LEGISLATIVE COUNCIL

Wednesday 4 August 1999

The PRESIDENT (Hon. J.C. Irwin) took the Chair at 11.4 a.m. and read prayers.

LISTENING DEVICES (MISCELLANEOUS) AMENDMENT BILL

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

That the sitting of the Council be not suspended during the continuation of the conference.

Motion carried.

SITTINGS AND BUSINESS

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

That Standing Orders be so far suspended as to enable petitions, the tabling of papers and Question Time to be taken into consideration at 2.15 p.m.

Motion carried.

INDUSTRIAL AND EMPLOYEE RELATIONS (WORKPLACE RELATIONS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 29 July. Page 1860.)

The Hon. T.G. CAMERON: This Bill, which was introduced in the South Australian Parliament on 11 March 1999, proposes substantial amendments to the State's principal industrial relations legislation, the Industrial and Employee Relations Act 1994. The Government's stated reasons for the changes revolve around the assertions that the amendments will provide employees and employers with flexibility in determining wages and conditions; that the changes will prevent South Australia falling behind the other States in the industrial area; and that they will result in higher levels of employment, particularly for young people. I think that summarises the main reasons why the Government has introduced this Bill.

However, I believe that the Government's proposals will, in the main, strip back awards to the point where they will no longer act as an effective safety net, and that they will strengthen managerial authority and make it much more difficult for unions to represent their members or to function effectively. What I intend to do now is briefly run through some of the main points of the Bill and to put on the record what I see as some of the problems, and I will try to do that as briefly as I can.

I have concerns over why clause 4, page 2, line 20 (interpretation), is necessary, because there will be considerable additional costs in terms of new stationery, forms, and so on. Regarding clause 20, page 6, line 18 (term of appointment for Commissioner), I believe that if this is approved it will interfere with a Commissioner's independence, which will be eroded by the provision of Acting Commissioners. I note that there is unlimited power to put Acting Commissioners on six month contracts, and I do not support that.

Concerning clause 29, page 7, line 22 (general functions of Employee Ombudsman), I would like to state on the record that I am one member of Parliament who is happy with the performance and the functions of the Employee Ombudsman. I note that if this is approved the powers of the Employee Ombudsman will be reduced. Clause 29 will limit the EO's ability to provide advice and assistance to workers, and workers will have to specifically request intervention. The EO would be precluded from routinely looking into non-union agreements submitted for approval, and the function of investigating and reporting on outworking arrangements is to be taken away from the EO. I have not seen any arguments to support any of the proposed measures that the Government has in mind for the Office of the Employee Ombudsman, so I oppose those amendments.

Clause 32, page 9, line 15 provides the general functions of inspectors. Inspectors will now investigate compliance with awards and agreement obligations for outworkers, but with no ability to raise more general issues of policy. If the inspectorate function is to work properly, inspectors must be empowered with appropriate authority. It is only with a proper inspectorial function and the fear that a Government inspector might turn up on the site one day to go through the wages and records books that keeps some of our more errant employers in line. So, rather than support the position that the Government is putting forward in relation to the general functions of inspectors, I would support increasing their powers rather than reducing them.

The Hon. T.G. Roberts interjecting:

The Hon. T.G. CAMERON: The Hon. Terry Roberts interjects, 'And a car.' I am not sure what he means by that interjection, but one would hope that the inspectors are provided with the means of being able to carry out their function.

Clause 33, page 9, line 32 provides for the Office of the Workplace Agreement Authority. The new Workplace Agreement Authority is to be appointed to scrutinise and approve most workplace agreements in place of the commission. Again, I have not heard any decent argument about why this function would be removed from the commission. In addition to that, no formal qualifications or competencies will be required of the persons appointed and, as I understand it, they may also delegate their decision making powers to their staff in relation to the scrutiny of workplace agreements. The authority is precluded from holding formal hearings but will be able to visit workplaces to discuss proposed agreements. I wonder about the level of employee intimidation if this is all taking place on the employer's premises.

Clause 34, page 12, line 25 provides for the deduction of union dues. Employers will be required to seek a fresh written authorisation each year for union deductions from their employees' wages. This applies to no other form of authorised deduction from wages, and quite clearly it is designed to make it more difficult to collect union fees. My view about that clause is that it is driven by ideology. I cannot see that the Government intends to require any other body to get a new written authorisation each year for deductions from employees' wages, so why pick out union dues? Why interfere with a contract between the union member, the union and the employer? When all parties are more than happy to have union fees deducted from their wages, why would you want to interfere with that process? I know it has been done as far as Government employees are concerned, but again I would submit to the Council that that is driven by ideology and a desire to make it more difficult for the unions to carry out their lawful functions, so I do not support that proposition.

Clause 39, page 13 line 18 provides minimum entitlements under the legislation. Under schedule 5A an agreement in certain cases can be approved by the commission, even if it

does not meet prescribed minimum standards. I would like more clarification in respect of what that entails. Clause 40, page 13, line 35 provides for the employment of children. Regulations will be included to prohibit the employment of a child under the age of 14 years in certain circumstances. I would like to place on the record that this initiative was first raised by Robyn Geraghty, the member for Torrens, who has campaigned long and hard on this issue, and I understand that she will introduce a private members' Bill. I have taken the opportunity to look at that Bill, and I have advised the honourable member that I will support her position. I can see no reason why that clause should not be supported in this Bill, but I suspect that it has been included only to head off the private members' Bill being introduced by Robyn Geraghty.

My own view about the employment of children is that this Bill does not go far enough. I do not know why 12 and 13 year olds are being employed here in South Australia, particularly when you look at the high levels of youth unemployment in the 16 to 20 year old bracket. It is of concern to me that young boys and girls as young as 12 and 13 are working here in South Australia, at times in conditions under which I do not believe 12 and 13 year olds should be working. Specifically, I think you are asking for trouble if an employer has 12 and 13 year old girls working in his place until 4 a.m. and the arrangement is that the duty manager will take those staff home. I would be a little concerned if I had a 12 or 13 year old daughter who was being brought home from work at 4 a.m. So, my view is that that provision does not go far enough.

Clause 41, page 14, line 10 provides for workplace agreements. This will mean that a new system of workplace agreements will replace the existing system of enterprise agreements and will prevail over awards that would otherwise apply. If you look at page 15, line 6 regarding the effect of approval of workplace agreements, you can see that, where employees are doing essentially the same job, an employer would be able to lawfully seek not just to put them on individual agreements but also to offer a collective agreement to only some of that group on whatever criteria the employer considers desirable. One can quite clearly see that that is a recipe for downgrading wages and conditions.

On page 17, line 6, regarding the negotiation of individual workplace agreements, under section 5 an employer is specifically permitted to present a workplace agreement to a job seeker on a 'take it or leave it' basis. If you look at page 20 you will see that the line headed 'Form and content of workplace agreement' proposes that section 77(2) contains a limited set of minimum conditions to which workplace agreements must conform. However, an employee could be required under an agreement to work unlimited overtime or any hours the employer demanded, for no additional compensation. That is pretty fair, is it not?

Also, it is not clear that the ordinary rate of pay set by a workplace agreement must actually be the rate applicable to an employee under an award. Page 24, line 20 (Proceedings for approval before Commissioner) allows for the full commission to approve an agreement even if it does not comply with the minimum requirements. That is a very fair provision, is it not? I wonder what that will herald if it is introduced here into South Australia. A cut in wages and conditions is the only outcome that is possible.

Page 25, line 1 provides that approval or workplace agreement is intended to prevail over an award under the Commonwealth Act. Under this Bill it is only where a Federal award applies to the workers in question that a 'no disadvantage' test is to be applied. Page 26, line 22 provides for lodgement of workplace agreements in workplace agreement authorities or the Registrar's Office. Under clause 79(b) all individual workplace agreements are to be kept secret. Aside from problems in respect of detecting abuses of power, the confidentiality of such agreements will make it difficult to assess how they are being used and what effect they are having. That should not come as any surprise: I suspect it is the intention of the Bill to have these workplace agreements shrouded in secrecy. Any request for access to agreements must be directed to the authority or the commission, with no guarantee of success or criteria by which requests will be assessed.

Page 27, line 14 (duration of workplace agreement) provides that, under proposed section 80, agreements will be permitted to run for up to five years and continue beyond that unless superseded or rescinded. I do not support agreements being allowed to run for a period of up to five years: I think that period is too long. However, the current length of agreements is restricted to two years, and I wonder whether two years is sufficient and whether three years would not be a more appropriate term.

The point has been made to me that, with respect to a number of these workplace agreements that now exist, no sooner does one start negotiating an agreement and conclude it and it is time to start dusting off the log of claims and to get ready for the next round of negotiations. I have not proposed any amendment in relation to that issue; it is just something that I ask all the Parties to look at with respect to whether or not it would be in the interests of the unions, the employees and the employers to provide a little more flexibility there so that agreements could be entered into up to a period of three years—but, of course, that is based on mutual agreement.

Regarding clause 42, page 30, line 32 (power to regulate industrial matters by award), proposed section 90 will strip back proposals for the Industrial Relations Commission to arbitrate awards only on defined, allowable matters. That is pretty fair, is it not? Again, that just strips back the power of the Industrial Commission.

Union rights of entry are not included in the list of allowable matters, and this may severely limit the capacity of unionists to ensure that awards and agreements are in force and to communicate this on a proper basis with their members. Existing legal rights determining take-home pay and conditions of employment are extinguished after 18 months, and for new employees there is a system that provides entitlements that are considerably less.

Regarding page 32, line 1 (power to regulate industrial matters by award junior rates of pay), proposed section 90(3B) will wherever appropriate prescribe rates of pay for employees aged under 20. The recent Australian Industrial Relations Commission report on youth wages found that none of the alternatives to junior wages that it considered were feasible—although it did not close off the possibility that there were non-discriminatory alternatives.

Clause 45, page 33, line 20 (public holidays), would permit agreements to be made whereby an employee would have to work on a public holiday and take another day off in lieu without additional compensation for compensation for working on a holiday. That clause may be worth looking at, but only on the basis that the appropriate additional penalty is payable, or is applicable, if a day is taken off in lieu. If the appropriate awards provide for double time or double time and a half, will a situation be created where the employer

goes to the employee and says, 'I want you to work on the public holiday and you can have a day off when you like'? I know what the employee will think: they will wonder whether they will have a job if they say 'No.' However, if the employer can, by mutual consent with the employee, achieve a situation where the employee works on a public holiday, so be it, provided that the appropriate penalty applies.

Clause 50, page 35, line 7 (termination of employment), would extend the classes of dismissed employees who are unable to challenge the fairness of their treatment. No worker could complain of an unfair dismissal during their first six months in employment, or their first 12 months in the case of a person working in a small business with 15 or fewer employees. The exclusion of casual employees is also extended to require a minimum of 12 months' service. It is not clear whether businesses that start off with fewer than 15 employees could divide them up into different entities to avoid going over the 15 limit, and there is a concern that the 15 employee ceiling could dissuade successful small businesses from growing.

I do not want to understate here the fact that there is concern out there in the community about unfair dismissals, and it is a concern that has been put to me on numerous occasions by small business proprietors. It is just that I do not accept that the way the Government wishes to go about addressing this problem would work. The problems I see with it are that, if it was introduced, it would just be another incentive for employers to transfer permanent or permanent part-time employees onto a casual basis.

If any member doubts what I am saying, they should go out into the retail industry at the moment and look for a permanent five day a week job—a job that you can call a real job, because it provides five days' work with five days' pay. They are pretty hard to find. If we are not careful, the entire industry will be turned over to casual employees, and the proposals that are outlined in this Bill would only, in my opinion, act as an incentive to employers to get rid of permanent employees and to casualise their entire work force.

The Hon. Nick Xenophon interjecting:

The Hon. T.G. CAMERON: The Hon. Nicholas Xenophon interjects that it is short-sighted. That is probably a description that would apply to a whole host of other clauses contained in this Bill.

