications (Interception) Act, because that Act relates to and restricts the interception and recording of telephone conversations. The protections inherent in that Act are that permission to intercept and record telephone conversations is granted upon warrant only for serious offences, and the material obtained from those interceptions is admissible in evidence only if the appropriate provisions of the legislation have been complied with.

It is my understanding that evidence that is obtained by this means without the necessary warrant relating to the particular transaction is inadmissible. In this legislation, as I read it, we in this State are not going down that route, and I would like the Attorney to explain why it is inappropriate in these circumstances to impose a similar sanction, namely, inadmissibility of any evidence that is obtained in contravention of the provisions of the current legislation. I support the measure in its wider scope and congratulate the Attorney for bringing forward this important and, I think, overdue reform.

The Hon. A.J. REDFORD: I support the second reading of the Bill and also congratulate the Attorney-General on tackling this very difficult and vexed area of listening devices. It is particularly pertinent in relation to the changing technology both in terms of the nature of criminal activity and the nature and extent to which listening devices are used. Certainly there has been a sea change in terms of the technology available for the purpose of listening to conversations since the Bill was first promulgated in 1972. I note that there is a significant number of amendments to the Act, and I also note with interest the contributions of the Hon. Terry Cameron and the Hon. Ian Gilfillan. I look forward to participating in the Committee stage.

The object of this Bill is to make legislation reflect that change in technology and to include visual surveillance. It also increases protection in relation to the use of information gained through the use of a listening device or through the use of visual surveillance and allows these devices to be set up on private property. It also changes the regime in relation to the disclosure of information. Again, I look forward with a great deal of interest to the Committee stage when we deal with these issues.

I do have some concerns about the Bill in relation to the extent to which listening devices may or may not be used. My understanding of the Bill is that listening devices can be used after application by a relevant authority to a court where there is a relevant investigation or, indeed, a relevant proceeding. I take no issue with much of the criteria in relation to 'relevant proceeding'. However, I am a little concerned about the definition of 'relevant proceeding' which provides:

> (h) Any other proceeding relating to alleged misbehaviour, or alleged improper conduct, of a member of the police force or an officer or employee of the State, the Commonwealth or another State or a Territory of the Commonwealth.

I am also concerned about the definition of 'relevant investigation' which provides:

> (b) investigation of alleged misbehaviour or improper conduct of a member of a police force or an officer or employee of the State, the Commonwealth, or another State or a Territory of the Commonwealth.

The principal Act does not include any definition of 'misbehaviour', nor does it include any definition in relation to 'improper conduct'. I am concerned that we are exposing people to the risk of both visual and audio surveillance for events which might fall into the category of misbehaviour or impropriety. I have always had difficulty understanding what is meant by the term 'improper'. It is a word that has crept its way into the criminal jurisdiction over some years, and it has caused enormous difficulties in the courts in relation to what is meant by the term 'improper'. I know that a number of cases have gone to the High Court to determine what is meant by the term 'improper'. I am not sure what is meant by the term 'misbehaviour', and I am a little concerned that we may see a surfeit of litigation about what is meant by the term 'misbehaviour'.

The use of a listening device by an authority is a substantial intrusion upon the privacy and civil liberty rights of ordinary citizens. I think we need to be very cautious about the way in which that intrusion should occur. I know this is confined in relation to the police force, and I can understand that we need no hint of corruption, and where there is any corruption we need to bring every force possible to bear to

eliminate that corruption. However, I have a real concern that when one couples the use of the term 'misbehaviour' to officers or employees of the State or the Commonwealth that we are not going too far. I would be most grateful if the Attorney-General could outline the need to extend this legislation to 'misbehaviour or improper conduct'. If we are going to allow this sort of intrusion, we must be very cautious and we must have substantial reasons for that to occur.

Another issue which concerns me is that of going to a court to obtain a warrant to enable a listening device to be used. I must say that I have not seen in any of the reports tabled by the Commissioner of Police pursuant to the Listening Devices Act any indication that any application has ever been refused. I am concerned that there is no independent check to ensure that the use of these listening devices is not overstated. I well remember back in 1994 a case before the Magistrates Court which was reported in the *Australian* as follows:

> . . . the prosecution, ie the Director of Public Prosecutions, revealed investigators had tapped more than 18 000 telephone calls on warrant, although some would have been only electronic pulses or other non-calls.

I refer to the fact that some 18 627 telephone calls were tapped in Australia for the period 2 March 1994 until 27 July 1994, which appears to be an extraordinarily large number of interceptions. I know that that was done pursuant to the Commonwealth Telecommunications Act, but I would hope that we do not see a huge proliferation of the use of listening devices because that is a substantial intrusion on our civil liberties.

The Hon. T.G. Roberts: Or visual.

The Hon. A.J. REDFORD: I agree with the honourable member. I am distinctly uncomfortable with this sort of surveillance of Orwellian proportions that could potentially come about, not as a result of anything done legislatively but because of the increasing availability of improved forms of technology and the fact that that technology is available so cheaply to so many authorities.

I would invite the Attorney-General to give me examples where applications for a warrant to use a listening device have been refused, because I must say that I am not confident that the courts on an *ex parte* application from an investigating authority will ever knock back such an application. The trouble is that the ability to supervise that is extremely limited.

Indeed, I cite an example of something which happened to me a couple of years before I entered this place. I well recall acting for an Italian gentleman who was charged with an offence of growing marijuana at Port Wakefield. He was prosecuted for a very serious offence, and the matter came before a judge and jury in the District Court. I well know that the prosecutor was very confident about the success of his case: he thought the evidence was overwhelming. My client gave evidence under oath that he was unaware that this crop was on his property. There was some suggestion that perhaps his son might have been involved. There was a very strong summing up by the judge. I will not identify him, but he used to give those sorts of summing up which basically said to the jury that someone is obviously guilty and you had better convict them. I must say that we were a little concerned about the nature of the direction given to the jury. I think we were on page 3 of our grounds of appeal (it took about 20 minutes to draft) when the jury returned with a unanimous verdict of not guilty.

Obviously, my client was very happy with that result; there was no need to appeal; and the matter was at an end—or at least we thought so. I well remember about two weeks later my client ringing me and saying that he had found this 'device' in his front lounge. I said, 'Look, I do not know what you are talking about; bring it into my office.' So, he brought it into my office. It resembled a battery pack and it measured 1 foot by 4 inches by about 8 inches, and it had all sorts of wires, etc. I did not have any technical expertise to identify it. I rang a barrister whom I knew had a little more experience than me. I took it to his office and asked him, 'What do you think this is?' He said, 'That is a listening device.'

We referred to the Listening Devices Act and discovered that to be in possession of one of these things we were committing an offence. This gave us some cause for nervousness, because we had a couple of wins at that stage. So, we rang the Director of Public Prosecutions, who also said that in fact we had a listening device and had probably committed an offence by interfering with it. Very quietly, someone came down to the barrister's office and collected the device, and that was the last I ever heard of it.

The legal profession abounds with stories of alleged offenders who have been acquitted in the criminal courts, who have then been followed home and nicked for drink driving after the celebration drinks or nicked for something else. Indeed, this brought a new dimension: if you were acquitted of a drug offence, in goes the listening device. I am not saying that that happens.

The Hon. T. Crothers interjecting:

The Hon. A.J. REDFORD: I am not saying that; there might have been other good grounds. My client has never been back to see me, so obviously they never found any evidence to charge him with anything else. Given the success in the earlier case, I am sure that if he had been prosecuted he would not have gone to another lawyer. I have digressed, but it is a rather amusing story. It does illustrate that we need to deal with these applications for a warrant with very great care to ensure that we do not substantially interfere with a person's civil liberties.

I refer to section 7 of the Listening Devices Act. Section 7 refers to the lawful use of a listening device by a party to a private conversation. Indeed, my colleague the Hon. Robert Lawson touched on the issue and, if I may say so, did so well. Basically, the scheme of the legislation is that section 4 of the Act provides for an offence where a person intentionally uses a listening device to overhear, record or listen to a private conversation, whether or not they are a party to that conversation, without the consent of the parties to that conversation.

Indeed, this amending legislation increases the penalties as I understand it in relation to a breach of section 4 of the Act to a fine of $10 000 or imprisonment for two years. That by itself gives no cause for concern. However, section 7 of the Act provides an exception. Section 7(1) of the Act provides:

> Section 4 of this Act does not apply to or in relation to the use of a listening device by a person (including a person to whom a warrant is issued under section 6) where that listening device is used—
>
> (a) to overhear, record, monitor or listen to any private conversation to which that person is a party;
> and
>
> (b) in the course of duty of that person, in the public interest or for the protection of the lawful interests of that person.

Section 7(2) is substantially amended by this Bill. If section 7(2) is amended, it will set out some exemptions in relation to authorities and then add a clause in relation to the com-

munication or publishing of information. It is my view that section 7(1) effectively renders section 4 almost nugatory in just about every single case I could imagine. My concern is that there are many occasions in my professional experience where one party to a conversation records that conversation without the knowledge of the other.

When I have been approached as a legal practitioner and asked to give advice on whether or not that conduct is appropriate, I have always been able to advise with good conscience that that is not an offence in the circumstances that a person describes because, frankly, the term 'or for the protection of the lawful interests of that person' is so wide in my respectful view that it makes it almost impossible to find anyone who would fall within section 4 of the Listening Devices Act who would not be able to avail themselves of the defence under section 7 of the Act.

I shall cite an example: a matrimonial dispute where the husband and/or the wife in an estranged relationship decide to set up their partner and act, on the face of it, in a reasonable manner (but in the context of the relationship very provocatively) and tape what is happening. They do so in the belief that that might assist them in their cause in any subsequent legal action. I do not morally approve of that sort of conduct—and I will come to that in a minute—but, with due respect, that sort of conduct is legal because section 7 is so wide.

The Hon. Ian Gilfillan: Is it admissible?

The Hon. A.J. REDFORD: In some cases, yes, it is. I know that there are rumours around this place in relation to the use of listening devices. It has been suggested to me by certain members that one member of Parliament tapes conversations he has on the telephone unbeknown to the other party to the conversation. I understand that, because the device is not connected to the phone, the Commonwealth legislation does not apply. I have some real concerns that, if I telephone a certain member of Parliament, he might record our conversation without my knowledge. Whilst that might be legal under the Act, I find it immoral, wrong and of some concern.

I must say that I do not know whether those rumours are true. Not that I have spoken to this particular member on any particular occasion, but I will always keep that in mind. We need to consider seriously how this section, particularly the defence under section 7, is to operate. There are many occasions where two people have a conversation, with one of them expecting it to be kept private, and the next thing there is a risk that it is being taped. There is a real risk to set up people and, as an Australian, I do not believe that we should allow anyone to put themselves in that position.

It seems to me that it is much harder for a responsible authority, such as a member of the police or the National Crime Authority, to use a listening device than it is for the ordinary citizen. I am not sure that that is appropriate. I am not sure that that is something we ought to look at. Nor am I sure how the Attorney can go about it. I believe that the Attorney is in a very difficult position: neither the Attorney, his department nor the Director of Public Prosecutions will be aware of how extensively they are used. I must say that I am at a loss to see how we could monitor the use of listening devices by private persons under the impression that they are doing so lawfully because they have a defence under section 7.

I remind members that all they have to do to avoid the section 4 offence and not to have to worry about getting a warrant is, first, be a party to the conversation; and, secondly, establish some lawful interest. I am not sure what is meant by the term 'lawful interest'. Given that section 4 imposes criminal penalties, it is likely that that section is to be interpreted narrowly, which is an appropriate means of statutory interpretation; and that section 7 is to be interpreted widely, given that it provides a defence, and therefore lawful interest could mean almost anything.

The lawful interest might be, 'I want to have a good record of the conversation just in case there is some litigation involving this conversation down the track.' I have been concerned about section 7 for years. I freely acknowledge that I do not have any particular response to how we should deal with it, but perhaps there should be some debate about the use of listening devices—not by authorities who generally act responsibly and appropriately—and on how they are used in the broader community by non-authorities, if I can use that term. Perhaps it is not appropriate to deal with it in the context of this Bill, but I feel that I would have been remiss in my duty if I had not at least alluded to my concerns about the private use of listening devices and the broad nature of the defence set out in section 7.

I would be most interested to hear the Attorney's response. He may even be able to tell me that the advice I have been giving over the years about the width and breadth of section 7(1) has been wrong, and I will take that advice on board. I certainly have not had anyone suggest that it is wrong in the past, and it certainly has not been the subject of any litigation. However, it does concern me and I believe that it is important because I am seeing evidence that people are more inclined to use listening devices, such as small tape recorders. It is becoming more prevalent. Other than in relation to my comments, I commend the Bill.

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their indications of support for this important Bill. What the Government has endeavoured to do in the preparation of this Bill and its presentation before the Parliament is provide a balance, recognising the sensitivities of interception of conversations, video surveillance and the use of tracking devices. It is a matter of judgment frequently about where the line should be drawn.

The conclusion which I and the Government have reached is that what is in this Bill is an appropriate balance, but if there are issues which have not been appropriately explored or where members think the balance is wrong then I have an open mind about giving further consideration to them. The Bill has been the subject of quite extensive consultation and compromise in the preparations so far.

In indicating support for the Bill, the Leader of the Opposition noted that the Bill inserts a number of new provisions relating to the use of surveillance devices by the police. The Leader noted that the Bill allows a judge to authorise the installation of more than one device on a warrant and that the warrant authorises police, in executing the warrant, to gain entry by subterfuge to extract electricity, to take non-forcible passage through nearby premises and to use reasonable force.

It should also be noted that only in the cases where a judge has authorised use of a listening device to record the conversations of a specified person, and where that person is suspected on reasonable grounds of having committed or is likely to commit a serious offence as defined by the Act, can the police enter any premises to record the conversation of that person.

During her second reading contribution the Leader of the Opposition also raised a query regarding circumstances where a person, such as a private investigator, illegally obtains a video or information from a listening device and the police subsequently seize this video or tape. The Leader of the Opposition questioned whether the police could use the information caught on the basis that the police had not improperly obtained it.

If the information is obtained through the illegal use of a listening device, the disclosure of such information is regulated by section 5 of the Listening Devices Act 1972. Currently section 5 provides that illegally obtained information cannot knowingly be communicated or published. However, the Bill inserts a new section 5 which will give limited scope to communicate and publish illegally obtained material.

Technically, the police will still be prevented from using information illegally obtained by use of a listening device, regardless of whether or not the police undertook the illegal activity. However, two other issues may be of relevance: a person who uses the listening device to record a conversation in accordance with section 7 does not commit an offence, and therefore the communication of information obtained by such means is not regulated by section 5 of the Listening Devices Act 1972. Section 7 protects from prosecution a person who is party to the conversation and who records that conversation in the course of duty in the public interest or for the protection of that person's lawful interests.

At page 471 in the Supreme Court case of *Giacco v. Edginton*, Justice Cox stated:

> In my opinion it was, in the circumstances, in the public interest that Hall should tape these conversations because it must always be in the public interest to bring to justice persons engaged in a conspiracy to murder, and there [was] good reasons at the time to suspect that the appellants were engaged in such a conspiracy and that the appellants' conversations with Hall were designed to further it.

Therefore, depending on the circumstances of the case, including the nature of the offence, a person may be able to argue that the listening device was used in accordance with section 7. If so, any communication of the taped conversation would be covered by new section 7(3), not new section 5. In addition, it is possible that, even if a conversation was taped in contravention of section 4 of the Listening Devices Act 1972 or an illegal act is committed in order to videotape an activity, a court could admit the evidence based on the discretion in *Bunning v Cross*, which is based on public interest principles. According to the *Bunning v. Cross* principles, when considering to admit evidence obtained illegally, a trial judge must balance the apparent conflict between the desirable goal of bringing the wrongdoer to conviction and the undesirable effect of court approval or even encouragement being given to the unlawful conduct. The principles by which there is discretion to admit or exclude evidence obtained by illegal means are well settled, but they must be left to the discretion of the trial judge to be exercised on the facts of each individual case.

The Hon. Terry Cameron indicated support for the Bill and also raised a query regarding protection for people who are recorded on video or audiotape but who have no relationship to the investigation. All people recorded by a listening device or surveillance device used or installed under the Act deserve and are afforded the same level of protection under the Act.

The Bill inserts a number of new provisions in the Listening Devices Act 1972 to deal with disclosure of information obtained under or in contravention of the Act. New section 5 will regulate the communication or publication of information obtained by the illegal use of a listening device. New section 6AB deals with the communication or publication of information obtained by a listening device or surveillance device which was used or installed in pursuance of a warrant issued under the Act; and new section 7(3) regulates the communication or publication of information obtained through the use of a listening device in accordance with section 7 of the Act.

These provisions for disclosure apply to all information obtained by these means, regardless of whether the information contains material which may be used in evidence for an offence, or whether the information is of an innocent nature involving a person who is not suspected of any illegal activity. Each provision only allows the communication or publication of information in limited situations, such as in relevant proceedings or relevant investigations.

New section 6C regulates the control and destruction of the information obtained in accordance with the warrant. The section will make it clear that, if the information is not required in connection with a relevant investigation or relevant proceedings as defined by the Act, the information must be destroyed. Therefore, records of conversations or activities of an innocent nature that will not be required in connection with the relevant investigation or relevant proceedings are required to be destroyed. The new section will also allow regulations to be made controlling the movement of the obtained information. It is intended that the regulations will contain tight controls regarding the storage and movement of the information.

I turn now to the contribution of the Hon. Mr Gilfillan, who indicated his support for South Australia Police being given the capacity to install surveillance devices and tracking devices in situations that are currently beyond their lawful powers. He also recognises that the Bill, laudably, improves on the present regime of police accountability in the use of listening devices. However, Mr Gilfillan has raised a number of issues with which he is concerned.

First, the honourable member has expressed concern that the Bill specifically removes privacy as a relevant consideration when a judge is considering whether or not to grant a warrant for a listening device or warrant. While the provision relating to privacy in the current Act has not been replicated in new section 6(6), it does not mean that privacy is no longer an issue. There is a plethora of cases that recognise the well established principle that legislation authorising intrusion into an individual's property and privacy is strictly construed, as recognised by the Honourable Justice Kirby in *Ousley v R*, where he states:

> . . . the principle rests upon the presumption, imputed to Parliament, that it will ordinarily respect such rights and derogate from them as little as possible, and then upon strict conditions, and subject to effective protective procedures.

With this approach to statutory interpretation and the fact that privacy considerations are inferred in every other factor expressed in new subsection (6), it is clear that privacy is a factor to be considered by a judge in dealing with an application for the use of a listening device or installation of a surveillance device. In particular, I refer to paragraph (a), which provides that the judge must take into account the gravity of the criminal conduct; paragraphs (b) and (c), which require the judge to consider whether the information that is

sought to be obtained will be so significant and so likely to be obtained that the warrant is justified; and paragraph (d), which requires a judge to consider if there are alternative means of gathering the information.

Apart from these factors, paragraph (f) provides that the judge may consider any other relevant matter, which of course would include the intrusion that the use of the listening device or installation of the surveillance device will cause. Consequently, the Government does not believe that new subsection 6(6) must expressly require a judge to consider privacy when dealing with an application under the Act for it to be clear that Parliament expects that a judge will balance a person's privacy with the need to ensure that serious criminals are brought to justice.

Secondly, the honourable member quoted the Law Society's submission on the Bill for the benefit of the Council. I will comment on each of the Law Society's issues in turn. The Law Society expressed concern that new section (6)(7)(b) will allow the police to extract electricity in using or installing a device under a warrant. Some consider that section 6(1) already authorises the exercise of ancillary powers as expressed in new subsection 7(b). However, the Government considered it beneficial to expressly provide for such ancillary powers in any event.

The ability to use electricity is fundamental to the use of some types of surveillance devices. It must also be acknowledged that surveillance devices will only be used where a Supreme Court judge is satisfied on reasonable grounds that the listening device should be used or the surveillance device installed. I am also advised that the electricity required to power a device is minimal.

While the Law Society supported the requirement to maintain a register of warrants, it believes that the Commissioner should be required to retain and preserve the warrant or the application and the affidavit in support. Currently, when a warrant is issued in accordance with the Supreme Court rules, the warrant and the original application with all supporting documentation are secured in a sealed envelope and kept by the court in a locked safe. Such documentation is retained by the court for a period of three years. On the expiration of three years the documentation is returned to the police if the investigations to which the information obtained in connection with the warrant have been completed. If the investigations are continuing, the court will retain the documentation.

Records are also currently maintained by the police. The duplicate warrant and copies of the application with all supporting documentation are kept in a safe, and the information may only be accessed by the application for the warrant and persons responsible for the administration and control of these activities. When the original documentation is returned by the courts, all copies and duplicates are destroyed and the original documentation that has been returned by the court is kept indefinitely in secure storage by the police.

Therefore, procedures for the retention of warrants, applications and supporting affidavits are already in place. The Government believes that legislative amendment is not required to entrench this procedure. In any event, the Law Society's request for amendment has stemmed from the concern that no record may be maintained which will cause problems if the issue of a warrant ever comes into question or needs to be justified. The case law recognises that the issuing of a warrant is an administrative act. It also recognises that by virtue of this classification a warrant may only be challenged on the grounds that there is an error on the face of the warrant, but it is not open to a judge to adjudicate on the sufficiency of a warrant or whether the issuing authority was in fact satisfied as to any statutory requirements.