Clause 51, page 36, line 4 (application for relief), provides that a filing fee of $100 will be required when an unfair dismissal claim is lodged. I have had to go to the Industrial Court myself and defend people who have lost their jobs. Not only do they have to cope with the trauma of losing their employment but also they have to deal with the trauma of how they will cope economically. Someone who has been sacked and who then has to go through the tortuous process of trying to regain their employment will be required to pay a filing fee. If in any way that measure acted to dissuade people from making applications, I think we would end up with a less fair system than is currently the case.

Clause 54, page 37, line 3 (rules) would allow a member to resign from an association whether or not they are a financial member at the time of the resignation, and this is to take effect no more than 14 days from the time of written resignation. I am not sure whether I support the wording of this clause in the Bill, but if a member does resign from any association—be it a union or any association—I cannot see why that resignation, provided that they are not in breach of the rules of the union, should not apply. However, it is my understanding that a number of unions and associations have a rule which states that a member is not allowed to resign unless they are financial at the time. I have come across many situations where workers have shifted employment from one industry to another. They have joined another union but they have forgotten to resign from the union to which they belonged. Four or five years later they return to their original employment and apply to rejoin the union and, despite the fact that they belong to another union appropriate to their employment, they are advised that if they want a union ticket they must pay all their back dues. That is not fair, and that situation needs to be addressed. It is my understanding that most of the unions have ceased that practice and that it does not occur a great deal. However, if it is occurring, it is something that should be looked at.

Clause 58, page 37, line 20 (powers of officials of employee associations) revamps the circumstances under which a trade union official can enter a workplace. This provision would significantly restrict the powers of union officials to enter workplaces in connection with the enforcement of awards and agreements where the official concerned has reasonable grounds to suspect that awards or agreements are being breached. A union official would be strictly confined to examining issues and documents in relation to members of that union.

I do not support the initiative of this Bill to strip back the powers of trade union officials: I think that they have been stripped back far enough. They are entitled to go about and legitimately perform their business on behalf of their members. If anyone on the other side believes that that should preclude a union official from checking workers who are not members of unions, I do not know where we are going.

It would be impossible for a union official to perform properly the functions of their job unless they had free access to time and wages records and could look at all the records. There would be nothing to stop an employer from paying only union members the conditions set out under the award, with the full knowledge that an inspectorate has had its arms and legs cut off and that the union has no power ever to gain access to records. They would have a field day.

I would like members on the other side of the Chamber to appreciate that, where unions are concerned, it is that sanction that the employer does not know whether a union official will come into his workplace and ask to look at his time and wages records that keeps them on their toes. Imagine what some employers would do, comfortable in the knowledge that the union official could never get access to their books and that the inspectorate from the Government had no powers to go there and look at them. It would be a recipe for wide-scale breaches of awards.

In terms of clause 73, page 40, line 32 (negotiated settlement to be preferred), division 1A promotes the use of mediation to resolve industrial disputes not by encouraging the Commission to make more use of its own power of mediation but by promoting private mediation. If one looks at page 41, line 17 (mediation service), one can see that sections 193B and 193D offer publicly funded mediation as an alternative for dispute resolution.

However, strings are attached. Only mediators from a new mediation service can be used. Appointment to the service and the terms on which people are appointed are entirely within a Minister's discretion. No formal process of accreditation or qualifications is mentioned. It is not clear whether parties must accept whichever mediator is allocated to them by the Government or can choose from anyone in the service. There are also stringent rules for the conduct of publicly

funded mediation—the most significant being that parties must represent themselves. Corporate employers, State Government and unions may choose any officer or employee to speak for them.

Again, on any test of fairness, how is that fair? You could be asking 16, 17 and 18 year old kids to represent themselves. It quite clearly discriminates against that section of society who are not as articulate, confident or well educated as others. I am not prepared to support this mediation service proposal: I think that it is all best left within the Industrial Commission. I worked for a union for 9½ years. I did not find any problems with a voluntary conference proposal. The industrial commissioners had wide powers to mediate. I can well recall, on a number of occasions, an industrial commissioner berating me in his chambers, telling me what he would do to me if this particular industrial dispute was not ended.

On one occasion I ignored the commissioner's threats only to continue with industrial action on the weekend, finding myself locked up in gaol at the instigation of the South Australian Jockey Club. The Industrial Commission has plenty of powers to bang people's heads together and to get the parties to mediate. For the life of me, I cannot see why we need these other layers of bureaucracy, together with the expense. The mediation service would also provide that employee parties and sole traders on the other hand cannot seek specialised representation. The best that they can get is an interpreter if they cannot speak fluent English.

I think that the Government is on the wrong track and is misguided with its proposition in relation to the mediation service and, despite the odd letter I get from an employer's organisation telling me that it fully supports the Government's initiatives, I have not found an employer yet who supports the proposals in relation to the mediation service outlined in the Bill.

In relation to clause 92, page 45, line 30 (minimum standard for sick leave), new clause 6 of schedule 3 will make it possible for an employee to negotiate to have unpaid sick leave or allowance or loading in lieu of paid leave. Members will have to excuse me for being old- fashioned when it comes to issues of sick leave, annual leave and public holidays but I come from the old school. I do not support any moves to have any of these conditions paid out. My view is that public holidays are for workers to have a rest and, if they do not have a rest, they should be paid a penalty. Annual leave is to be taken and sick leave is for the purposes of sick leave. I know that many in the trade union movement do not share that view, but I have opposed provisions to have sick leave paid out all my life and I do not see any reason to change now.

SA First will support the second reading of the Bill in order to facilitate further debate on these issues. However, I would not want the Government to interpret this as any support on my part for the Bill. I do not support this Bill. I do not support the basic contention that the Government makes that this Bill will increase employment in South Australia by giving employees more flexibility. I suspect that the only flexibility this Bill would introduce is that it would enable employers to reduce the wages and conditions of workers.

The Hon. Sandra Kanck interjecting:

The Hon. T.G. CAMERON: The Hon. Sandra Kanck interjects and asks why I do not vote the Bill down at this stage. I suspect that I am more of a democrat than the honourable member because I do believe in debating out the issues. If the Government intends to put this Bill through the second reading stage, it would be my intention to engage it in debate and to ask it for proof of some of the more ludicrous assertions that have been made surrounding it. There are matters in the Bill worthy of a second look, such as the employment of children. There are problems in relation to the question of unfair dismissals.

It is a problem for small business when they get entangled in one of these actions. However, I do not support the initiatives that the Government has put forward to resolve that problem, because I do not believe they will. I also believe that some unions would like to see more flexibility in relation to entering into agreements for longer than two years, and I have already outlined my concern in relation to resignation from a union and other related matters. At this stage, I urge the Government seriously to rethink this Bill. I urge it to continue discussions with the employers and the UTLC to see whether or not they can achieve a broader agreement on the key issues outlined in the Bill. I say that, because I suspect that the Government will not get a lot of joy if it attempts to push this Bill through the second reading in this Council.

The Hon. K.T. GRIFFIN (Attorney-General): I thank the Hon. Mr Cameron for his indication of support for the second reading of the Bill. I appreciate that he has indicated that that support comes with significant reservations but, on the basis that this is the last sitting week of the session—

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: There will be an opportunity to explore all those issues. As the Minister handling the Bill in this Chamber, I am prepared for all sorts of verbal aggravation during Committee. All I am saying is that I appreciate the indication from the Hon. Mr Cameron that he will support the second reading, but I am acknowledging also that I understand that that support comes with significant reservations. That is as far as I am taking it. I am not gleeful and I am not gloating: I am just accepting it as a statement of fact and acknowledging that, at the end of the session, we can at least restore the matter to the Notice Paper in the next session so that we do not have to go through all the speeches again at the second reading stage.

I am sure that every member of the Council will be pleased that we do not have to go through those, including the members who have actually made the speeches, that they do not have to repeat what they already have on the record, because of a formality. So far as the Government is concerned, the Bill is of fundamental importance to South Australians. There will be differing views about the nature—

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: The honourable member is correct that we have visited it, but life changes. It does not stand still and we do not go backwards. If we have to go through it again, it is the responsibility of legislators to revisit these issues periodically.

The Hon. T. Crothers interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: Not to be distracted by the interjections: let me say that this Bill is of fundamental importance. It is important that I attempt to correct some of the myths and misinformation that are being promoted in relation to the Bill. The Government established its workplace relations policy position in 1997 with its pre-election policy document 'Focus on the Workplace'. This policy document envisaged a comprehensive and evolutionary series of changes to workplace relations in this State. That is a very good concept, if I might reflect for the Hon. Mr Crother's

benefit—evolutionary. That means that evolution will come perhaps with some repetitious consideration of the issues.

Members interjecting:

The Hon. K.T. GRIFFIN: Well, the philosophical debate about DNA technology and evolution would be quite enlightening, I think, but back on to workplace relations: the Industrial and Employee Relations (Workplace Relations) Amendment Bill reflects and seeks to implement the policy commitments made by the Government in 'Focus on the Workplace'. The Bill seeks to implement policies which have been in the public arena for more than 18 months. They have been broadly circulated and published. There have been continuing opportunities to challenge and improve them.

The relevant ministerial advisory committee formed two working parties. The first considered how the Government's policy should be implemented. The second considered various drafts of the Bill itself. The Bill has been amended in the light of comments made from a range of interest groups, unions, employer groups and others, and has included a series of operational amendments suggested by the Industrial Relations Court and Commission, as well as a range of amendments suggested by various academics.

It is not correct to say that there has been insufficient consultation about the Bill. It is also incorrect to suggest that some people or organisations who have written letters in support of the Bill have not even read the Bill. That argument is clearly difficult to sustain, particularly when some of the writers of those letters of support have raised some concerns about a few minor provisions of the Bill. How could they know about those provisions had they not read the Bill? The results of these extensive and considered consultations and combined input has helped to ensure that in seeking to implement these policies the Bill is a logical, well considered, contemporary and evolutionary step for workplace relations in South Australia.

As to the purpose of the Bill, it has a three-fold purpose, which has already been referred to in the second reading report: to help create jobs, to create a flexible workplace relations system and to provide employees with necessary protections. The Government's view is that the legislation is essential for South Australian companies to remain competitively nationally and to prevent a situation where States with more flexible working conditions gain a competitive advantage over South Australian enterprises.

If opponents of the reforms contained within this Bill, especially those relating to workplace agreements, were successful then South Australia's workplace relations laws would fall behind those of other States. As other States continue to move forward, passage of the Bill becomes all the more critical to ensuring that South Australia maintains its reputation as a State with industrially contemporary and competitive laws and a State in which to do business.

I now want to deal briefly with some of the criticisms. Obviously, I will not be able to deal with all of them but, hopefully, I will cover the significant—

The Hon. T.G. Roberts interjecting:

The Hon. K.T. GRIFFIN: No it doesn't; it just says something about my lack of preparedness. I am quite prepared to acknowledge that.

Members interjecting:

The Hon. K.T. GRIFFIN: You know me—always prepared to be up-front. On the allegation that this is a Reith Bill: the Bill provides for innovations which meet the needs of South Australia. The Bill proposes innovations that are specifically tailored for South Australian conditions and designed to maximise employment opportunities and the competitive well-being of South Australian workplaces. Where there are similarities with Federal legislation, the Bill will simply further align the State and Federal systems.

As to the allegation that the Bill erodes the role of trade unions, whilst the Bill will affect the rights of entry of union officials, it clearly preserves and, arguably, increases the role of trade unions. In particular, the Bill clearly allows the workplace agreement to confer upon a union various rights, which can then be enforced by the relevant union. This will provide the union movement with a role which, it is arguable, the current Act does not provide.

As to allegations about the right of entry provisions, members opposite suggest that changes to right of entry provisions will require disclosure to an employer of details of a union's source of information about a suspected breach of an award or agreement. There is no provision in the Bill either compelling or preventing this occurrence. The Act already contains freedom of association protections for employees who consider they are victimised due to their membership or non-membership of an association.