The Law Society has expressed concern about the communication and publication of information that has been released in court proceedings on the basis that it was lawfully obtained but was found to be illegally obtained. As I have previously outlined, section 6AB regulates the communication or publication of information or material derived from the use of a listening device under a warrant, or a surveillance device installed through the exercise of powers under a warrant. Section 7(3) deals with the communication or publication of information or material derived from the use of a listening device under section 7. Neither provision regulates the disclosure of material obtained in contravention of section 4 of the Act, or material obtained by a surveillance device which has not been used in connection with a warrant for the installation of that device. Consequently, where information, albeit having been released in court on the belief that it was legally obtained, has been found to be obtained by the illegal use of a listening device, the further publication or communication of such information will be regulated by new section 5. Under the new section, information will only be disclosed in very limited circumstances, and it will be irrelevant that the information has been disclosed in Court.

The Law Society has stated that care needs to be taken to ensure that only devices that are likely to be used for an unlawful purpose are declared under the Act. The Government agrees with this statement. The concept of declared listening devices is not new in this Bill. Since the Bill was enacted the Minister has had the power to declare, by notice published in the *Gazette*, a listening device or class of listening device to be 'declared listening devices' for the purpose of the Act. The Act then makes it an offence to possess a declared listening device without the consent of the Minister. Since 1985, the following classes of listening devices have been declared under the Act;

1. Radio transmitter devices of a size less than 30 cubic centimetres in volume.

2. Listening devices of the kind commonly known as an 'electronic stethoscope'.

3. Listening devices of the kind commonly known as a 'directive type microphone'.

4. Sipe Laser 3-DA Complete Mobile Laser Listening System made by Sipe Electronic and any other listening device substantially similar to that kind of device.

5. Any listening device of the kind commonly known as 'Laser Listening Systems'.

Such listening devices are generally used to covertly record a private conversation to which the person is not a party and, therefore, such devices do not have a lawful purpose. At this time I am not aware of any proposals to declare any further listening devices.

Currently, the police do not have the power to search for, and seize, declared listening devices that the police suspect on reasonable grounds are in a person's possession without the consent of the Minister. The Bill will insert a provision to give the police such a power.

The Law Society also suggests that if there is evidence that tracking devices are being used by organised criminals to frustrate investigations or locate protected witnesses then consideration might be given to including declared tracking devices.

As I have just stated, the listening devices that have been declared for the purposes of the Act are devices that do not

have general legal usage. Generally, the purpose of such listening devices is to record, overhear or monitor private conversations to which the person is not a party. This is an offence under the Listening Devices Act. By comparison, it is not an offence to use a tracking device. Consequently, it is anomalous to declare tracking devices on the basis that they do not have general legal usage.

The nature of listening devices and the material that may be obtained from their use sets them apart from other surveillance devices. A tracking device does not provide substantial private information about a person. One may discover the geographical location or movements of a person; however, such information may also be obtained through the covert surveillance of a person. On this basis, the Government believes that it is not necessary to make it an offence to use a tracking device and, therefore, it is inappropriate to declare specified types of tracking devices.

The Law Society claims that the Bill will widen the ambit of the Act by allowing the police to use a warrant in relation to any offence, including minor offences. The Government does not agree with the Law Society's assertion.

The current Act does not restrict the offences for which the police may apply for a warrant. However, a Supreme Court judge must take into account a number of factors, including the gravity of the criminal conduct being investigated, when considering if there are reasonable grounds for issuing a warrant. In considering whether to issue a warrant or not, the judge is effectively balancing two competing public interests: an individual's right to be protected from unnecessarily intrusive police investigation, on one hand, with the public expectation that criminals will be brought to justice.

The Bill does not alter this position. The gravity of the criminal conduct to which the investigation relates is still a factor to be considered by the Supreme Court judge and, as I have already stated, the Act will be construed narrowly to ensure that a person's privacy is maintained.

I am advised that, to date, warrants have not been issued by a judge, nor has a warrant been sought for, what could be called, minor offences. Generally, warrants have been issued for investigations into serious offences such as murder, conspiracy to murder, robbery, conspiracy to commit robbery, serious drug offences, serious organised theft offences. Such offences are not unlike the class 1 and class 2 offences in the Telecommunications (Interception) Act.

In claiming that the Bill widens the ambit of the Act, the Law Society also states that the disclosure provisions have been widened significantly in that you can use the information obtained in relation to any offence. Again, this is consistent with the position in the current Act. However, the Government believes that the provisions relating to the publication and communication of information and material obtained by use of a listening device have been tightened rather than expanded.

Currently, section 6a provides that a person to whom the warrant is issued under the Act must not, except in the course of duty or as required by law, knowingly communicate or publish any information obtained by use of a listening device under the warrant. It also provides that a person who uses a listening device at the direction of the person to whom the warrant was issued must not, except to the extent necessary to give full effect to the purposes for which the warrant was issued or for the purposes of giving evidence, communicate or publish any information obtained by use of the listening device.

The police have adopted extensive procedures to regulate the release of information, and seek the cooperation of parties, such as the Director of Public Prosecutions and defence counsel, to respect the sensitive nature of the information. However, once the information has been lawfully communicated by the person to whom the warrant is issued or a person who used the warrant at the direction of the warrant holder, there is no further restriction on the communication of that information.

The Bill will ensure that every person coming into contact with information obtained by use of a listening device or installation of a surveillance device under a warrant will be required to only communicate or publish such information in accordance with the Act. Section 7 of the Bill has also been amended to overcome a similar deficiency in relation to the communication and publication of information obtained under section 7 of the Act.

Also, while the new provision will allow for the disclosure of information in relevant proceedings for any offence, as already indicated, this is not inconsistent with the current provisions, and is not inconsistent with legislation or proposed legislation interstate.

The Law Society considers that the Bill should specifically deal with the admissibility of evidence that has been obtained through the illegal use of a listening device, or the use of a surveillance device where the installation of the device involved committing a trespass. Currently, the admissibility of evidence which has been obtained illegally or through improper conduct is considered on the basis of principles established in *Bunning v Cross*. However, the Law Society has suggested a provision similar to section 74E of the Summary Offences Act so that illegally obtained evidence will be inadmissible unless there are substantial reasons for the evidence to be admitted. This is stronger than the principle in *Bunning v Cross*, and I am not persuaded that we ought to be moving in that direction.

Section 74E of the Summary Offences Act ensures that evidence, obtained during a police interview that was not conducted in compliance with section 74D, will be inadmissible unless the court is satisfied that in the interests of justice the evidence should be admitted notwithstanding the police non-compliance. The procedures for recording police interviews were enacted to reduce the potential for forced confessions, or claims of forced confessions. The law surrounding confessions has traditionally been a special area.

The use of listening devices or surveillance devices can be contrasted in an essential respect. Unlike with confessions, the issue is not whether the evidence is false, induced or could be subject to claims of it being false. Generally, the question is whether the evidence was obtained by taking illegal or improper steps. While illegal activities should not be encouraged, I believe that the current legislation and case law deals adequately with the potential admission of such information.

The Law Society suggests that there should be provisions for requiring the judge to specifically address the proposed positioning of the listening or surveillance device to minimise intrusion. The judges have generally not regulated this area. The police have adopted a stringent policy with respect to the positioning of listening devices on the basis that privacy is a significant issue. It must be recognised that there will be occasions where it will be necessary to install a device in a bedroom, such as in the investigation of an alleged paedophile. It should also be recognised that intimate activities are not only conducted in the bedroom. However, positioning of

a listening device, and in fact a surveillance device, must be an operational issue. A judge must be satisfied that the use or installation of a listening or surveillance device is justified. However, the judge is not in a position to direct the investigation.

The Hon. Mr Gilfillan raised several other issues today following on the contribution he made yesterday. He dealt with certain drafting issues, which we can deal with in Committee. He strongly put the view, supported by the Council for Civil Liberties President, Mr O'Gorman, that there ought to be someone present when an application is made for the issue of a warrant—someone called a 'public interest monitor'. The Government vigorously opposes such a proposition. It misunderstands the nature of the application, which is of an administrative nature, and I suggest would be totally inappropriate and ineffective because such a public interest monitor will have no idea what is involved in the investigation or the conduct being investigated and will not be in any position to make a judgment about whether or not the application is an appropriate one.

What does the public interest monitor do, anyway, if the public interest monitor says, 'I disagree with the application that is being made; I don't think Your Honour ought to grant the application for the issue of a warrant.' Does the public interest monitor make a public statement about it or a report to someone on it? What happens from there? I think it is an ill-conceived proposition that has no prospect of working satisfactorily. In any event, it will probably be a serious reflection upon the integrity of judicial officers who are charged with a statutory responsibility. To think that we ought to have a public interest monitor present to, in a sense, watch over what the judge does really is quite misguided and makes no useful contribution to the administration of justice. So the Government will be resisting that vigorously.

The Hon. Mr Gilfillan also made a comment about the Police Complaints Authority and said that there is no suggestion that it will get additional resources to audit. He also made the comment that he suspects that the responsibility will be delegated to the Police Internal Investigations Branch. If that is his suspicion, I understand that it is completely wrong. The Police Complaints Authority has a responsibility under the Commonwealth Telecommunications (Interception) Act to undertake an audit function. The Police Complaints Authority officers undertake that and there has been no suggestion at all that broadening that audit function to the Listening Devices Act is in any way going to change the responsibility of the Police Complaints Authority, and on all the information I have (and if I am wrong I will correct it next week) there is no indication that in any way will the police be investigating police or auditing police in the context of warrants and the exercise of the powers given under the Act when executing a warrant in relation to a listening device.

In terms of additional resources, the auditing process is not so onerous that it requires additional resources. It is not as though there are hundreds of these warrants issued. They are issued sparingly under the Listening Devices Act and the Commonwealth Telecommunications (Interception) Act and there is no suggestion that broadening the operation of the Listening Devices Act and broadening the responsibility of the Police Complaints Authority will add substantially to the Police Complaints Authority's responsibilities.

The Hon. Robert Lawson raised a question about the difference between the Commonwealth and State Acts in respect of the offences for which a warrant may be issued. I have already dealt with that extensively in the reply to the Hon. Mr Gilfillan. In the same context the Hon. Robert Lawson raised a question about the admissibility of evidence and I believe I have dealt with that adequately. There is no logical reason why there ought to be an identical approach between the State and the Commonwealth in respect of its different jurisdictions. In relation to police undercover operations, if we waited for the Commonwealth to enact legislation in response to the Ridgeway decision several years ago, we would still be waiting, but the Parliament expedited legislation to ensure that investigations which were made by police undercover operatives were not invalidated as a result of the Ridgeway decision. In the context of the differences between the State legislation and the Commonwealth Telecommunications (Interception) Act, I do not have a difficulty with differences of approach.

The Hon. Mr Redford raised some issues about definition of the 'relevant proceeding', including issues of police discipline in the context of 'relevant investigation', as well as raising questions about what is misbehaviour and what is improper conduct. The Government has taken the view that it is appropriate and important, because of the experience of the Wood Royal Commission alone, to extend the definitions of 'relevant investigation' and 'relevant proceeding' to encompass police in particular—not just State police but Commonwealth and other States and Territories police—because frequently video surveillance or listening device information is the only way that evidence can be obtained in respect of corruption allegations.

The honourable member says that he has always had some concern about the use of the word 'improper' in criminal legislation. I share that concern, but only to the extent that it is a word which determines illegality and which may in its meaning vary according to common and public usage. I do not think it has raised any difficulties in practice. In the Criminal Law Consolidation Act there are a series of public offences that depend upon the use of the concept of impropriety as the basis upon which those offences are founded, but I do not think that it will cause any difficulty in the context of this legislation.

The honourable member also raises the question of application to a court for a warrant, expresses concern about it but, with respect, did not provide an alternative. As I have said already, I certainly do not agree with any concept of a public interest monitor. As I have indicated in the earlier part of my response, issuing a warrant is an administrative function and no-one has raised concerns about the way in which that has occurred up until the present time. It is not a function of the reporting process to identify what applications have been refused. I would not have any idea which applications have ever been refused. I know that judges do give applicants a hard time. It may be possible to obtain some information about what applications have been refused. If I am able to do that without delving back through years of history, I will endeavour to do so, at least to reassure the honourable member that judges do not rubber stamp. It is my experience that the judges all take their responsibilities very seriously.

The honourable member raised several other issues. I do not have the answers at my fingertips. If I have not adequately addressed all those, then we can do it in the Committee consideration of the Bill. I close by reiterating what I said at the beginning, which has really been affirmed by all members who have spoken on the Bill. This is an important piece of legislation. It is important to try to get the balance right. The Government believes very strongly that the balance is right.

I think from the contributions which members have made that, in general terms, they all acknowledge that the balance is right as well. There will be some arguing at the boundaries, but we will take those through the Committee stage of the Bill. I would like to think that out of it will come a piece of legislation that will facilitate, in a responsible way, gathering of evidence against those who commit serious and other offences. I thank members for their contribution and support of the Bill.

Bill read a second time.

FIREARMS LEGISLATION

The Hon. IAN GILFILLAN: I seek leave to make a personal explanation on the subject of misinformation given on a speech on firearms legislation on 17 February.

Leave granted.

The Hon. IAN GILFILLAN: In this place on 17 February in my concluding remarks on my Firearms (Miscellaneous) Amendment Bill I stated:

> I was surprised to receive no formal response from the shooters groups. . . I think I can say, in summary, that the organised shooters groups have not opposed this Bill. . . but in response to my request for feedback I received no formal comment from shooters groups about these proposed amendments.

It was brought to my notice by the Police and Government Liaison Officer for the South Australian Revolver and Pistol Association that it had been in communication with me. I received a letter on its behalf dated 22 January and I formally responded (over my signature) to those comments on 2 February, some 15 days before my statement in the Council.

I formally acknowledge an apology to the South Australian Revolver and Pistol Association Incorporated. I had overlooked the fact that it had responded with a substantial letter, which I appreciated, and I put it on record that I regret that omission and I apologise to that organisation.

SHEARERS ACCOMMODATION ACT REPEAL BILL

Adjourned debate on second reading.

(Continued from 3 March. Page 791.)

The Hon. CAROLINE SCHAEFER: This Bill is in fact a nuts and bolts Bill—or a rats and mice Bill. It appears, though, that everyone who has ever met a shearer is having a few words, other than perhaps the Hon. Trevor Crothers, who was one and who has wisely chosen not to speak. This Bill simply formalises something that happened some 25 years ago (or thereabouts). The original Shearers Accommodation Act was put into place so that a basic decent standard of amenities be provided for shearers and that was at a time when shearers had to stay on properties. Other than in the more remote areas, it is more likely now that shearers drive back to their homes at night.

This Bill is really superseded for two reasons, the main one being that it is superseded by the Occupational Health, Safety and Welfare Act of 1986 and specific regulations adequately cover amenity matters in that Bill. It is also superseded largely because fewer and fewer large shearing gangs need to stay on properties for a protracted amount of time. Certainly, as a child, my family had contract shearers who did indeed stay for anything up to a month on our property. I am the first to acknowledge that shearing is probably the hardest physical work left, other than perhaps shoeing horses. I believe that any of the shearers I know deserve to be paid well and to be respected for what is a vital profession.

Having said that, I point out that it was also relatively difficult in many cases for property owners to provide facilities that were adequate because very often those amenities were used only once every 12 months, and it was fairly difficult and quite a financial drain to be asked to provide things such as septic toilets and electrical power in fairly isolated circumstances. Nevertheless, I think the Act was certainly necessary by 1975 and was probably necessary before then. However, it is now superseded, as I say, by the Occupational, Health, Safety and Welfare Act. We have enough laws and Acts in this State, so it is nice to see one repealed.

The Hon. A.J. REDFORD: I support this Bill, which is a very welcome development. I have to declare an interest in the sense that my father is a wool grower and, indeed, my brother, who is on the land, is also involved in partnership with my father as a wool grower. It is a very difficult enterprise, as the Hon. Ian Gilfillan said in his contribution. My brother and I over the past six months have had many discussions about the industry—where it is headed, what should or should not happen and, indeed, whether he intends to maintain his interest in the industry into the future. At the end of the day, it is probably my brother's decision, and he seems to be indicating to me that, despite the appalling times they have had over the past few years, it is his intention to stick with the industry.

I know that the Hon. Ian McLachlan, the former member for Barker, has been charged with the very serious responsibility of preparing some recommendations about the necessary changes required to improve this industry and to put some money back into it to enable people to live a reasonable lifestyle. I have a view that there is a future in the wool industry, but it may be a very different wool industry from the one we have seen over the past 50 years. I think reliance upon centralised marketing authorities has been a failure in the case of the wool industry and many of our other rural industries—

The Hon. T.G. Roberts: It succeeded for a while.

The Hon. A.J. REDFORD: That is true, but we are now in a very different world, and I think the responsibility for wool will go back to the individual producer to a far greater extent than ever before. It is a different world in which we live now. The economies are more globalised. Goods and services transcend borders, and one of the major changes to the benefit of the wool industry is the cost of transportation of passengers, accessibility of growers, to overseas markets which has been improved by the declining cost of airfares and other transportation. I think we will see a day where most of our rural producers either get together and become larger—and that has not always been a successful formula—or market their own product directly with the consumer.

One of the failings in the wool industry over the past 20 years has been that the producer does not see the actual consumer, that is, the person who turns the wool into another product. I say that with the greatest of respect to those older people who are currently in the industry. I may well be proved to be wrong but, if my brother is to remain in the wool industry, and he is in his mid 30s, he like many others will have to spend time with those who purchase the product to ensure the product that they are providing meets their needs and, in turn, they meet the needs of the consumer. Unless that

happens I do not have a great deal of optimism for the industry. I think the industry will go through more pain than gain in the short term, but I am optimistic that there will be a future for the wool industry.

In dealing with this Bill, the seeds of the Shearers Accommodation Act started around the turn of the century with the great shearers' strikes and the great pastoralists who had enormous numbers of sheep and who were making substantial incomes when world trading was substantially in favour of Australia. Of course, there were always employers who sought to exploit, unfairly, shearers and, as a consequence, strong unions, in particular the AWU, were formed to deal with that issue. At the end of the day, they secured good pay and conditions, and I acknowledge what the Hon. Ian Gilfillan said. They worked very hard—it is back breaking, difficult work—but they were relatively well paid.

With the demise of the industry and the inability of individual wool growers to make a good gross income, and thereby a good net profit, their ability to pay shearers has been substantially eroded. Changes have been made over the years. The introduction of wide combs has made a difference and enabled the productivity of individual shearers to increase and, to some small extent, that has obviated the position.

As a boy, I used to look forward to shearing. It was the big event of the year. I know as a young boy the first thing we did was kill a beast. Guy Fawkes Day always used to fall around shearing time at home and it was a terrific time. I also know there was a downside in the sense that we had an old house where granny and grandfather lived and brought up four children. That was not deemed to be sufficient for shearers. I know that the Act itself caused a great deal of resentment: why should a house, which was deemed sufficient for the owner of a property and to grow up in, be deemed to be insufficient for the use of shearers for three to four weeks a year?

I know people used to say that they were on the road 12 months of the year and that they deserved a reasonable standard of accommodation but, at the end of the day, the costs of providing the sorts of accommodation required under this particular legislation led to a change in practices in the industry. Nowadays, shearers tend to use accommodation in local hotels or motels rather than accommodation which is provided on the property. That may well have been a good development and more than anything else has led to the repeal of this legislation.

It does close a long chapter in the history of the proud wool industry and the disputes associated with shearers' quarters. In some respects we could all be forgiven for being a little nostalgic about what used to happen in the wool industry and what used to happen in relation to the provision of accommodation, but times change and we move on. I must say this is a commonsense development and I am sure that when this Bill is proclaimed by his Excellency there will be a few beers drunk around a few shearing sheds and a few shearers' quarters and a lot of reminiscing will take place. I hope that the demise of this legislation does not coincide with any further demise of the wool industry. I commend the Bill.

The Hon. K.T. GRIFFIN (Attorney-General): I thank honourable members for their indications of support for the Bill.

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

The Hon. K.T. GRIFFIN: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

RACING (DEDUCTION FROM TOTALIZATOR BETS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 18 February. Page 738.)

The Hon. M.J. ELLIOTT: I indicate that the Democrats support the Bill, which has come about because there has been increasing competition among the States and the various TABs, and there is a need to have some flexibility in terms of the commission rates so that South Australia can offer competitive rates and not lose market share. I have consulted with a number of people throughout the racing industry and others associated with the TAB, and no-one has raised any objections. On that basis, the Democrats are prepared to support the Bill.

The Hon. T.G. ROBERTS: The Labor Party also supports the Bill. We understand that its purpose is to come to terms with some of the competition that is now offered between the States. I must say that it is a bit of a dog's breakfast out there in the South Australian TAB arena. At one stage we led Australia in the technology, the application of the technology and the interaction between the jockey clubs and the TAB and the TAB outlets, but I am afraid that that is no longer the case.