It will continue to be against the law for an employer to discriminate against, dismiss or prejudice an employee because he or she is entitled to the benefit of an award or workplace agreement or because he or she takes action to pursue those benefits. An offence of this type can attract a maximum penalty of $20 000, which is the highest maximum penalty under the Act and reflects the seriousness with which the Government views such offences. It can also result in an order that an employer compensate or re-employ the worker concerned.

I turn now to the issue of workplace agreements, and deal first with the assertions made by some members about inequality of bargaining power in relation to those workplace agreements. Under the Bill, all workplace agreements must provide at least the statutory minimum entitlements to annual, sick, parental and long service leave, and the award entitlements to bereavement leave and a minimum ordinary rate of pay. Other statutory conditions continue to apply, such as rules governing termination of employment and anti-discrimination.

No employee can be forced to sign an individual agreement. Indeed, the new Workplace Agreement Authority must be satisfied that employees understand their rights and obligations under the agreement and genuinely want the agreement approved. In addition, there will be a seven-day 'cooling off' period during which an employee may require his or her employer not to seek approval of his or her workplace agreement.

Under the Bill, significant penalties can be applied to any employer who coerces, harasses or improperly pressures an employee into signing a workplace agreement; discriminates against or terminates an employee for not participating in a workplace agreement; or terminates an employee because he or she exercised the 'cooling off' right.

On the allegation that workplace agreements will reduce wages: other places with workplace agreement systems similar to that proposed by the Bill have enjoyed real reductions in unemployment since the introduction of those systems. For those who choose the workplace agreement stream the evidence from other places with similar agreement structures is that employees are better off under their workplace agreement than they would be under the relevant award.

On the allegation that there is a reduced role for representation in agreement making: the Bill does not change the current situation in relation to representation in the agreement making process. Trade unions and the Employee Ombudsman will be able to play a role in workplace agreements if employees wish them to do so. The Bill provides for collective agreements and extends to individual workplace agreements the requirement that an employer must tell an employee that he or she can choose anyone as his or her representative in negotiations for a workplace agreement, including a union representative or the Employee Ombudsman.

As to the alleged secrecy of workplace agreements, under the Bill collective workplace agreements will remain available for public inspection. An employer and employee are free to show their individual workplace agreement to whomever they choose, unless there is an agreement to the contrary. They can provide written authorisation to a representative, to allow the representative to inspect the copy of the individual workplace agreement, which is lodged with the Workplace Agreement Authority or Registrar. The Bill gives departmental inspectors access to individual workplace agreements lodged with the Workplace Agreement Authority or Registrar. Inspectors will be able to access an agreement in this way in the absence of a formal complaint from an employee.

On the suggestion that the Government needs to help make agreements work, rather than change laws about them, this Bill implements a new regime for enterprise agreements that will make them work better by providing an easier process and greater flexibility. A better approval mechanism will be put in place through the introduction of the Workplace Agreement Authority, while greater flexibility will be delivered through the criteria for approval of agreements.

I turn now to the issue of awards and the allegation that award simplification removes employees' necessary rights. Awards will contain the minimum provisions necessary to properly protect employees, allowing employers and employees to agree other provisions through workplace agreements. In addition, the rights of workers in areas such as unfair dismissal, occupational health and safety and sexual harassment are already well covered by existing legislation.

I turn to the subject of unfair dismissals and the allegation that unfair dismissal exemptions miss the problem. It is clear from some members' contributions that they do not understand the basis of the unfair dismissal proposals. The Bill's unfair dismissal proposals represent an appropriate balance between the rights of employees and the need to encourage employment, and I explain how that occurs. In relation to the six month exemption for all employees, the six month amendment will create desirable certainty for employers and employees. It will give employees and employers an adequate and appropriate period of time to assess whether they want to establish an ongoing employment relationship. As to 12 months casual exemption, a period of 12 months gives a casual worker the opportunity to establish a systematic and regular pattern of work, after which time it would be reasonable for that person to have the expectation of future employment.

On the matter of the 12 month small business exemption, small businesses say that the current regime of unfair dismissal laws serves as a disincentive to creating further employment opportunities. This exemption recognises the resource limitations on small business, particularly in terms of dealing with the consequences of an unfair dismissal application. The Bill includes provisions designed to ensure that large employers do not avoid the unfair dismissal jurisdiction simply through corporate restructuring.

In terms of the concern about exempt employees not being able to claim unfair dismissal in cases of sexual harassment, the exemptions to unfair dismissal in no way impinge on an employee's ability to bring action under other legislative provisions (such as the equal opportunity legislation) or through a common law action against the employer for breach of contract and to seek a contractual remedy for the breach. As to criticisms of the unfair dismissal filing fee, the aim of the filing fee is to discourage frivolous or vexatious claims, by making employees think about the merits of their case before they file an application. The fee will be able to be remitted, reduced or refunded in certain situations so that *bona fide* applicants are not disadvantaged.

I turn now to the issue of junior rates and the allegation that junior rates are about getting cheaper employees. Junior pay rates are about giving young people jobs. Faced with the choice of having to pay an adult wage to young and relatively inexperienced employees, many employers will (and do) choose older, more experienced applicants over younger people. Junior rates of pay encourage employers to take on young people, while also ensuring a fair reward.

I turn to the issue of the Industrial Relations Commission and Employee Ombudsman and the allegations that the Bill marginalises the South Australian Industrial Relations Commission. Let me deal with the Workplace Agreement Authority. The effect of the Bill is that the commission will be involved in the process of approving workplace agreements wherever that process necessitates the exercise of judicial or quasi-judicial power. This is appropriate, given that the Workplace Agreement Authority will not and should not have any powers of this nature. The Employee Ombudsman has indicated that some employers have reported to him their concern about the approval process, believing that it is too intimidating for small business to appear personally before the Industrial Relations Commission.

Others have been deterred from making an enterprise agreement through the Industrial Relations Commission because they feel the process is too long, expensive, rigid and formal. This suggests that the current process for approving workplace agreements is limiting their attraction for employees and employers alike. The Workplace Agreement Authority will make the agreement approval process less formal and will increase the speed at which applications are processed. In relation to the new mediation service and the allegation that there is an additional layer, a member opposite stated:

> The Government now wants to put another layer in the system to hold up the resolution of disputes. The Government proposes that we have this new, wonderful thing that it has discovered called mediation—which in fact has been in the system all the time.

That is the quote from *Hansard*. This is simply another example of members opposite giving their contributions without first reading the Bill and simply relying on information given to them by others. The Bill proposes to establish a mediation service, which is another option for parties. It is in no way compulsory and does not in any way restrict parties' ability to access the commission. Mediation is a valuable tool, with benefits not apparent in traditional tribunal-based solutions to disputes.

Since 1994, the Industrial Relations Commission has used its mediation powers under section 197 of the Act on no more than two occasions. Some of the reasons for this are the adversarial culture of dispute resolution before the commis-

sion and the fact that some parties feel daunted by the formal and adversarial setting of the commission. This is despite ongoing work by the commission to make parties feel comfortable with the dispute resolution process.

I turn to concerns about the roles of Employee Ombudsman. The Employee Ombudsman will be able to focus his or her efforts where they are needed most—in the important and expanding area of workplace agreements. The refocused role of the Employee Ombudsman will reduce the current duplication of services provided by industrial inspectors. Employees will be able to seek advice, help with negotiations, or representation from the Employee Ombudsman in relation to workplace agreements.

As to the allegation that the Bill removes employees' safeguards, industrial inspectors employed by the Department for Administrative and Information Services already advise employees on their rights regarding awards and workplace agreements. Their role will be widened to enable them to enter workplaces without the present requirement that they first receive a formal complaint from an employee. They will ensure compliance with the Act, awards and workplace agreements for outworkers.

In summary, I again remind members of the three-fold purpose of the Bill: to help create jobs; to create a flexible workplace relations system; and to provide employees with necessary protections. The Government considers that many of the contributions to the debate have espoused positions of an ideological nature without any real attempt to address the greatest economic challenge facing this State—the issue of unemployment. I again thank members for their contributions, particularly those who have indicated support for the second reading.

The Council divided on the second reading:

AYES (12)

Cameron, T. G.	Crothers, T.
Davis, L. H.	Dawkins, J. S. L.
Griffin, K. T. (teller)	Laidlaw, D. V.
Lawson, R. D.	Lucas, R. I.
Redford, A. J.	Schaefer, C. V.
Stefani, J. F.	Xenophon, N.

NOES (9)

Elliott, M. J.	Gilfillan, I.
Holloway, P.	Kanck, S. M.
Pickles, C. A.	Roberts, R. R.
Roberts, T. G. (teller)	Weatherill, G.
Zollo, C.	

Majority of 3 for the Ayes.

Second reading thus carried.

NEW TAX SYSTEM PRICE EXPLOITATION CODE (SOUTH AUSTRALIA) BILL

Adjourned debate on second reading.

(Continued from 8 July. Page 1640.)

The Hon. P. HOLLOWAY: This legislation adopts a new section of the Commonwealth Trade Practices Act to State law. Section 75AV of the Trade Practices Act, which was part of the Commonwealth Government's ANTS (a new tax system) package contains the new tax system Price Exploitation Code. This code is a companion to the GST legislation which passed through the Senate in June. The ALP's Opposition to a goods and services tax is well understood. That legislation has passed the Federal Parliament, however, so we will be supporting this Bill as we do not support any exploitation by corporations, retailers or service providers to use the introduction of a new goods and services tax to profit unfairly.

The control of exploitation requires uniform Commonwealth and State laws as Commonwealth responsibility is based on the trade and commerce powers of section 51 of the Commonwealth Constitution. However, the States have residual constitutional responsibilities for business activities of individuals or partnerships, for example, so it is necessary if the Price Exploitation Code is to have uniform effect that it apply under both Commonwealth and State law. This Bill effectively adopts the Commonwealth code under the Trade Practices Act and applies it under this Bill as State law. The Opposition will facilitate passage of this Bill through both Houses of Parliament before we adjourn at the end of this week.

It was the intent that the price exploitation provision would apply from 1 July 1999 for a three year period. It will apply in the first year leading up to the formal introduction of the goods and services tax next year and for two years beyond that date. The penalties that apply for price exploitation under this new law are up to $10 million for corporations which breach the Price Exploitation Code and $500 000 for persons other than a corporation. It is assumed beyond the two year date that competition will regulate the long-term price increases under the goods and services tax.

I understand that, when other countries have adopted a goods and services tax, they have not applied such measures to their jurisdiction. However, Australia has a particularly concentrated market structure. There are many industries in this country in which just a few firms have considerable market power and market dominance, and it is appropriate therefore that we should seek to outlaw any price exploitation. Under this Bill, price exploitation is deemed to occur when goods or services are supplied at a price that is unreasonably high, taking into account the various tax changes and where the unreasonably high price is not attributable to the supplier's costs, supply and demand conditions or any other relevant matter. That is the explanation with the Bill. It can be seen from that definition that it will not be an easy task to establish except for the most blatant cases of price exploitation.

The more likely price exploitation that we are likely to see under the introduction of a goods and services tax is a series of small incremental rounding up or increases across a broad range of products which it would be very difficult to establish as being unreasonable in themselves but which, in aggregate, could provide quite a substantial shift from consumers to producers. I think that that definition of unreasonable does inevitably provide some difficulties, but not too many alternatives are available to the State or Commonwealth Governments to prevent price exploitation and we have to at least try.

The Bill also raises the question of resources. It was my understanding that the ACCC was to provide 40 staff across Australia to police this measure—and I am not sure whether they are additional staff or existing staff. I guess that would mean that we would have three or four of them in South Australia. I am not sure that they will be able to do a great deal. During his response, will the Treasurer confirm whether or not the figures that I have given for the staff increases are correct? I appreciate that it is the responsibility of the Australian Consumer and Competition Commission.