South Australia has a very complicated system of payouts that is a combination of pooling within States, and it is very confusing for punters when New South Wales and what they call the southern pool and Queensland's pool are shown on the TAB screen. South Australia is not shown, and it declares a separate dividend a little later than the rest. Nevertheless, we now have, in win and place betting, trifectas and four-trellas, different amounts being shown for different States and different pooling systems applying.

I believe that, within that dog's breakfast as described, it allows for flexibility for the South Australian TAB to vary its commission and allows it to be competitive with the other States, and it is subject to approval by bodies appointed by regulation. It is my assessment that the sooner there is a central body that allows for some clearly defined evenness between the pooling, the better. There is a possibility that, if South Australia, as the smallest State, with smaller pools, slips back behind the Eastern States, people will go shopping around and go back to the SPs for a uniformity of price, and we certainly do not want to see that.

There is no mention of the reasons for its introduction in the second reading explanation but, hopefully, this flexibility will supply more of a competitive edge for the South Australian TAB. However, I believe that the Eastern States, with their larger pools, are able to, in most cases, put forward better dividends on their win, place and trifecta pools than is South Australia. There are some odd occasions where South Australia's payouts are larger than those of the Eastern States, but this method should give us some competitive edge in the lead-up to what possibly will be at a later date a more uniform pool struck right across the larger States and incorporating the smaller States within that.

The Hon. NICK XENOPHON: I indicate that I do not object to the Bill. I can understand that the Bill allows for a greater degree of flexibility in terms of the deduction of commissions with respect to the TAB and South Australian

racing clubs. I believe it ought to be put on the record that my quarrel is not with the TAB and the racing industry or, indeed, any other gambling code as such. My quarrel is with the degree of problem gambling that can arise. This seems to allow for a degree of flexibility, which will allow the TAB and the racing clubs to be competitive as compared to the Eastern States. I understand that it has no impact on people who punt on racing and the TAB and, as such, it should have no bearing on the rate of problem gambling.

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 2 March. Page 771.)

The Hon. P. HOLLOWAY: The Opposition supports the Bill. I should indicate that, like other members of Parliament, I am a member of the Parliamentary Superannuation Scheme. This Bill amends four superannuation Acts: the Judges Pension Act, the Police Superannuation Act, the Parliamentary Superannuation Act and the Superannuation Act 1998 which, of course, covers public servants in the old superannuation scheme. This measure is necessary because of changes made by the Commonwealth Government on budget night on 20 August 1996 when a surcharge was introduced. One of the problems is that it has taken a very long time for the Australian Taxation Office to come to terms with this legislation.

Basically, when the Commonwealth legislation was finally enacted it imposed a surcharge of up to 15 per cent on all employer and deductible personal superannuation contributions made by or for high income earners. The surcharge has effect from budget night 1996 and applies to contributions made after that date. It was estimated during debate on the Commonwealth legislation that about 355 000 taxpayers throughout Australia will be affected by the surcharge. We can expect that about 30 000 taxpayers in South Australia will be affected by the surcharge, and many of them would be in the four superannuation schemes affected by this Bill.

An important feature of the Commonwealth legislation is that the superannuation provider—not the employee—is liable to pay the surcharge. Of course, for those in private schemes this surcharge is applied on the relevant scheme. For defined benefit scheme members, that requires a different approach in assessing the surcharge liabilities. If the contributions are held under a defined benefits scheme, the surcharge is payable on an amount calculated by reference to a notional surchargeable contributions factor determined for the member and the member's annual salary for the purposes of the scheme. Part of the problem in calculating liability under a scheme with a notional factor is that it has proved extremely difficult for the Australian Taxation Office. Indeed, I do not know of any member of these schemes who has yet received their assessment under this Act.

The problem that would arise for any member who were to retire under any of the schemes under discussion is that their liability for this tax may not be known until 12 to 18 months after they have retired. Of course, that makes it rather difficult. The Commonwealth surcharge legislation is extremely complicated. Because of that difficulty, this Bill enables sufficient commutation of the pension benefits so that that tax liability can be met. I stress that this Bill does not in any way change benefits for members of the four superannuation schemes, nor does it in any way reduce taxation liability under those schemes: it allows a commutation of the eligible pension to meet the taxation liability. Of course, that commutation is based, as we are told in the legislation, on an unbiased or full actuarial basis.

Members will get a reduced defined benefit, and the taxation liability will be met out of the reduction in benefits that members of the various schemes will receive. It is fair that that should happen, given that there will be considerable delays in the calculation of the particular liability for individual members under the schemes. I also note that the PSA, the AEU, the Police Association, the Chief Justice and the Superannuation Board all support the measure. The Opposition supports the Bill.

The Hon. M.J. ELLIOTT: I rise on behalf of the Democrats to indicate our support for the Bill. As the previous speaker stated, it does not increase benefits in any way but does give the capacity to meet the surcharge as it arises, which makes more sense to me than any explanation I have heard about how the surcharge works. Having sat through some briefings, I must say that I left even more mystified and thought that for the first time in my life I might have to use an accountant—something I have tried to keep away from, just as I have tried to keep away from lawyers. This might still enable me to keep away from accountants, which would be a blessing. I also note that the unions representing the various people in the public sector who are affected by this change are all supportive.

The Hon. R.I. LUCAS (Treasurer): I thank members for their indications of support. As the Hon. Mr Elliott concluded in his succinct second reading contribution, this is not a provision which applies only to members of Parliament: it does apply to public sector unions or public servants generally. The unions representing those employees support this provision. Members of Parliament are being treated equally with members of those public sector unions.

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

PARLIAMENTARY SUPERANNUATION (ESTABLISHMENT OF FUND) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 3 March. Page 761.)

The Hon. P. HOLLOWAY: The Opposition will support this Bill. I declare that I am a member of the Parliamentary Superannuation Scheme. This Bill, like the previous one, is not about the alteration of benefits to members but rather about processes. The Bill establishes a fund which can hold assets to meet the liabilities under the scheme. In the mid-1980s, the scheme was largely unfunded but now it is fully funded, and these measures are necessary given the many changes that have been made to superannuation legislation by the Commonwealth over the past decade or so. It is clearly necessary that the parliamentary scheme be brought into line with other funds to comply with those particular measures, and this Bill simply seeks to do that by restructuring the scheme. I support the Bill.

The Hon. L.H. DAVIS secured the adjournment of the debate.

STAMP DUTIES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 2 March. Page 761.)

The Hon. J.S.L. DAWKINS: I will speak briefly on this Bill and I refer in particular to the first of the three amendments. The first amendment extends the current exemption provided for 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. The amendment also extends the inter-generational farm exemption to stock implements and to what is described as 'other chattels' but, I think, is better described as 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 Farmers Federation and also legal and accounting practitioners who have experience in the field of rural property and transfers and associated work. The rural community also, in general, supports these measures and reinforces the Government's commitment to encouraging the ownership of family farms within family groups. It is also important to recognise that this exemption already applies if the farmer dies and the estate is transferred to the niece or nephew by the will. The Government is simply bringing it forward so that the farmer can transfer the land, while he or she is still alive, to a younger person.

In saying that, I believe it is important to recognise that the age profile of farmers in South Australia—as you, Sir, would well know—is alarmingly high: I think the average is between 58 and 59 years of age. It has been State Government policy to do everything possible to encourage young people to remain on farms, and that was the very reason for bringing in the exemption of stamp duty for sons and daughters of farmers. As we all know, there are many cases where either the farmer has not married or there is no direct descendant, and so the only remaining member of a family would be a niece or a nephew.

In that regard, it is important that the exemption be extended. My understanding is that it is important that, in order for the niece or nephew to get the exemption, they must have demonstrated a clear interest in the property. They cannot just turn up and be the beneficiary of the exemption. In the past 12 months or so, I have had the pleasure of convening a Liberal Party task force in relation to rural communities, and that has been followed by my chairmanship of the Government's rural communities reference group. We have been very keen to provide the best opportunities for young people to remain in country areas or, if they wish, to return to the area in which they grew up.

The first amendment under this Bill goes a long way towards providing opportunities for some young people to return to a rural area to play a part not only in running a property but also in that community. It is very important that we give them the best opportunity to do that. I do not wish to speak any longer other than to say that I believe that this is an admirable extension of what has been a successful initiative by the State Government.

The Hon. CAROLINE SCHAEFER: I support this Bill. I must admit that I thought that this Bill had been passed some time ago. It seems to be a very long time since it was initially discussed within our Party. Certainly, I think that there is an expectation in the wider rural community that this Bill will be passed. As the Hon. John Dawkins has said, there are a number of cases in South Australian farming areas where brothers work as a partnership and even own land as a partnership but have the land under separate titles. In a number of cases, the next generation is, in fact, the niece and/or nephew of one of the original proprietors.

Many people do not realise the strong ties that farmers have with their land. There is a very strong desire to pass on the land from generation to generation and to keep it within families where possible. Indeed, those who have grown up and lived on the land, and on a particular property, have a far greater understanding of it and, I believe, a better understanding of its sustainability than perhaps has anyone else. There are very practical reasons for allowing the inter-generational transfer of land to go through as smoothly as possible.

When we came into government in 1993, one of the drawbacks of transferring land from the older generation to the younger generation was the imposition of stamp duty. In some ways, many aged farmers were trapped into retaining the title on their property, which did not allow them to get the aged pension, simply because they could not afford to transfer it to the next generation who, in some cases, to all intents and purposes, had been working the land for many years.

The extension of that exemption of stamp duty to nieces and nephews has a practical implication because, in many cases, they are the workers of that land and have been for many years. As it becomes more difficult to survive on the land, particularly with limited acres and in marginal country regions such as the region where I have lived and farmed, the size of the holdings must necessarily become larger. In many cases this has affected the older children of the family—it has happened over many generations in the Kimba district—where the allocations of farms when they were originally taken up were 100 acre blocks, but I think that it would now be difficult for a family to earn a living on less than 4 000 acres.

There has been a continuous need for the transfer of land titles from one generation to another and for those holdings to become larger in order to remain viable. So, it often happens that a niece or a nephew may be the only one remaining in a particular family—or, if we revert to indigenous phraseology, a particular tribe—who is able to make a living from that land. This measure is merely a practical extension of allowing that to happen for sons and daughters of the next generation through to nieces and nephews. I strongly support the Bill.

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

TOBACCO PRODUCTS REGULATION (SMOKING IN UNLICENSED PREMISES) AMENDMENT BILL

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

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): 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.

Honourable members will be aware that the smoke-free dining legislation came into operation on 4 January 1999. The transition to the new legislation generally has been smooth.

However, the operation of the legislation has revealed significant discrimination against unlicensed premises which do not have the same right to apply for an exemption as licensed premises. This amendment will allow unlicensed premises the right to apply for an exemption.

The important principle of not being allowed to smoke where meals are consumed is still preserved.

More specifically, concerns have emerged in relation to coffee shops, bowling alleys and roadhouse cafes, particularly truck stops. These premises, many of which are small businesses, are not licensed premises and as the legislation currently stands, cannot apply under section 47 of the Act for an exemption.

The coffee shop operators claim that this creates an unlevel playing field, that as small businesses they are being discriminated against (as are their patrons) compared with licensed premises (and their patrons) and that they are losing business and having to put off staff. In some cases, former office worker patrons are now going to nearby licensed premises to smoke during a coffee break.

Roadhouse and truck stop operators, particularly those in the South East, contend that truck drivers are now bypassing them and continuing over the border where they stop for their break, resulting in a significant downturn in business, estimated at 10-20 per cent in some cases. Smoke-free dining is the latest in a series of issues impacting on roadhouse businesses.

The Government has listened to the concerns of these groups and, on equity grounds, is prepared to amend the legislation to provide the operators of unlicensed premises with the mechanism to apply for an exemption in a similar manner to licensed premises.

In terms of the amendment, the general prohibition on smoking in an enclosed public dining or cafe area will not apply in relation to—

an area within unlicensed premises (whether being the whole or part of an enclosed public area) that—

(i) is not primarily and predominantly used for the consumption of meals; and

(ii) is for the time being exempted by the Minister for Human Services.

Conditions may be placed on such exemptions, as they can be for licensed premises. The review and appeal mechanisms in the Act will apply except that the appeal will be to the Administrative and Disciplinary Division of the District Court in the case of unlicensed premises (whereas for licensed premises it is to the Licensing Court of South Australia).

The Bill is about equity and level playing fields. The Government in no way resiles from its commitment to a strong and effective anti-smoking strategy as announced last year. Work on that strategy is proceeding, with the goal of reducing the prevalence of smoking, particularly among young people, by 20 per cent over the next five years.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for commencement of the measure by proclamation.

Clause 3: Amendment of s. 47—Smoking in enclosed public dining or cafe areas

Section 47 of the Act prohibits smoking in enclosed public dining or cafe areas. This clause amends the section to empower the Minister to exempt areas within unlicensed premises that are not primarily and predominantly used for the consumption of meals.

Clause 4: Further amendment of principal Act

SCHEDULE

Further Amendments of Principal Act

The Schedule updates references to Ministerial titles and other legislation.

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

CONTROLLED SUBSTANCES (FORFEITURE AND DISPOSAL) AMENDMENT BILL

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

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): 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 amend the provisions of the *Controlled Substances Act, 1984* to allow for the forfeiture of property used in connection with drug offences and to provide for the immediate disposal of controlled substances and dangerous materials, including hazardous chemicals often used in the manufacture or production of illicit drugs.

Forfeiture provisions are to be found at Section 46 of the *Controlled Substances Act, 1984*. Those provisions received judicial scrutiny in the case of *R v Howarth* 162 LSJS 317. In that matter it was determined that the wording of Section 46 only provided for the forfeiture of illicit drugs and items such as syringes which had been 'the subject of the offence'. Therefore, equipment, chemicals and items used in the production of the drugs could not be forfeited. The decision was re-affirmed on 1 May 1998 in the civil action of Record v the State of South Australia Action No. 97/2760 where the court ordered the return of hydroponic equipment which had been used to produce cannabis.

These decisions have broader ramifications. Hydroponic equipment is not the only type of paraphernalia affected. Amphetamines, 'ecstasy', 'P.M.A.' and 'fantasy', have been responsible for a number of fatal drug overdoses in this and other States in recent times. They are all illicit drugs, manufactured using elaborate devices and laboratory equipment. As a result of the recent judgements, such items will often be returned to the offender at the completion of criminal proceedings, in spite of a conviction for the offences charged. Other things such as chemical formulae and detailed written instructions on drug production are also liable to be returned to convicted persons. This also extends to equipment seized when Expiation Notices are issued for simple cannabis offences.

Clearly, it is desirable to ensure that when offences against the *Controlled Substances Act* are detected, including cannabis cultivations and clandestine drug laboratories, forfeiture provisions are available to ensure that not only is the drug itself forfeited but so too are articles used in connection with the offence. Whilst there is some scope to seek forfeiture under the *Criminal Assets Confiscation Act, 1996*, this avenue is often not available or is inappropriate.

Clandestine drug laboratories present significant occupational, health, safety and welfare problems to police, fire service officers, forensic scientists and other persons who must dismantle, remove and store the illicit drugs, equipment and other chemicals found. Persons involved in the production of these drugs often leave corrosive, toxic and potentially explosive chemicals in unlabelled and unsuitable containers. Not only is the seizure and transport of these materials difficult and expensive, the safe storage of them is potentially hazardous and requires specialised facilities, which are costly and not readily available. The *Controlled Substances Act* does not currently provide for the destruction of these materials.

In the interests of the community it is appropriate to allow for the destruction of illicit drugs and associated dangerous articles at the earliest opportunity whilst ensuring evidence is retained for criminal proceedings.

The Bill achieves these outcomes by repealing the existing forfeiture and destruction provisions and replacing them with a new section to ensure that illicit drugs and property used in connection with drug offences can be efficiently and safely dealt with and where appropriate, be forfeited by court order.

I commend the Bill to the honourable members.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Substitution of Part heading

This clause repeals the heading to Part 6 of the Act, 'PENALTIES, FORFEITURE, ETC.' and substitutes it with the heading 'OFFENCES, PENALTIES, ETC.', indicating the proposed contents of Part 6 given that forfeiture will now be dealt with in Part 7.

Clause 3: Repeal of Divisional heading
This clause repeals the heading to Division 1 of Part 6, obviated due to the removal of Division 2 of Part 6.

Clause 4: Repeal of Division 2
This clause repeals Division 2 of Part 6 of the Act which dealt with forfeiture of substances, equipment or devices. The contents of the repealed Division are now to be found in new section 52A.

Clause 5: Substitution of Part heading
This clause repeals the heading to Part 7 of the Act, 'POWERS OF SEARCH, SEIZURE AND ANALYSIS' and substitutes it with the heading 'SEARCH, SEIZURE, FORFEITURE AND ANALYSIS', indicating that Part 7 is to include forfeiture provisions.

Clause 6: Substitution of s. 52A
This clause substitutes section 52A with a new section headed 'Seized property and forfeiture'.

Subclause (1) provides that, subject to qualifications contained in the section, seized property must be held pending proceedings for an offence against the Act relating to the property.

Subclause (2) gives the Commissioner of Police the power to direct that certain seized property be destroyed, regardless of whether a person has been charged with an offence relating to that property. The types of property to which the subclause relates are prohibited substances, drugs of dependence or other poisons, or property that is, in the opinion of the Commissioner of Police, likely to constitute a danger during storage pending proceedings for an offence against the Act relating to the property.

Subclause (3) provides that property referred to in subclause (2) may be destroyed at the place at which it was seized or at any other suitable place.

Subclause (4) provides that if a charge is laid or is to be laid for an offence relating to property referred to in subsection (2), samples of the property that provide a true representation of the nature of the property must be taken and kept for evidentiary purposes, the defendant has the right to have a portion of the sample analysed by an analyst, and the defendant must be given written notice of that right. The obligations contained in subclause (4)*(a)* and *(c)* and the right contained in subclause (4)*(b)* provide a degree of transparency in the process of analysis of samples that are to be kept for evidence.

Subclause (5) provides that possession of samples taken under the section must remain at all times within the control of the Commissioner of Police or his or her nominee.

Subclause (6) provides that the regulations may make provision relating to the taking of samples of seized property and analysis of those samples.

Subclause (7) provides that the Magistrates Court (on application by an authorised officer) or any court hearing proceedings under the Act may order that the seized property be forfeited to the Crown if it finds that the property was the subject of an offence against the Act, or consists of equipment, devices, substances, documents or records acquired, used or intended for use for, or in connection with, the manufacture or production, or the smoking, consumption or administration, of a prohibited substance or drug of dependence.

Subclause (8) gives the Commissioner of Police the power to direct that property forfeited to the Crown under the section be destroyed or otherwise disposed of.

Subclause (9) provides that, subject to qualifications set out in subsections (10) and (11), if seized property has not been forfeited to the Crown in proceedings under this Act commenced within the prescribed period after its seizure, a person from whose lawful possession the property was seized, or a person with legal title to it, is entitled to recover either the property itself or compensation of an amount equal to its market value at the time of its seizure.

Subclause (10) is a qualification to the preceding provision dealing with recovery of property and compensation, with the effect that monetary compensation for the property is not recoverable where the property has been destroyed under subclause (2) if the property was the subject of an offence against the Act, or consists of equipment, devices, substances, documents or records acquired, used or intended for use for, or in connection with, the manufacture or production, or the smoking, consumption or administration, of a prohibited substance or drug of dependence.

Subclause (11) is also a qualification to subclause (9). It gives a discretionary power to a court hearing proceedings (referred to in subclause (9)) in relation to property that has not been destroyed under subclause (2) for the recovery of that property or compensation from the Commissioner of Police, to make an order for forfeiture of the property to the Crown.

Subclause (12) provides that the section does not affect the operation of the provisions of the *Criminal Assets Confiscation Act 1996* relating to forfeiture of property referred to in section 4*(a)*, *(b)* or *(c)* or any other provisions of that Act.

Subclause (13) defines 'the prescribed period' and 'seized property' for the purposes of the section.

Clause 7: Statute law revision amendments
This clause provides for the further amendment of the Act by the Schedule which contains statute law revision amendments.

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

SUPPLY BILL

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

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 year the Government will introduce the 1999-2000 Budget on 27 May 1999.

A Supply Bill will still be necessary for the early months of the 1999-2000 year until the Budget has passed through the parliamentary stages and received assent.

In the absence of special arrangements in the form of the Supply Acts, there would be no parliamentary authority for expenditure between the commencement of the new financial year and the date on which assent is given to the main Appropriation Bill.

The amount being sought under this Bill is $600 million, which is an increase of $100 million on last year's Bill.

For the past three years the amount of the annual Supply Bill has remained constant. The increase this year is necessary due to the gradual rise in the amount of appropriations over this period and in particular the introduction of accrual appropriations in 1998-99.

The Bill provides for the appropriation of $600 million to enable the Government to continue to provide public services for the early part of 1999-2000.

Clause 1 is formal.

Clause 2 provides relevant definitions.

Clause 3 provides for the appropriation of up to $600 million.