I fear that the legislation is more to satisfy political needs, that is, the need to be seen to be doing something (as a former

Federal Senator described it some years ago) rather than to protect consumers. The GST will be introduced at a time when inflation, which has been at historic lows for the best part of a decade, is, according to some economic observers, starting to emerge in the United States, and there are fears that it may spread. I point out that, the higher the inflation rate, the harder it will be to detect exploitation. It will just provide another factor within this test to see whether exploitation has taken place. The other comment I make in relation to this Bill is that the Commonwealth Trade Practices Act generally is a highly legalistic document.

Without any great confidence in this measure, I support the legislation on the basis that some of its deterrents are certainly better than none, and we should certainly at least be seen to be trying to prevent any companies or individuals unfairly exploiting the introduction of this new tax. I will place two questions on the record now. I appreciate that this is a question of overlapping jurisdiction—both Commonwealth and State law is involved—and that it is essentially the Commonwealth through the ACCC that will police this matter, and because of those factors it may be difficult for the Treasurer to answer, but nonetheless I will place them on the record.

First, how are transitional issues to be dealt with in cases such as this? An example might be, if a wholesale sales tax had been paid on existing inventory, how will that be considered in the assessment of any price exploitation issues? Clearly that is a complication that will be very difficult to deal with since the point of sale at which the wholesale sales tax applies is different from the point at which the goods and services tax will be applied, and there may be some considerable difficulties in that regard.

The second question I place on record relates to the agreement between the Commonwealth and the States which has given rise to this Bill. It is my understanding that the passage of this Bill was agreed to by the States and the Commonwealth on 9 April 1999, which was prior to the Democrats amendments to exempt food within the GST package. Has any revision of the Bill or the agreement been necessary to reflect the changes that were made as a result of those amendments; or is the agreement still the one that was agreed to prior to those changed conditions when the Bill passed the Senate in June? With those comments, I indicate that the Opposition supports the Bill.

The Hon. M.J. ELLIOTT: On behalf of the Democrats I indicate support for this Bill. Clearly in the whole GST package there will be swings and roundabouts and gains and losses. The way in which the political game is played, the Labor Party has focused on things which will become more expensive, but the fact is that a large number of things will be less expensive. I am pleased to say that we are already seeing—

The Hon. P. Holloway interjecting:

The Hon. M.J. ELLIOTT: The honourable member can play that game as much as he likes—

The Hon. P. Holloway interjecting:

The Hon. M.J. ELLIOTT: That is why we are having this debate right now, for goodness sake. It became important that, because prices were going to go down, there was not a long lead time, otherwise people would stop buying. In fact, there was a fair bit of evidence that during June sales of some electrical goods did start to decline because people anticipated that eventually prices would decrease. It is noteworthy that a number of outlets now have been advertising the fact that prices have decreased, for instance on electrical goods, and they have now seen a significant increase in sales.

Of course it is important that price increases are handed down, and that is what this legislation is all about. I think it is fair to expect that, indeed, some people in the market will make a decision that people have been prepared to pay a certain price and that they may attempt to try to stay near that price regardless of the drop in tax. That is the reason why this legislation is necessary. I have spoken with people in business who have a concern that, for those who are applying a tax for the first time, they will not be able to put the price up by the price that the tax suggests because there will be market resistance. I think that in this area there will also be swings and roundabouts.

I think it is probably true that some things will not drop as far as they should because of changing tax rates, but I also argue that, because of market pressures, a number of items will not increase in price by as much as the tax rate would suggest that they might. That is an inevitability I would argue on both sides of the equation. I guess that this legislation will never pick up that sort of thing happening at the margins but, where it can be clearly demonstrated that a significant price drop was possible and should have occurred because of a significant drop in taxation and it has not been passed on, it is important that some action be available. It is for that reason that the Democrats support the Bill.

The Hon. R.I. LUCAS (Treasurer): I thank members for their indication of support for the second reading of the Bill. I will endeavour to respond to the three questions from the Hon. Mr Holloway. First, I confirm that there was a second inter-governmental agreement, and I think I might have referred to that before in Question Time. There has been a second inter-governmental agreement, and I am advised that the second inter-governmental agreement has not necessitated any changes in the legislation that we are looking at or indeed is being passed at the Commonwealth level.

In relation to the issue of staffing, we have no direct knowledge of the staffing levels. As I think the honourable member acknowledged, it is not something within our direct level of responsibility. I am advised that we have heard similar stories of quantum of staff of the order that the member talked about, but it has not been anything that has been advised to us officially and we are not really in a position to be able to confirm that, I am afraid.

The only point I would make is that largely the role of the ACCC in this area will, I imagine, be substantially based on getting some runs on the board early; that is, if the ACCC is able to demonstrate early on in the piece that it is serious, that it can demonstrate that someone has been found guilty of an offence under the legislation and is fined significantly for it, I think that probably will be worth more in terms of educating businesses throughout the nation than 4 000 staff poring over the shelves of various companies throughout Australia.

Whilst I have not been advised of this officially (and I am not indicating that this is the approach that the ACCC is likely to adopt), let me hasten to say that, if I were in their shoes confronted with a task such as that which confronts them, that would certainly be the approach that I would be looking to adopt: to get some runs on the board early and rely on the media publicity that that is likely to generate to very quickly educate the vast majority of businesses.

As the Hon. Mr Elliott has indicated, with legislation like this there will always be ways for people to work at the margins and try to work their way around the system. It is

nevertheless a full-blooded attempt by the Commonwealth to try to tackle this particularly serious issue.

In relation to the matter of wholesale sales tax paid on the inventory that might be in stock at the time of the commencement of the GST, we will take some further advice. However, my advice at this stage is that the Commonwealth has said that that will be in general terms refundable, that is, there will be some process for companies to claim back the extent of their wholesale sales tax and that they have in broad terms factored that into their revenue calculations.

We do not have direct knowledge here this morning of all that detail. That is based on the advice that we have available at the moment, so we will certainly further clarify that. If it is anything significantly different, I undertake to correspond with the honourable member in the coming break and provide him with further detail. With that, I thank honourable members for their indication of support for the Bill.

Bill read a second time.

In Committee.

Clauses 1 to 35 passed.

Clause 36.

The CHAIRMAN: I point out to the Committee that this clause, being a money clause, is in erased type. Standing Order 298 provides that no question shall be put in Committee upon any such clause. The message transmitting the Bill to the House of Assembly is required to indicate that this clause is deemed necessary to the Bill.

Clause 37, schedule and title passed.

Bill read a third time and passed.

CASINO (LICENCE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 8 July. Page 1642.)

The Hon. P. HOLLOWAY: The Opposition supports this Bill, which seeks to make some changes to the Casino Act 1997 in relation to the granting and transferral of licences as well as to the administration of the Act. This Bill will further facilitate the sale of the Casino, which was withdrawn from sale last year. This legislation grants a licence to Adelaide Casino Pty Ltd, the current operators of the Adelaide Casino. Under the previous legislation (the Casino Act 1983), the licensee was the Lotteries Commission of South Australia. Under an agreement with Adelaide Casino Pty Ltd, the Lotteries Commission authorised Adelaide Casino Pty Ltd to manage the Adelaide Casino, which meant it exercised all the rights and responsibilities of a licensee. The granting of a licence under the proposed legislation to Adelaide Casino Pty Ltd, which is owned by a subsidiary of Funds SA, a statutory body set up by the Superannuation Funds Management Corporation of South Australia Act 1995, removes the Lotteries Commission from the equation.

In relation to the transfer of licences, this Bill seeks to clarify the position of the licensee in a situation where the shares of Adelaide Casino Pty Ltd, the body corporate which holds the licence, may be sold to an external party. This Bill allows the Gaming Supervisory Authority to scrutinise such a situation. The Opposition agrees that the Gaming Supervisory Authority should review such a change in control of the Casino with the same rigour that it would a transfer of the Casino licence under a direct sale of the Casino assets themselves. This process also provides a formal procedure for any purchaser of the shares in the entity holding the Casino licence—a necessary step to provide certainty to a purchaser.

When such a change of control occurs, the licensee must inform the Liquor and Gaming Commissioner and the Gaming Supervisory Authority of the transaction or proposed transaction that would result in a change of control or influence. In relation to the Gaming Supervisory Authority, the licensee must inform them within 14 days of becoming aware of the transaction. The Gaming Supervisory Authority has the power to approve such a transaction. If the authority does not approve the transaction, the aggrieved person has the right to appeal to the Supreme Court against the order. The licensee may be liable to disciplinary action if it was a party to an unauthorised transaction that results in a person gaining control of the Adelaide Casino without the approval of the authority.

In a situation where the entity that holds the licence is one in which control is widely held, such as a publicly listed company or a listed unit trust, the gaming supervisory authority will have the power to scrutinise transactions where changes in control of the entity occur, even if the movements of shares are less than the majority interest. Obviously, that is a necessary position, and the Opposition fully supports it. The administrative changes proposed in this Bill are, on the whole, technical changes aimed at improving the regulation of the Adelaide Casino under any new private operator should a sale proceed. The Opposition supports the Bill.

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

[Sitting suspended from 12.32 to 2.15 p.m.]

LEGISLATIVE REVIEW COMMITTEE

The Hon. A.J. REDFORD: I lay upon the table the eighteenth report of the committee 1998-99.

JOINT COMMITTEE ON TRANSPORT SAFETY

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I lay upon the table the interim report of the committee.

SURF EDUCATION PROGRAMS

The Hon. R.I. LUCAS (Treasurer): I seek leave to table a copy of a ministerial statement made by the Minister for Education, Children's Services and Training on the subject of surf education programs.

Leave granted.

QUESTION TIME

DISABILITY SERVICES

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister for Disability Services a question about the Commonwealth-State agreement for funding disability services and negotiations for additional funding to meet the $300 million unmet demand in Australia.

Leave granted.

The Hon. CAROLYN PICKLES: On 29 June the Minister advised the Estimates Committee that he had been to Canberra with a track record and a willingness to financially support unmet demand. Today the Federal Government has

announced an offer of an additional $150 million over two years, contingent on the States putting their share under the Commonwealth-State funding ratio of 30:70. This means that South Australia can now access about 8 per cent of $300 million over two years (about $12 million), subject to the State increasing its own expenditure. My questions are:

1. Will the Minister advise whether the Government is still willing to financially support unmet demand?

2. Will the Government accept the Commonwealth offer?

3. By how much will the State increase funding for disability services under the agreement?

The Hon. R.D. LAWSON: I welcome the announcement today by the Federal Government that it will pay an additional $150 million over two years into disability services nationally. This is an important acknowledgment by the Commonwealth Government of its commitment to people with disabilities and an acknowledgment of its obligation to provide leadership and financial assistance in this very important area. The precise terms of the Commonwealth offer are not known at this stage, although throughout the morning I have been endeavouring to obtain additional information from Canberra in relation to the announcement. However, I should say that it is somewhat disappointing that the Commonwealth offer is for funding not immediately nor in this financial year but for the two financial years commencing 1 July 2 000, which are the two remaining years of the current term of the Commonwealth-State Disability Agreement.

This means that the substantial need that has been recognised as existing at the moment is not being addressed by this initiative. Early indications are that the Commonwealth assistance is targeted specifically at older carers. The needs of older people who have been caring for a child or relative with disabilities is very substantial, but there are other needs in the disability sector and needs associated with accommodation services required not only for older carers but also for younger people with disabilities. I will be examining very closely, as will the Government, the precise terms of the Commonwealth offer.

When Senator Jocelyn Newman announced that the Commonwealth would be making an offer, she indicated that the States would have at least one month before a meeting of Commonwealth, State and Territory Ministers to discuss a national response, and we will be using that time to develop appropriate strategies to ensure that we can best meet the needs of the community. I will be happy to provide the honourable member with further details as soon as information about the offer is available.

GOVERNMENT RADIO NETWORK

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Minister for Administrative Services a question about the report of the House of Assembly Select Committee on the Emergency Services Levy.

Leave granted.