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

SUPREME COURT (RULES OF COURT) AMENDMENT BILL

Returned from the House of Assembly without amendment.

NURSES BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 810.)

The Hon. P. HOLLOWAY: The Nurses Bill is one of the more significant pieces of legislation to come before State Parliament. It replaces the current Nurses Act, which was last substantially revised in 1984. Any Bill which establishes the framework under which nurses and midwives operate is a significant instrument if for no other reason than that there are approximately 23 000 registered and enrolled nurses and midwives in this State and their duties profoundly affect us all at some stage in our life.

Indeed, nurses in our public health system constitute by far the largest group of public sector employees. That is an indication of the labour intensive nature of nursing care and the central importance of nurses in the delivery of health care. The nursing profession is the linchpin which holds the health system together. Nurses are one of the very few groups in our

society who are still held in high esteem by the public. The Opposition believes that that public trust must not be threatened by any ill-considered measures which this Parliament may adopt.

The Minister states that the major revision of the Nurses Act which is before us is necessary because of heightened community expectations of health professionals, the rapid introduction of new technologies and therapeutic agents, and changing practices and higher educational standards required within the profession.

The review of the Nurses Act is also required by the year 2000, as with all legislation and regulations, to ensure that it complies with the terms of the National Competition Principles Agreement. Indeed, many of us wait with great interest for the competition principles review of the legislation governing medical and legal practitioners. I wonder why they have been kept until last.

The Opposition will support the second reading of the Bill because we believe there is a need for modernisation of the provisions which govern the nursing profession, and we support many of the proposed changes. However, we will move amendments to other aspects of the Bill during the Committee stage to address what we see as regressive changes.

My colleague in the House of Assembly, the shadow Minister for Health, Lea Stevens, spoke in great detail about the background and substance of the Nurses Bill on Tuesday, 8 December (page 500 of *Hansard*). I would recommend to anyone who wishes to understand the issues involved in this Bill and the Opposition's approach to it that they read her speech. I do not intend to repeat all the points that the shadow Minister made but I will outline the Opposition's concerns about certain aspects of the Bill, and these matters will be debated in greater detail when the Bill is in the Committee stage.

Discussions about a review of the Nurses Act have been under way for several years now and the contentious issues have not changed. Since this Bill passed the House of Assembly last December, I am aware that further discussions have taken place between the Government, the Australian Nurses Federation and other groups representing nurses, and all political Parties in relation to it.

As a result of these discussions the Government has agreed to some changes to the Bill and we are now aware that the Democrats will support one of the Government's more contentious proposals, namely, the removal of the need for enrolled nurses to be supervised by registered nurses in certain circumstances. The Democrats have also stated that they will support a change to the title of the legislation to make it a Nurses and Midwives Act. Just how far this proposed change goes beyond a name change to include substantial amendments to the Bill is not yet clear because we have not yet seen those amendments. As a result of all these developments the Opposition will not move all the amendments that it unsuccessfully placed before the House of Assembly and we will move others in a different form.

I return now to what are really the five main issues of contention in relation to the Nurses Bill. The first of these is the question of supervision of enrolled nurses. This is the issue where we differ from the Government and the Democrats: it is the exemption for enrolled nurses (ENs) to be supervised by registered nurses (RNs) in certain circumstances. The new provision is contained in clause 24(2)(b) of the Bill which provides:

> Subject to this Act, enrolment as a nurse authorises the enrolled nurse with the written permission of the board [Nurses Board], to practise in the field of nursing on conditions determined by the board without the supervision of a registered nurse.

It is really that last part, the ability of the board to exempt enrolled nurses from practising without the supervision of a registered nurse, that is the change to this Bill.

The requirement for supervision of enrolled nurses is common to legislation in most States of Australia. I understand that the South Australian provisions, if enacted, would go further down the deregulation track than any other provisions in Australia. So why then does the Government seek the removal of the supervision requirements of the current Act?

The consultation draft, which was the foundation of the review of the Nurses Act, describes the supervision requirement as 'a significant restriction upon the employment of enrolled nurses and the employment decisions of health units'. Save for a reference to the Nurses Board of South Australia Final Issues Paper (1998) concerning the supervision of enrolled nurses, there is no discussion in either the consultation draft or the report to the Nurses Bill—in other words, the Minister's second reading explanation—as to the basis for this conclusion; nor is any community cost benefit analysis undertaken in either the review or the report which identifies that the factors in the Competition Principles Agreement have been considered and given due weight in such analysis.

The Competition Principles Agreement requires that competition has to prevail unless there are public interest reasons, and it was really that test that the Opposition believes should have been undertaken in relation to this issue. No community cost benefit analysis was undertaken of which we are aware.

It is not accurate to attribute the requirement for enrolled nurses to be supervised as limiting on their role compared with unlicensed carers, which is one of the arguments that has been used in this debate. This is the interpretation that a number of employers have chosen to use to unreasonably restrict the role of the enrolled nurse. Nurses have worked hard during the past few years to expose this as a myth, with the effect that there has been an increase in the demand for enrolled nurses during recent times across a range of sectors such as the private hospital and community sectors.

Where there are issues of shortages of qualified nursing staff, this must be addressed through appropriate funding, education programs and other mechanisms to ensure that adequately qualified nursing staff are available to meet the community's needs. Exempting enrolled nurses from supervision by registered nurses will not deliver more staff.

The Bill fails to provide any details of how exemption by the Nurses Board for enrolled nurses might operate or under which circumstances, and that is a matter on which we will be seeking clarification from the Minister during the debate. I think it is relevant to consider the actual number of enrolled nurses as part of the group that would be affected. As far as we can gather, the groups where exemption might be granted are nurses working in, say, domiciliary care, doctors' surgeries and the like. It is my understanding that it would not apply to enrolled nurses working in larger institutions such as hospitals.

In fact, only a small number of persons are employed in the home, doctors' rooms, day surgeries and industry who are currently employed where no registered nurses are also employed. This does not appear to be a factor that has been

taken into account in removing the supervision requirement. The failure to limit the manner in which the board may impose conditions on practice we believe leaves open the possibility that anti-competitive conditions may be imposed in the exercise of the discretion to approve practice without supervision.

The Australian Nurses Federation (ANF) has also expressed concerns that, in the longer term, given competition policy requirements, the board would not be able to sustain restrictions on EN exemption from supervision only to certain practice settings. This raises the possibility that ENs would be under pressure to work without adequate support from RNs in a wide range of practice settings such as acute hospitals, for which their basic education does not prepare them. It is part of the role and function of a registered nurse to assess and plan the care needs of the patient or client. Enrolled nurses participate in and contribute to this process but do not have primary responsibility for assessing or planning care. There could be an increased risk to public safety if ENs are forced to work without adequate support from RNs in domiciliary care, hostels, day surgeries and doctors' rooms.

Furthermore, it is absolutely inappropriate for nurses to be supervised by doctors or other health care professionals apart from nurses. It would be like an oral surgeon telling a dentist what to do. Medical practice and nursing practice are two separate, autonomous professions in their own right, although there are areas of overlap and they clearly work in collaboration. If it is permitted for doctors to supervise enrolled nurses, then this would raise the issue of accountability to the relevant statutory authority. Is the supervising medical practitioner accountable to the Nurses Board in any disciplinary proceedings for errors made by the enrolled nurse, or is the enrolled nurse accountable to the Medical Board?

It is worth noting that the requirement for supervision of enrolled nurses was recently retained in Queensland legislation following a national competition policy review in that State. The retention of such a provision in Queensland and its current consideration in other States raises the issue of how the proposed removal of the requirement for supervision facilitates that object referred to in the report to the 1998 Bill; that is, providing for national consistency in regulation and registration. The supervision requirement is also consistent with the Australian Nursing Council (ANCI) competency standards for enrolled nurses, which are the national standards that an enrolled nurse must meet in order to become licensed.

The Opposition's preferred position is the status quo: enrolled nurses should continue to be supervised by registered nurses—and the amendments moved by the shadow Minister in the House of Assembly reflected that position. Basically, we believe that public safety is best protected by the highest quality of nursing care available. Given that the Democrats have stated their intention to permit enrolled nurses to work without supervision in certain circumstances, the Opposition does not have the numbers to stop this occurring. Instead, we will move amendments to define and restrict the situations where the Nurses Board may permit unsupervised enrolled nurses to work. In this way we hope we can restrict any abuse of the system—and those amendments have been tabled. That covers the first issue, namely, the enrolment of nurses.

The second issue that has arisen during the course of this Bill is that relating to midwives. Obviously, members have had a considerable amount of correspondence in relation to this issue over the past three months. I will read onto the record a letter from a midwife because I think it sums up most of the issues concerned. The letter says:

> I am writing to you regarding the revised Nurses Bill that was recently tabled in Parliament. I am a midwife currently employed in the public sector and have grave concerns for the ramifications for childbirth in this State if this new Nurses Bill is passed.
>
> As you would be aware, the Nurses Board are endeavouring to have a single register for nurses eliminating separate requirements and qualifications for midwifery. In effect, this would mean that nurses and not midwives necessarily could be employed and legally attend to women during the childbirth phases of their lives. This indeed would be a tragedy to both the women of this State and to a profession that has survived thousands of years.
>
> We in South Australia have one of the highest caesarean section rates in the world. The World Health Organisation recommends a rate of 10 to 15 per cent and our State rate is around 23 to 25 per cent, being higher in the private sector.
>
> Research throughout the world identifies that midwife care is safe for women and their families and their intervention rates are less, leading to less surgical requirements for women. Midwives and obstetricians working in a collaborative relationship provide appropriate, cost-effective care, with midwives the lead carer in normal pregnancy and obstetricians in high risk situations.
>
> In this era of cost cutting and strained budgets, new options of care need to be considered and implemented. A conference was held recently here in Adelaide titled 'Midwifery Models of Care: An Australian Perspective', convened jointly by the Women's and Children's Hospital and Flinders University, and supported by the Health Commission. Many speakers from around the country discussed different models of maternity care involving midwives and case load programs and in collaboration with their medical peers. These methods of health provision are cost-effective and safe and require further investigation and implementation.
>
> If we are to view childbirth as a normal process in a women's health perspective, direct entry midwifery is a natural progression to free midwifery from the sickness model of nursing, not bury and lose midwifery in the medicalisation of childbirth. There are many countries that have direct entry midwives, for example, Britain, Canada, the Netherlands and New Zealand who with a single nurses register would be unable to practise here in Australia.
>
> There are many other arguments for the opposition of this new Nurses Act, including—

and these are the points made by the correspondent—

- no requirement for the Chairperson of the board to be a nurse
- no requirement for a midwife to be on the board
- no requirements for a nurse or midwife to be on board inquiries into nurses' or midwives' conduct and competence
- if a direct entry midwife registers in this State they are licensed to practice as a nurse having never undertaken study in this area
- a nurse can work in any area, for example, midwifery, mental health without any education apart from their general education at their initial registration.

> Please consider these arguments and use your vote to say 'No' to the new Nurses Act.

That was written by Jackie Kitschke, midwife. That letter is typical of many letters that members have received in relation to the Nurses Act regarding the midwife issue. The Opposition accepts the general thrust of those arguments and, indeed, it is supporting amendments which address many of those points that were outlined in the letter. I will take those points one by one. The first point is: no requirement for the chairperson of the board to be a nurse. I note that the Minister in another place has made some amendments to that clause, so that now the chairperson of the board has to have nursing qualifications. The Opposition believes that we should go further. We believe that the chair of the board should be a nurse who is currently practising—in other words, a nurse who is registered or enrolled under the Act—and we will be moving amendments to that effect.

In relation to the second point—no requirement for a midwife to be on the board—the Opposition will move

amendments to the Act which will ensure that the five nurse representatives on the board will be elected from their membership. We believe that, given that there are about 2 500 midwives out of the 23 000 registered nurses, that certainly gives that group of nurses a sufficient number, should they wish to exercise their voting power in that way, to have one of the five nurse representatives on the board. So, we believe that that concern will be addressed in that way.

The next matter is: no requirement for a nurse or midwife to be on board inquiries into nurses' or midwives' conduct and competence, and certainly we will be moving amendments in relation to the quorums on the board and the composition of those committees, and so forth.

The next point is: if a direct entry midwife registers in this State they are licensed to practise as a nurse having never undertaken study in this area. One of the amendments that we will move (and I will say more about this later) is to reinstate areas of specialist qualifications into the Act which will include midwives.

We believe that with our amendments we will address most of the concerns that have been raised by the midwives. However, we believe that at this stage it would be premature to support the Hon. Sandra Kanck's approach, which is to rename the Bill, to become the Nurses and Midwives Act.

It is my understanding that consideration is being given at the moment to allow direct entry midwifery courses in this State. That matter has not yet been resolved. There are also some issues in relation to mutual recognition. Before this Parliament at this moment there is a Bill to extend mutual recognition of qualifications to New Zealand. Clearly, that will change the situation in relation to midwifery entry. So, we certainly will be moving to retain the midwives register and the keeping of midwifery as a specialist qualification during the course of this Bill.

The third area that I wish to talk about now is the area of specialist qualification. One of the principles for the review of the Nurses Act was that of protection of the public good and the facilitation of information and education to the public to enable consumers to make informed choices as to their health service providers. The current Act requires nurses working in areas of midwifery and mental health to hold specialist qualifications or to be supervised by a nurse with those specialist qualifications. The Bill removes this requirement and the safeguard it provides for patients with these health care needs.

The Bill removes the requirement for specialist qualifications whilst maintaining what are identifiably illusory protections, such as restrictions upon the use of the specialist titles of 'midwife' and 'mental health nurse'. In the view of the Opposition, this is likely to result in confusion and misunderstanding by consumers and a reduction in the capacity of consumers to make informed choices as to health providers. A woman in labour is rarely in a position to be able to question or negotiate over the qualifications of the staff caring for her. She has a right to assume or expect that the person assisting with the delivery of her baby is a qualified midwife or, at least, a nurse supervised by a qualified midwife.

Similarly, a person admitted to a mental health service should be able to assume that the nurses are qualified in their area of care. The Opposition believes that there is the potential for harm to the public if expert trained nurses are not required in midwifery and mental health areas. It is not enough to rely on employers alone to meet their duty of care. Unfortunately, there are already too many examples of unscrupulous employers, in their efforts to cut costs, not providing suitably qualified staff. Employers are under increasing pressure to meet increased demand with diminishing resources. It is not enough to rely on an employer's duty of care or an individual nurse's compliance with codes of conduct and the like. Nurses are too often placed in a situation where they are directed to work in areas in which they do not feel competent. They are sometimes pressured into acceptance through appeal to their concern for patients' welfare or colleagues in areas that are grossly understaffed. They are also lured into acceptance by promises of support and assistance that are in many cases illusory as a consequence of the other nurses' heavy workloads.

Rather than reduce the regulation around specialist areas of nursing practice, there is a strong argument for the extension of this protection to all other areas of specialist practice. At the very least, the Opposition believes that we must retain regulation in the two specialist areas already dealt with in the present Act. The areas of midwifery and mental health nursing are two of the longest standing and most distinct areas of nursing speciality, and it must be acknowledged that they are not the only specialities. However, as well as the historical differences and reasons for regulation, there are, in addition, contemporary practice issues that support a continuing need for regulation. Midwifery and mental health are the two largest areas of nursing in private practice or on a fee for service arrangement. Many other specialties, such as intensive care nursing, coronary care, and so on, require practice within a hospital environment due to the needs of the patient.

Growth in midwife only deliveries, home births, family therapy and counselling programs means that a growing number of mental health nurses and midwives practise outside of health services as sole practitioners. The community—their clients—should be assured that any nurse working in these areas is qualified and competent to do so. In addition, we believe that the board should be required to examine whether additional areas of nursing specialty should be similarly protected. The Opposition will, therefore, move an amendment that will require the board to undertake such an examination and make appropriate recommendations. As I said earlier, I have tabled those amendments to clause 23.

The next issue of contention relates to the regulation of unlicensed workers providing nursing care. The present Act (the 1984 Act) allows the board to regulate the practice of nursing by persons other than registered or enrolled nurses. The Bill removes that capacity from the board. However, in the current Bill it is stipulated that the board's functions are, amongst other things (and I am talking here about clause 16(1)) to regulate the practice of nursing in the public interest and to determine the scope of nursing practice.

It is the Opposition's view that refusal to regulate such workers is not a progressive step to take. It is the way out in response to the enormous pressures of our economic climate. The training of unlicensed workers in specific limited tasks is potentially very dangerous both for the consumer and for the supervising nurse, who may be placed in a very difficult situation if resources are limited. This does not necessarily lead to a need to licence a third level of worker but, rather, a recognition that nursing work needs to be regulated, regardless of who performs it.

Why should a patient receiving nursing care from someone other than an enrolled or registered nurse be left without access to the board when the behaviour of the individual was unprofessional or constituted misconduct?

How is it reasonable to impose restrictions or obligations on one person delivering nursing care and not on another providing the same service to a patient? I have tabled amendments to the Bill in relation to this matter. I shall read out several letters from both sides of the debate. The first, from Ian Yates, Executive Director of the Council on the Ageing, addressed to Lea Stevens, the shadow Minister, states:

> I refer to our earlier conversation regarding the Government's new Nurses Bill and my presentation to the Australian Nursing Federation seminar on 8 February at which you were present. The COTA Board reviewed its position on the Bill at its meeting on 25 February and confirmed its concern at the complete deregulation of unqualified workers providing nursing care through the removal of section 23 of the current Nurses Act without any new provision.
>
> While COTA does not support the maintenance of regulation for its own sake, or undue professionalisation, we believe complete deregulation is unwise and introduces unnecessary risk. The COTA board is quite sympathetic to the ANF proposal for the licensing of employers as an alternative scheme. This requires discussion as to the detail and we would like to see it extend beyond the nursing profession in its scope. These views were communicated to the Minister for Ageing and Disability Services, the Hon. Robert Lawson QC, MLC, when we met with him on 22 December 1998. I hope this clarifies our position and that the Opposition is able to press for a more satisfactory outcome than that proposed in the current Bill.

That is one side of the debate, and that is in accordance with the amendments we will be moving. For completeness I should read correspondence that we received from the Aged Care Organisations' Association in relation to the question of the regulation of unqualified carers. In her letter, Mrs Ros Herring, Executive Director of the Aged Care Organisations' Association, states:

> We do not support a broadening of the Nurses Act to specifically include the work of unqualified carers. Our position is based on an extensive level of accountability existing in aged care through the Federal Aged Care Act. The level of accountability is beyond that offered by the Nurses Act and we do not wish to further complicate the care of the elderly by yet another level of State and Federal duplication. The Aged Care Act involves:
>
> (a) An accreditation system involving a common stipulation of minimum standards in both personal care of residents and the accommodation in which they live.
>
> (b) A rigorous complaints process involving all facets of the provision of services.
>
> The lack of definition of what is 'nursing' would potentially involve a significant coverage of the work currently undertaken by 'carers', who have also shown far greater flexibility in the mixture of their duties between domestic and personal care work, which has benefited the workplace.

For completeness, I put that on the record. Clearly, this question of the regulation of unqualified carers is, like most of the other issues in relation to the Nurses Act, a quite complicated one. Of course, that complication is compounded by the fact that we have Commonwealth and State legislation in this area.

The fifth and final area of concern in relation to the new Bill related to the composition of the Nurses Board. In the Lower House the Minister changed his original Bill to include 'a person with nursing qualifications should be the Chair of the Nurses Board'. This was after pressure from the ANF and others, including the Opposition, over the fact that a nurse should be Chair. The Minister wants to be able to put in as Chair eminent people who perhaps were once nurses but who are no longer registered or enrolled. However, we believe that a nurse who is covered by the Act should be Chair, and the Minister can nominate the others from under the section of the Act that relates to members of the board.

The Opposition will move other amendments. We do not believe it necessary to have a medical practitioner on the Nurses Board. There is no nurse on the medical board; there are no doctors on the dentists' board; and if you look at the regulation of most professions you will see that the regulation of the profession is in the hands of those professionals concerned. We believe that the Nurses Board should be no different. So, our position in relation to that will be to move amendments relating to the Nurses Board. That covers the five main issues of concern in relation to the Nurses Bill.

In summary, the Opposition supports the second reading of this Bill. We will move amendments to the five areas of concern that I have indicated. We would hope that this Bill comes into effect, with those amendments, and that the nursing profession can look to this legislation as its guiding instrument over the coming years.

I conclude by thanking the Minister in another place for his cooperative attitude in relation to the Bill. It was certainly a very great change compared to the previous Minister for Health. He has certainly been extremely helpful in relation to the consideration of the Bill. I also particularly thank and congratulate the Australian Nurses Federation, which has had a very constructive and helpful role in this entire debate. I also congratulate the other bodies representing groups of nurses, such as the Australian College of Midwives Incorporated and other groups representing midwives, as well as the many other people who sent in submissions or who contributed in other ways to the debate on the Bill. The attitude of the participants has been far more constructive. With those remarks, I look forward to the Committee stages of the Bill.

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

ADJOURNMENT

At 6.23 p.m. the Council adjourned until Tuesday 9 March at 2.15 p.m.