The Hon. P. HOLLOWAY: Yesterday the report of the Select Committee on the Emergency Services Levy was tabled. This report makes eight recommendations about the raising and collection of the levy and the purposes to which the levy will be applied. Recommendation 8 states:

> That the Government reviews its commitment to the Government radio network due to its high cost and examines options for lower cost solutions to remedy existing communication problems.

Does the Minister accept the findings of the select committee report and will he act on the recommendations of the committee, in particular, recommendation 8 and, if not, why not?

The Hon. R.D. LAWSON: I have not yet had an opportunity to study in any detail the report of the Select Committee on the Emergency Services Levy. In so far as the report makes recommendations regarding the Government radio network, I will be interested to learn what was the precise basis of any information that the committee had concerning not only the network but also the contractual arrangements which the Government has already entered into with Telstra for the design, construction, maintenance and operation of the Government radio network. The estimated cost of that network is, over the seven years life of the contract, some $247.7 million which, as the Government has consistently acknowledged, is a substantial amount of money.

However, the Government was determined to ensure that the Government radio network that is installed is one that is effective, will be reliable, will be capable of being used in emergency situations and will be sufficiently flexible to accommodate the emerging technologies. I will further study the recommendations of the report of the select committee to see whether there is any further information that I should supply in response to the honourable member's question.

ABORIGINES, GAOL RELEASE

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Aboriginal Affairs, a question about gaol release.

Leave granted.

The Hon. T.G. ROBERTS: On a recent trip to Port Augusta, I spoke to the Aboriginal women in Davenport about some of the problems that they face in living their daily lives there. It appears that Aboriginal women in Davenport are taking on a lot of roles and responsibilities that probably would be left to a lot of our key agencies. It is clear that the workload and responsibilities that they have accepted are making their task difficult and are certainly taking a chunk out of their lives: it is a major part of their lives. I think there is a toll to be paid later for the extra workload that they have taken on.

One of the major problems they raised with me was the difficulty they had with the release of Aboriginal prisoners in the Port Augusta area who lived in remote areas. It is a problem that we need to face in a bipartisan way. I am not sure how they have raised the issue back through Government departments, but it appears that the problem is not being dealt with. When prisoners are released from the Port Augusta Gaol, they are given a ticket on a bus to the nearest point to their tribal lands or homeland, and they are expected to board the bus and travel back to their place of origin. Unfortunately, in many cases the release is a point for celebration: one thing leads to another and they do not board the bus. In many cases, relatives in Port Augusta and Davenport have to provide accommodation, either temporary or in some cases semi-permanent, to released prisoners who in the main are unresourced.

I believe that a better way of releasing these prisoners could be worked out by the Government. The Government, through the intervention of the department, may be able to work out a more suitable formula for the release of prisoners, particularly those living in remote areas. Will the Minister

include, as a form of support and rehabilitation, an improved method of return travel for released gaol prisoners who live in remote areas, particularly in the north of the State?

The Hon. K.T. GRIFFIN: It is a question of probably two areas of Government policy and responsibility we will be interested in. Of course, one is the Minister for Aboriginal Affairs; the other is the Minister for Police, Correctional Services and Emergency Services, with the emphasis on the Correctional Services component of that ministerial title. I will refer the question to the Ministers and bring back a reply.

HINDMARSH SOCCER STADIUM

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning, representing the Minister for Recreation, Sport and Racing, a question about the Hindmarsh Soccer Stadium.

Leave granted.

The Hon. J.F. STEFANI: Several weekends ago, the *Sunday Mail* published a special feature entitled 'Directions for South Australia.' The feature outlined seven key areas on which the Government will be focussing its activities. In the publication, under the subheading 'Sports and Recreation', there was a colour photograph of the Hindmarsh stadium indicating that these sporting facilities are being further developed. My questions are:

1. Will the Minister advise whether the Government will establish an independent management structure to administer and promote the greater use of the stadium facility in order to achieve the profitable yearly operation of the stadium?

2. Can the Minister advise whether the Government has obtained a forward budget estimate detailing the additional costs which will be incurred at the Hindmarsh stadium to service the total capital expenditure, including the $18 million outlay associated with Stage 2 of the new grandstand extensions?

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

OIL RECYCLING

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning, representing the Minister for Environment and Heritage, a question about oil recycling.

Leave granted.

The Hon. SANDRA KANCK: I was shocked to learn that our State's Environment Protection Agency is advising personnel from automotive repair workshops who ring seeking advice about the disposal of oil filters from cars, trucks, buses, and so on that they should simply put them in the bin for standard waste collection. Effectively, the EPA is advising that oil filters, which contain, amongst other things, pollutants such as zinc, phosphorous, barium, iron, nickel and lead, should be disposed to landfill. That, in turn, raises the likelihood of the pollutants leaching into the watertable. Oil is a non-renewable resource that can be recycled. Yet, every time a car oil filter goes to landfill, up to half a litre of oil can be tossed away and, in the case of truck filters, it can be up to two litres of oil. It is estimated that 100 million litres of oil soaks into landfills around Australia every year. If you weigh that against the spillage of 260 000 litres of oil at Port Stanvac recently, the enormity of the practice is exposed. My questions are:

1. Does the Minister consider the disposal of oil filters to landfill to be an environmentally acceptable practice?

2. Have the managers or owners of Adelaide's metropolitan waste dumps been made aware of this practice; if so, what has been their response to it?

3. As there are companies which have the capacity to recycle the remaining oil and the metal from the oil filters, why is the EPA not advocating this practice?

4. Does the Minister believe that the EPA is providing appropriate advice to those in the automotive industry; if so, what is her environmental justification; if not, what remedy does she propose?

The Hon. DIANA LAIDLAW: I will refer that series of questions to the Minister and bring back a reply.

EMERGENCY SERVICES LEVY

In reply to **Hon. IAN GILFILLAN** (1 June).

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

Local Government are keeping all savings from the introduction of the Emergency Services Levy.

The Hon. Iain Evans was not Minister for Local Government in May 1998 as suggested by the honourable member, but was in fact Minister for Emergency Services.

MEDICAL TREATMENT, CONSENT

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Hon. Diana Laidlaw, representing the Minister for Human Services, a question about consent for medical treatment.

Leave granted.

The Hon. L.H. DAVIS: In 1983, the Parliament passed the Natural Death Act, which provided that a person over 18 years who desired not to be subjected to extraordinary measures in the event of their suffering from a terminal illness could make a direction on the prescribed form. This legislation resulted from a private member's Bill sponsored by the Hon. Frank Blevins.

An honourable member: You were here then, weren't you?

The Hon. L.H. DAVIS: I voted against it, actually. The Natural Death Act remained in force until it was repealed in 1995, following Parliament's passing the Consent to Medical Treatment and Palliative Care Act. Section 7 of this Act provides:

> A person of or over 18 years of age may, while of sound mind, give a direction under this section about the medical treatment that the person wants, or does not want, if he or she is at some future time—
>
> (a) in the terminal phase of a terminal illness, or in a persistent vegetative state and;
>
> (b) incapable of making decisions about medical treatment when the question of administering the treatment arises.

A direction under this section must be in the form prescribed by schedule 2. There are also powers under the Consent to Medical Treatment and Palliative Care Act to appoint medical powers of attorney, which may well result in a similar direction being provided, as I understand it. My questions are as follows:

1. Can the Minister provide any details of how many persons have used the provisions of sections 7 and 8 and the requisite schedule of the Consent to Medical Treatment and Palliative Care Act 1995, which had the effect of limiting medical treatment and which were duly acted upon by a

medical practitioner in the period from 1995 through to the present time?

2. Can the Minister provide any details whatsoever of how many people used the provisions of the Natural Death Act, using the prescribed form of that Act, which were duly acted upon by a medical practitioner from 1983 through to the repeal of that Act in 1995?

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

GRAPE VIRUS

The Hon. T. CROTHERS: I seek leave to make a precied statement before asking the Attorney-General, representing the Minister for Primary Industries, Natural Resources and Regional Development, questions about the grape virus.

Leave granted.

The Hon. T. CROTHERS: It was reported in the *Sunday Mail* of 13 June this year that a new virus threatening Australia's grape industry had been found at two Sunraysia district properties in Victoria. According to the article, the grapevine virus B, which has not previously been found in Australia, has the potential to reduce yields and kill vines. The virus is believed to have arrived in vines imported from Israel. These imported vines were released from quarantine in 1996. Having said that, I am mindful that that other grape virus, phylloxera, also emanated from one of the river valleys in Victoria and almost had a devastating effect in this State back in the late 1800s. As I said, these imported vines were released from quarantine in 1996. My questions to the Minister, therefore, are:

1. Have there been any reported cases of grapevine virus B in South Australia?

2. What safeguards, if any, are in place to ensure that vines imported into South Australia are indeed disease free, given that the virus escaped detection while the vines were in quarantine?

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

CONICAL SNAILS

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Primary Industries, a question about conical snails.

Leave granted.

The Hon. J.S.L. DAWKINS: I was interested to learn recently of the possible release of a parasitic fly to help control crop damaging conical snails in the cereal growing areas of South Australia. The South Australian Research and Development Institute is coordinating a new integrated snail research program in which growers through the Grains Research and Development Corporation and the South Australian Grain Industry Trust Fund will invest $650 000 over the next four years. The parasitic fly, introduced from Europe, has been tested in quarantine. I understand that it is specific to the conical snail species, which is largely a problem on Yorke Peninsula, although there are isolated pockets of the pest elsewhere.

There are four species of snails which cause problems in the grain industry. However, the main damage comes from the conical snail and a white snail species. The damage they cause by eating young crop plants, contaminating grain at harvest, delaying harvest and damaging machinery amounts to millions of dollars a year. Growers are well aware of the tight receival standards for grain containing snails and these are being further tightened. My questions are:

1. Can the Minister indicate when the release of the parasitic fly is likely to occur?

2. Can the Minister detail the various components which will be included in this important research project?

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

STREET ABUSE

The Hon. G. WEATHERILL: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Police, a question about people being intimidated and abused.

Leave granted.

The Hon. G. WEATHERILL: Some time ago I raised the question of people gathering in the vicinity of Old Parliament House, where people were drinking and catching people as they were walking past and asking them for money and, when they did not get any, being abused. Mr President, since they built the fence around Old Parliament House, which was a good move, it did stop for a short while, but this problem has arisen again, and seems to be getting worse. I have spoken to some interstate visitors, one of whom is a member of the West Australian Parliament. One night he decided to go to the Casino. He ran the gauntlet going across to the Casino and then had to run the gauntlet again when returning to his hotel, which is opposite this Parliament. He said that he had been to lots of countries, to Third World countries and places like that, but had never felt as intimidated in all of his life as he was in this area of Adelaide.

I have spoken to lots of people about this issue. If you speak to the people who work in this Parliament who have to go from here to catch trains and buses they will tell you that they have to run this gauntlet and get grabbed all over, and, if they do not give money, they get abused and pushed, and some have been knocked to the ground. This has been going on for far too long. It happens in North Terrace and in Hindley Street. After dark you would not dare walk along there. I would never let my wife walk along there, and I probably would not go along there myself unless I had somebody with me. That is how bad it is getting.

The Hon. Diana Laidlaw: And you can look after yourself.

The Hon. G. WEATHERILL: I can look after myself, but a lot of people cannot. My question to the Minister is: when will the Minister start protecting the people of this State and the interstate visitors to this State?

The Hon. K.T. GRIFFIN: It is not a matter for the Minister to protect citizens in that respect.

Members interjecting:

The Hon. K.T. GRIFFIN: The honourable member asked when was the Minister going to. It is not for the Minister to—

Members interjecting:

The Hon. K.T. GRIFFIN: I have a great deal of sympathy with the sentiments expressed by the Hon. Mr Weatherill, but it is not a matter for the Minister. The Minister cannot be out there taking steps, because it is not just a policing responsibility. It is a responsibility in relation to where Aboriginal people—and they are predominantly Aboriginal people—should be permitted to gather and how you deal with

those of them who are under the influence of alcohol. It is not an easy question to resolve. The previous Labor Government did not resolve it. Whilst I acknowledge the need to ensure that citizens can walk untroubled around the streets of Adelaide, whether it be in North Terrace, Hindley Street or Victoria Square, something constructive has to be done about the way in which those who are responsible for that behaviour can be properly dealt with.

A number of initiatives have been established. The Adelaide City Council is looking at the issue. The Capital City Forum, which comprises equal numbers of Government Ministers, led by the Premier, and councillors from the city council, has recently established a working group which includes some of my officers from Crime Prevention in addition to police, and that is directed towards trying to deal with issues of public safety within the city. That was established only a relatively short time ago, a matter of a month or so ago I think, but it is charged with a very heavy responsibility.

The issues in relation to this are complex. Only a few days ago I saw police officers on foot patrol talking to some people after an altercation on North Terrace. The police are sensitive to the issue. They are taking steps to try to address it.

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: Yes, bike patrols, horse patrols—a whole range of those. In the end, something has to be done to address the underlying social problem. That is the big issue which is a challenge not only to the Aboriginal community and to charitable organisations which address themselves particularly to homeless men but also to governments and police. I do not think any of us have a magic wand which will solve the problem, but we have to endeavour to do so.

If there is anything further to report I will ensure that those details are provided, but I think that generally covers it. The only aspect that I am not on top of right at the moment is exactly where the police might be in all of this. I know they are sensitive to it: I know they have periodic visits to the area and that they are taking action, but I will need to get an update on that.

UNIT PRICING

The Hon. IAN GILFILLAN: I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about unit pricing.

The Hon. K.T. Griffin: What?

The Hon. IAN GILFILLAN: Unit pricing. All will be revealed shortly.

The PRESIDENT: I hope the emphasis is on 'shortly'.

Leave granted.

The Hon. IAN GILFILLAN: When you shop in supermarkets I am sure that you, Mr President, like many of us, are often confronted with products that are available in different sizes. For instance, a particular brand of coffee may be available in sizes of 100 grams, 200 grams, 500 grams and even one kilogram. In addition, a rival brand of coffee may come in totally different sizes. Normally it is the case that the larger the packet size the cheaper the product contained within it. If you can afford to buy the one kilogram coffee jar, your coffee will usually cost less per cup than if you bought a succession of 100 gram coffee jars during various trips to the supermarket over a longer period.

The Hon. A.J. Redford interjecting:

The Hon. IAN GILFILLAN: The Hon. Angus Redford will be able share his shopping experiences with me later, outside my brief explanation. Mr President, protect me from an extension of my time.

Members interjecting:

The PRESIDENT: Order!

The Hon. IAN GILFILLAN: However, Mr President, as you know, this general rule does not always hold true. For example, there may be a special one week on, say, the 200 gram jar, which may have the effect that it is cheaper to buy your coffee in a smaller sized container, at least while the special lasts. However, you need to stand in front of a supermarket shelf for some time, perhaps with a calculator—and I am not sure how you were in maths, Mr President; you may not need a calculator—to work out whether this is the case. If the different sizes are all round numbers the calculation may be easy, but sometimes the calculation is very difficult.

For instance, how many of us could work out the best value for money when comparing the price of different tubes of toothpaste, as they can come in sizes such as 90 grams, 140 grams, 190 grams or 210 grams? In the United Kingdom these sorts of difficult decisions for consumers have been made much easier by the introduction of what is called unit pricing. This means simply that on British supermarket shelves each product has its price displayed in two ways: one is the normal way with which we are familiar; and the other is the price per 100 grams of the product. This makes it very easy when shopping on Saturday mornings to compare the prices of not only one brand but also different brands.

This issue has been raised by the Australian Consumers Association and has been reported recently in the *Advertiser* (Saturday, 19 June, page 68). In addition, it was raised on Channel Nine's *Money* program on Wednesday 14 July. The presenter of the *Money* program supported the concept and urged viewers to write to their local MP or Consumer Affairs Minister seeking the introduction of unit pricing, and I understand that this has the Australian Consumers Association's enthusiastic support. Will the Government support the introduction of unit pricing in South Australian supermarkets and, if not, why not?

The Hon. K.T. GRIFFIN: This issue raised its head last year—

The Hon. R.I. Lucas: Give him a unit priced answer.

The Hon. K.T. GRIFFIN: Well, the unit price answer can be described in different ways, and you will probably need a laptop to make sense of it. Undoubtedly, there will be some additional cost involved in so-called unit pricing. I must confess that my visits to the supermarket do not cause me the sort of problem that apparently the Hon. Mr Gilfillan is experiencing because there is not unit pricing. One can generally make a pretty good—

Members interjecting:

The Hon. K.T. GRIFFIN: Off the top of my head, I would have thought that it would introduce a quite significant workload for supermarket—

The Hon. M.J. Elliott: It is all done on computer now.

The Hon. K.T. GRIFFIN: It may be, but you have to remember that it has to be put onto the shelves in terms of pricing.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: Well, have you ever been to a supermarket and seen how many thousands of labels there are?

Members interjecting:

The Hon. K.T. GRIFFIN: I do lots of shopping, too.

The PRESIDENT: Order! I am sure that the Minister does not need all this help.

Members interjecting:

The PRESIDENT: Order! I am sure that the Minister is a trolley pusher, as the President is.

The Hon. M.J. Elliott: What would you do with a hard question—

The Hon. K.T. GRIFFIN: I would love a hardware shop, actually; lots of things to play with. By way of reaction, I would have thought that it would increase the workload. Ultimately, the consumer will pay for it. I will take some advice on it. It was—

Members interjecting:

The Hon. K.T. GRIFFIN: These questions are asked: don't expect an answer. I am trying to be helpful in giving you one.

Members interjecting:

The Hon. K.T. GRIFFIN: I go to the supermarket on a fairly regular basis.

Members interjecting:

The PRESIDENT: Order! I think we should return to the Minister.

The Hon. K.T. GRIFFIN: I am sure that this is leading to a contest, and at the end of the session it is probably appropriate that we apply our minds to the things that matter to people out in the community. I will take some advice on the unit pricing issue. As I say, my immediate reaction is that it would add some costs. I think that, with the scanning code of practice that we have in place, it may well result in some additional inaccuracies in the application of that by supermarket proprietors. I may be wrong. I will take some advice and bring back a reply.

The Hon. IAN GILFILLAN: As a supplementary question, would the Minister agree that, first, the introduction of the GST will require supermarkets and marketing outlets to make adjustments to their database and, secondly, does he agree that there are many consumers in the public to whom the actual cost factor is more important than perhaps it is to members of Parliament, therefore unit pricing may well be a significant part of—

The PRESIDENT: Order! The honourable member can only ask a question.

The Hon. K.T. GRIFFIN: I will take the question on notice.

EYESIGHT TESTING

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning further questions about vehicle licences and eyesight testing.

Leave granted.

The Hon. T.G. CAMERON: On 27 May the Minister said that my explanation that all other States require eyesight testing at licence issue was not right. I am pleased to note from her reply in *Hansard* dated 10 June that she is now aware that South Australia is the only State in Australia that does not require eyesight testing for everyone before an initial licence issue.

The Hon. M.J. Elliott: Who read this out for you?

The Hon. T.G. CAMERON: You'll notice I'm wearing my glasses.

The Hon. T.G. Roberts: They're Trevor's, aren't they?

The Hon. T.G. CAMERON: No, he's lost his. The Minister also stated that an applicant for first issue of a learner's permit or a licence was required to have an eyesight test if they declared that they wore glasses or contact lenses. I am informed that the licensing branches have recently been issued with instructions confirming this requirement. The current policy is to check the eyesight of people who state that they use corrective lenses, but not to check anyone who states that they do not wear corrective lenses—not even at the initial issue of a driver's licence.

As the Minister points out, we are the only State in Australia not to do so. I find this rather puzzling, considering our move towards uniformity and national rules and regulations regarding road traffic laws. If someone states that they wear corrective lenses, logic presumes that they have had their vision corrected by an optometrist's prescription. The Minister stated in her reply of 10 June:

> The Motor Vehicles Act places a clear duty on qualified medical practitioners and registered optometrists to notify the Registrar if a person is unfit to drive.

Therefore, the group of people who report that they wear corrective lenses are the people most likely to meet the required standard, because their optometrist is legally required to report it if they do not. They are not the problem: it is that group of people who may be unaware that their eyesight is failing or has become weaker who are the danger to themselves and other drivers. Commonsense would suggest that eyesight testing should be carried out on all drivers at initial issue, rather than simply rechecking those who have already been to an optometrist. My questions to the Minister are:

1. Does she agree that the real danger in this issue lies with motorists continuing to drive unaware that their eyesight may not reach the required safety standards, and that the current system, which requires only those who state that they need corrective lenses to be tested, is illogical, given that this group of people have already been to an optometrist?

2. Would we not all be much safer on our roads if South Australia joined the rest of Australia and introduced a requirement for everyone to have an eyesight test at least at the initial licence issue?

The Hon. DIANA LAIDLAW: I do not recall all the information that I provided in my written reply to the honourable member's question, but I do recall that it was of some length and explained why there is concern around Australia about the quality of the tests that have been undertaken in other States. They may be compulsory, but the quality of the tests is being questioned, which also questions the value of having compulsory testing. I will go back and check that reply and provide that information to the honourable member, as before or in a different form. Without checking earlier advice I provided to him, I certainly would not agree to the first question or, necessarily, the second.

In terms of the honourable member's reference to uniform road rules and national road rules, I would advise that, in terms of licensing for light vehicles, there is no such uniform standard across Australia. That is really why South Australia, through our Transport Safety Committee, is able to look at driver testing and training at this time, because we certainly have national rules for heavy vehicles. We have the road rules but do not have uniform licensing provisions, training provisions for light vehicles.

INTERNET DIVORCE

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Attorney-General a question about Internet divorce.

Leave granted.

The Hon. CARMEL ZOLLO: According to recent media reports, married couples in the United Kingdom now have access to divorce documents over the Internet through a company called Desktop Lawyer. Apparently you can log on to the website, register and then respond to a series of questions online. This service is available for an advertised fee of about $A200. With current Australian divorce rates exceeding one in two marriages, such rapid and clinical access to divorce is undesirable. Divorce carries a significant personal, emotional, social and economic cost to the community. It is a serious decision that hopefully remains a last resort decision for couples. Governments across Australia recognise the issues and costs surrounding divorce and have at various times attempted to address the issue.

Whilst there are other accessible methods that do not necessitate the use of a solicitor in South Australia, I am not aware of such legal services being provided online. This issue of the worldwide web is an interesting twist on e-commerce and raises many questions for Australia. My questions to the Attorney-General, and perhaps to the Minister responsible for information technology, who may also like to comment on this matter, are:

1. Is the Attorney-General aware of this web-based service?

2. Whilst I am aware that it is a Federal issue, is the Attorney-General aware of any similar existing or planned South Australian or Australian service?

3. Does the Government have any policies in relation to legal services being provided on the Internet?

4. Is this a practice the Attorney believes will need regulation or monitoring in South Australia?

5. Can the Attorney-General comment on this development and any action that he may take?

The Hon. K.T. GRIFFIN: It was only a matter of a couple of weeks ago that I launched the pre-lodgment service for claims in the Magistrates Court. That pre-lodgment service enables parties who have a dispute to log on to a mediation and dispute resolution service through the courts, prior to issuing proceedings. The documentation is available for $10 per matter and is available on the Internet so that businesses are able to buy the pre-lodgment notice of claim for $10 and then to enter the process and to serve it on the other party. As part of the process of endeavouring to resolve a dispute they can avail themselves of the mediation service available in the court.

That is one instance of what the courts are doing in South Australia. It is an innovative scheme and, as I understand it, we were the first in Australia to use the Internet for that purpose. In terms of Internet divorce, the honourable member is correct: it is a Federal matter. As to divorce laws, I must confess that I am not aware of the body to which the honourable member referred as promoting divorce through Internet proceedings—

The Hon. M.J. Elliott: It's only for virtual marriages.

The Hon. K.T. GRIFFIN: Virtual reality! The problem I suppose is the identification of the parties but, under Federal divorce law, there is now no appearance in court to sever marriage ties, as I understand it. It can all be done by filing a document by the parties: divorce by consent, effectively, if the prerequisites have been established. I suppose it is not much further down the track to think of it in terms of doing it formally through the Internet, but as part of a court process. I am not sufficiently aware of the example that the honourable member gave. It is a bit frightening and it is something that I would need to take advice on and familiarise myself with before I gave a more constructive response.

There is no doubt that the Internet will be used more and more for a variety of purposes connected with our courts. Whether it is in terms of listing, filing documents or serving documents, some of that will require changes to the rules of court; some of it may require changes in the substantive legislation. At this stage, there has been only limited use of the Internet by the courts in this State for the sort of pre-lodgement scheme to which I have referred.

GAMING MACHINES

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

Leave granted.

The Hon. NICK XENOPHON: I previously asked questions without notice in this place on 11 December 1997 and 1 June 1999 and on notice on 11 February 1999, seeking details of poker machine losses on a postcode by postcode basis. Although I did receive a response from the Treasurer in relation to a question I asked him on 20 August 1998 about poker machine losses in the City of Adelaide, I have also referred to the New South Wales Office of Gaming and Racing, which now publishes details of gambling losses of poker machine outlets on a venue by venue basis throughout that State. My questions to the Treasurer are:

1. When will the details that I previously requested be disclosed?

2. Have all or some of the details that I previously requested been compiled or prepared—at least in part—by the Treasurer or his department, or by the Office of Liquor and Gaming?

3. Given that the New South Wales Office of Racing and Gaming now publishes poker machine losses on a venue by venue basis, when could we expect such reform to take place in South Australia?

The Hon. R.I. LUCAS: As I indicated to the honourable member in a discussion outside the Chamber last week or the week before, I have had in my possession for a short period now a compilation of the figures that the honourable member has requested—not on a venue by venue basis but on a postcode aggregation basis. With regard to one of the iterations we have gone through in relation to this question, the honourable member might have sent a request to me with a list of aggregated postcodes as a suggestion to get around the venue by venue problem. The aggregation I have had for a while now is not an exact correlation with the honourable member's attempt at an aggregated postcode release of information. However, my recollection from having had a look at it is that it was a reasonable attempt at providing information without providing the individual detail of a particular venue in a particular location.

As I indicated to the honourable member last week or the week before, it is my intention to release that information by way of letter to the honourable member and also by way of public statement so that we can share our collective information with the world.

The Hon. Nick Xenophon: I would have done it for you, anyway.

The Hon. R.I. LUCAS: I thought you might have, so that is why I thought I might as well release it at the same time to you and to the media—

An honourable member interjecting:

The Hon. R.I. LUCAS: For reasons of public accountability.

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: No, to release all the information. I recall a front page story about the amount of gambling going on in one location—it might have been the CBD—about which I had provided some information to the Hon. Mr Xenophon. In the spirit of openness and accountability, once we get out of this Chamber and I can have another look at these figures, I will release the information to the honourable member and to the world. It does not follow the New South Wales path. The honourable member did mention that policy change in New South Wales. I will be happy to have one of my officers have a look at the New South Wales situation.

As the member would probably know, the policies of the New South Wales Labor Government are not always policies that the South Australian Liberal Government and I necessarily follow. I just remind members of our debates on electricity and interconnectors. So, the fact that it might have been done in New South Wales will not necessarily be an all persuasive factor for me, anyway, in terms of the release of information.

My recollection is that the information that has now been aggregated provides a reasonable balance between protecting the commercial interests of individual venues but, nevertheless, satisfies the desires of people who wish to see regionally-based information so they can highlight the amount of gambling that goes on in various suburbs, regional communities and parts of South Australia. We can then enter into a particular debate in those country and regional newspapers, I am sure, over the coming two month period between now and the next sitting of the Parliament.

The Hon. NICK XENOPHON: I have a supplementary question. The Minister has indicated that these details have been prepared. Will he undertake to release them within the next 14 days?

The Hon. R.I. LUCAS: Yes, I think I might be able to do that. As I indicated to the honourable member, it was—

The Hon. T.G. Cameron: Is that a 'yes' or a 'no'?

The Hon. R.I. LUCAS: I said that I might be able to. As I indicated to the honourable member, once we get out of this wonderful institution of Parliament in the final two weeks of the session I will have a chance to have another look at the documentation. It would be my intention to release the information pretty well immediately.

MINING PROJECTS TASK FORCE

In reply to **Hon. T.G. ROBERTS** (8 July).

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

The Resources Task Force will present to the Premier a five year Mineral Resources Plan. In developing the plan, the Resources Task Force is expected to draw upon current issues facing the mineral development industry and assess their importance in terms of stimulating growth in the mineral industry.

The current negotiations occurring to improve access for mineral and petroleum exploration in the Pitjantjatjara Aboriginal Land are an example of one of the contemporary issues facing the industry in this State.

In relation to your specific questions, I offer the following response:

1. No industry members of the Resources Task Force have been involved in negotiations for accessing Pitjantjatjara Land. One of the government members has been involved, but not in his capacity as a member of the Task Force.

2. It is not anticipated that industry members of the Resources Task Force will become involved in this matter as specific issues are outside the terms of reference for the Task Force. Government has a role and will continue to assist the Pitjantjatjara people to investigate opportunities to facilitate access to land for mineral exploration.

3. It is not appropriate for the Resources Task Force to become involved in resolving specific issues. They may however, choose to recommend to the Premier how land access issues generally might be better resolved in future.

4. It was not envisaged that the Resources Task Force would become involved in these form of negotiations.

SHIP BREAKING INDUSTRY

In reply to **Hon. P. HOLLOWAY** (8 July).

The Hon. K.T. GRIFFIN: I refer the honourable member to the answer provided by the Premier in the House of Assembly on 8 July 1999.

MURRAY RIVER, FISHING

In reply to **Hon. IAN GILFILLAN** (8 July).

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

1. On 9 February 1999, a media notice of policy decisions regarding the structural adjustment of the river fishery, following advice provided by the River Fishery Structural Adjustment Advisory Committee (RFSAAC), was released. The membership on this committee included the Bookmark Biosphere Trust. Recommendations provided by RFSAAC were accepted where there was agreement. However, on issues where there was not agreement, Government considered information available from a range of sources and made a determination.

The Parliamentary Inquiry into Fish Stocks of Inland Waters was conducted as a separate process that has run parallel to the work being completed at the RFSAAC. Given that such inquiries are not restricted to specific timeframes, Government needs to continue with the day to day management of fisheries resources in this State. A response to the ERD Committee recommendations has been made.

2. Under the current legislation river fishery licence holders are required to check their gill nets every 24 hours in backwaters. The new licence conditions will retain this requirement for common backwaters. The issue of whether commercial fishers should check gill nets placed in the mainstream and adjacent backwaters, and how often, was not considered as part of the structural adjustment plan.

The Fisheries Research and Development Corporation has announced funding for the project 'Greening Australia's Fisheries' which aims to develop an accredited/audited Environmental Management System (EMS) for the Riverland Fishermen's Association and the Southern Fishermen's Association. This grass-roots initiative aims to demonstrate that small fisheries are sustainable and will commit the fishing industry to a formal annual continuous improvement process in relation to sustainability. As identified in the Southern Fishermen's Association Environmental Management Plan the minimisation of bycatch from all fishing techniques will be included, not just gill nets.

3. The total amount of fish that can be taken, or quota, is not set for the river fishery. The fishery is currently managed by input controls for the commercial sector by limiting the number of licences, the amount and dimensions of fishing gear, the area that can be fished, the season that can be fished (as is the case for Murray cod) and the type of species that can be taken.

An annual allowable catch of a fish species could not be set effectively for individual fishers given the wide variability and impact of environmental factors relating to the recruitment of fish stocks from year to year. Costs associated with implementing and monitoring a quota system of management would be both prohibitive and impractical. The current reach system of management restricts commercial fishing to designated areas which both limits the impact upon stocks, encourages fishers to manage their 'patch of water' for the long term and addresses the issue of access by all users.

4. The number of persons prosecuted for fisheries offences in any year has varied in accordance with the presence of fisheries compliance officers on a permanent basis. For example, in the first month of operation the officer currently located at Berri issued nine enforcement actions including the compilation of one prosecution brief and the retrieval of fourteen illegal devices from the River Murray. Since the opening of the Berri office at least 100 illegal devices have been retrieved from the River which are not related to commercial licence holders. A few expiations have been issued. However, in the majority of cases, the offender is never located.

The compliance officer stationed at Berri works in conjunction with marine safety officers from Transport SA to provide greater resources for compliance on the River. Commercial fishers provide the bulk of funding for compliance activity on the River Murray with the Government providing a small component for compliance relating to recreational and poaching activities. This officer is responsible for compliance activities for the River Murray, as well as the Lakes and Coorong and other inland waters such as the Cooper Creek system.

FISHING, RECREATIONAL

In reply to **Hon. G. WEATHERILL** (8 July).

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

1. The introduction of recreational fishing licences in South Australia is not current Government policy.

Recent re-introduction of recreational fishing licences for inland waters in New South Wales was the result of public demand for the stocking of freshwater impoundments with native fish and trout. The communities willingness to pay for such activities clearly demonstrated to the NSW Government acceptance of an inland angling licence.

Similarly in Victoria, the introduction of Saltwater Recreational Fishing Licences is supported by a majority of recreational fishers to fund buy-out of commercial fishers in the bays and inlets.

Other benefits of the introduction of recreational fishing licences by both Governments include increased research and compliance capacity.

The issue of recreational fishing licences in this State has consistently invoked strong community discussion. Current Government policy does not support the introduction of a recreational fishing licence.

2. Development of the recreational fishing industry will assist in enhancing recreational fishing through initiatives to attract investment and is a major objective of the strategic plan to be released for public comment by the Recreational Fishing Industry Review Committee later this year.

The strategic plan will include development and promotion of South Australia as a world class fishing destination while ensuring that fish stocks and aquatic environments are maintained and enhanced, where necessary. This development will be implemented within fisheries management and ecologically sustainable development principles. The benefits of increased public awareness, understanding and initiatives suggested by the recreational fishing community will be integrated in this strategic plan.

Current economic constraints faced by Government limits the ability to service all community demands. This has resulted in the onus being placed on the community to define priorities and clearly indicate to the Government what and how much it is willing to pay for. In the case of recreational fishing, it seems apparent at this time, that the community does not support the introduction of a recreational fishing licence.

CUTTLEFISH

In reply to **Hon. M.J. ELLIOTT** (10 June).

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

A three-year FRDC (Fisheries Research and Development Corporation) funded project was initiated in 1998 to investigate the general life history of the cuttlefish species and gather baseline biological data. Following receipt of the first year's report (November 1998) on the fishery it became obvious that a conservative management strategy must be implemented which recognised the vulnerability of the unique cuttlefish population in upper Spencer Gulf.

Following advice from the Marine Scalefish Fishery Management Committee (MSFMC), the Minister for Primary Industries, Natural Resources and Regional Development approved the implementation of a seasonal area closure for cuttlefish in the Point Lowly region. The seasonal closure extends from 1 March 1999 to 30 September 1999 and from 1 March 2000 to 30 September 2000 (both inclusive).

It should be noted that the area will continue to be open to recreational and commercial fishers targeting any other fish species.

The seasonal closure will be reviewed by the MSFMC following receipt of the 1999 stock assessment report on the fishery. This report should be available in late 1999. A long-term strategy for management of the fishery will be developed.'

MURRAY RIVER

In reply to **Hon. P. HOLLOWAY** (11 March).

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

- At the final meeting of the River Fishery Structural Adjustment Advisory Committee (RFSAAC) on 12 October 1999, an impasse was reached on the restructure proposal tabled by the Riverland Fishermen's Association (RFA). The RFA was given the responsibility to discuss with local councils where best to locate commercial fishing reaches giving consideration to popular recreational fishing areas.

As documented in the minutes the Local Government Association member at this meeting stated that the common policy adopted by district councils in the Riverland did not support the extension of reaches. The member representing the Bookmark Biosphere Trust stated that the views of local councils must be considered but also commented that the restructure proposal was a reasonable compromise given the task required by the RFA. The member representing the Recreational Fisheries Committee – Inland Region did not make specific comment on the restructure proposal.

Members representing the Local Government Association, the Bookmark Biosphere Trust and the Recreational Fisheries Committee did not support the use of commercial gill nets in backwaters which was recorded in the minutes of the final meeting.

- Throughout the restructure process, SARDI has provided scientific advice as a member of the River Fishery Review Working Group and RFSAAC. Recently SARDI has released 'A summary report on the status of selected species in the River Murray and Lakes and Coorong Fisheries' which includes an assessment of callop and Murray cod stocks.

The river fishery is not currently managed by quotas or output controls but by input controls which aim to restrict the amount of fishing effort on native fish species which include closed seasons and restricting commercial fishers to specified reaches and adjacent backwaters. In the near future a cap on the total amount of fishing effort will be put in place.

- The summary report is currently available for peer review.
- A copy of the summary report has been tabled.

The Hon. K.T. GRIFFIN (Attorney-General): In conjunction with the answer to the question from the Hon. P. Holloway of 11 March 1999 in relation to the Murray River, I seek leave to table a report entitled A Summary Report on the Status of Selected Species in the River Murray and Lakes and Coorong Fisheries, by Pierce and Doonan and dated February 1999, which report is referred to in the answer to that question.

Leave granted.

MAKE IT SAFE PROGRAM

In reply to **Hon. IAN GILFILLAN** (7 July).

The Hon. R.D. LAWSON: In addition to the answer given on 7 July 1999, the following information is furnished:

1. The funding agreement with the provider of the Make-it-Safe Program, Injury Prevention SA, expired on 30 June 1999. Budget allocations for 1999-2000 within the Department of Human Services are yet to be finalised.

In accordance with usual practice on evaluation of the program is being undertaken.

There is concern that the claimed benefits of the program in relation to reduced hip fractures is not supported by hospital admission data. This evaluation will be available shortly.

The Minister for Human Services and Minister for the Ageing jointly announced on 7 July 1999 that funding of $100 000 had been approved to allow the Make-it-Safe Program to continue until the end of the year. The additional funding will allow the program to continue while the evaluation of its effectiveness is completed.

2. Departmental budget allocations for particular program areas for 1999-2000 are yet to be finalised. As indicated funding has been approved for the program to continue until the end of the year while it is evaluated.

People aged 65 years and over do have a much greater chance of requiring a hospital admission to treat a fall injury compared to a road-accident injury and funding for an injury prevention program for elderly persons to reduce hip fractures and other injuries will be ongoing. The evaluation of the Make-it-Safe Program will assist in deciding whether this is the most effective way of preventing injuries from falls among the elderly.

3. As indicated, a decision on the most effective way of preventing injuries from falls among the elderly on an ongoing basis will be made when the evaluation of the Make-it-Safe Program is available. Research into the effectiveness of the use of specially developed hip guards to prevent fractured neck of the femur also has merit. A decision on the best use of the available funds on an ongoing basis will be made when the evaluation is available.

INTERNET

In reply to **Hon. CARMEL ZOLLO** (2 March).

The Hon. R.D. LAWSON: In addition to the answer given on 2 March 1999, the following information is furnished:

Ozemail Camtech has been engaged to provide internet and email services to the MAPICS project. This is an interim arrangement, which will cease when the Parliamentary Local Area Network (LAN) comes into operation. The internet and email service is made available to Members of Parliament and their staff in Parliament House and electorate offices for use in relation to their Parliamentary and electoral duties.

The document referred to in the honourable member's question as 'clause 4 of the MAPICS contract' is in fact the standard Ozemail Acceptable Use Policy. It sets out the standard conditions of use of the Ozemail service, as well as the responsibilities of individual users.

The MAPICS Guidelines for the Use of the Internet and Electronic Mail are provided to all Members as part of the ISP installation process. They are intended to inform all users that, generally, the internet is insecure due to its distributed nature and that users should be aware that confidentiality of messages cannot be guaranteed.

Accordingly, it is not recommended to send confidential or politically sensitive email messages via the internet, without employing additional security measures such as encryption. A secure electronic mail service will be available when the Parliamentary LAN comes into operation.

The contract with Ozemail Camtech has a specific non-disclosure clause prohibiting disclosure of any aspect of usage of the services. Ozemail Camtech are required to record details of time used in order to provide itemised billing information, consisting solely of the number of hours used by each user per month.

Government officers, Ministers, employees or other contractors do not have access to Members' email server and Internet account history logs.

Under the Telecommunications Act 1997 (Section 282), a service provider within the meaning of the Act may be required to disclose information to a law enforcement authority such as State or Federal Police, NCA or ASI and, as such, must have the ability to monitor user accounts. The Crown Law advice is that users' interests are protected under the non-disclosure provisions of the contract, but that the law requires Ozemail Camtech to disclose information to law enforcement authorities.

RESIDENTIAL TENANCIES

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General, in his capacity as Minister for Consumer Affairs, a question about residential tenancies.

Leave granted.

The Hon. R.R. ROBERTS: On 2 August 1999, I was contacted by a constituent from Port Pirie, Mr Robert Faulkner, who advised that there was no toll free local call number available when he wanted to contact the Residential Tenancies Office in Adelaide. The constituent rang a 1900 number, as appeared in his country telephone directory, and was charged at $3.95 per minute. This became quite an expensive exercise when the constituent had to go through the ritual of selecting the appropriate number for his query and being placed in a queue, and so on.

My office contacted the Residential Tenancies office and spoke to the manager of tenancies, Mr Brian Scholls, who advised that the local call number 131 882 is advertised in the Upper North-Far North-Eyre Peninsula directory but not in the Adelaide metropolitan directory. The manager also advised that in the Adelaide directory there is an advertisement separated by another advertisement printed in bold red type titled Residential Tenancies and Landlords Advisory Line, with a 1900 number.

This advertising is misleading, because this is a privately run company and it has nothing to do with the Office of Consumer and Business Affairs, residential tenancies and the Residential Tenancies Tribunal—although it does separate their advertisements in the metropolitan telephone directory.

The Manager advised my office that this situation would be rectified at the next printing of the White Pages directory. I then referred to the directory in and around Port Pirie, namely, the 1999 Upper North, Far North, Eyre Peninsula directory, to find that Residential Tenancies does not appear under the 'R' listings as one would have thought, but found that the Residential Tenancies Advisory Line 1900 number did appear once more. It is only when you refer to the Office of Consumer and Business Affairs that Residential Tenancies appears as a subheading.

I doubt that the average constituent realises that Residential Tenancies comes under the jurisdiction of the Office of Consumer and Business Affairs and would therefore automatically look under the Rs when they had a problem in this area. My officers contacted White Pages and they advised that a cut-off date for new entries and alterations in the Upper North, Far North, Eyre Peninsula directory is 26 November 1999 for delivery to residents in February the following year.

So, clearly this problem exists and when people look in their directory under 'R' and cannot find what they are looking for they go for the Adelaide directory and there is this misleading situation. I understand that most people believe the Residential Tenancies and Landlords Advisory Lines to be a Government service and do not realise that they are paying $3.95 per minute. My questions are:

1. Will the Minister ensure that the corrections are made in the next printing of the Adelaide Metropolitan directory as well as the Upper North, Far North, Eyre Peninsula directory to make the Residential Tenancies phone number more legible and easier for reference for constituents?

2. Can amendments be made to the Upper North, Far North, Eyre Peninsula directory before the closing date of 26 November 1999?

3. What innovative programs can the Minister come up with to advise constituents of this anomaly within the system?

The Hon. K.T. GRIFFIN: I will have to have a look at the matter. That I will do and I will bring back a reply.

PARTNERSHIPS 21

The Hon. M.J. ELLIOTT: I seek leave to give a brief explanation before asking the Treasurer, representing the Minister for Education, a question about Partnerships 21.

Leave granted.

The Hon. M.J. ELLIOTT: There are a couple of issues that I want to cover very quickly. The first is a fairly practical issue. I read, as I recall, back on 19 July that the take-up package, as it is known, was going to be distributed to schools, was going to be released during that week. So I asked a member of my staff to ring to ask whether we could have a copy. They were a bit vague and, in fact, a number of calls were made during that week to try to ensure that we got a copy of the package when it was available. Eventually it arrived in schools, as I recall, during that week, and during the following week, with it still not having arrived, my staff member having again made further inquiries about whether or not we would get one and being told that a package was being prepared for MPs and to be patient, he rang up as a private individual and asked for it and it was delivered to his home within 24 hours. Despite further phone calls I am still waiting for my copy, as I believe all other MPs are as well. I do not know whether it has to go to the Premier before I am allowed to get a copy of it.

The second issue on Partnerships 21 is in relation to kindergartens which have operated under a similar scheme to Partnerships 21 for some time. A constituent has informed me that what was originally an initiative towards self-management has now become a situation where raising two-thirds of the operating costs is the responsibility of the management committee. I have been informed that many kindergartens are outraged and struggling under the financial burden. My questions to the Minister are, first, how is it that the public can have the take-up package delivered on demand within 24 hours and members of Parliament can be waiting for weeks without receiving a copy?

The Hon. T.G. Cameron: You seem surprised.

The Hon. M.J. ELLIOTT: I don't know why; I get surprised just occasionally. Secondly, can the Minister confirm that kindergartens are already operating under a Partnerships 21-style system that has shifted towards greater local responsibility for individual school revenue raising and, if so, can the Minister reassure the South Australian public that Partnerships 21 is not a thinly veiled attempt to shift more of the financial burden of schooling away from the State Government onto parents and community groups?

The Hon. R.I. LUCAS: It is a fantastic story that a member of the public can ring up and, within 24 hours, a responsive Government can have a package of information delivered to his or her home. I think that that is something that we should celebrate and congratulate.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: I am sure that it is just an accident or a particular problem that has meant that the Hon. Mr Elliott has not got his information in the 24 hour turn-around.

The Hon. M.J. Elliott interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: I am sure that the Hon. Mr Elliott would not deny the fact that a member of the public should get the information before he should, because it is more important that the community get this sort of information rather than the Hon. Mr Elliott. I will be happy to refer the honourable member's questions and his congratulations about the service to the member of the public from the Minister's office to the Minister for a reply.

SELECT COMMITTEE ON INTERNET AND INTERACTIVE HOME GAMBLING AND GAMBLING BY OTHER MEANS OF TELECOMMUNICATION IN SOUTH AUSTRALIA

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

That the committee have leave to sit during the recess and to report on the first day of the next session.

Motion carried.

SELECT COMMITTEE ON OUTSOURCING OF STATE GOVERNMENT SERVICES

The Hon. R.D. LAWSON (Minister for Disability Services): I move:

That the committee have leave to sit during the recess and to report on the first day of the next session.

Motion carried.

SELECT COMMITTEE ON WILD DOG ISSUES IN THE STATE OF SOUTH AUSTRALIA

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

That the committee have leave to sit during the recess and to report on the first day of the next session.

Motion carried.

POLICE EXCLUSION REGULATIONS

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

That the regulations under the State Records Act 1997 concerning police exclusion, made on 25 March 1999 and laid on the table of this Council on 25 May 1999, be disallowed.

It is incumbent upon me to explain the basis and the background for the Legislative Review Committee's recommendation. The regulation that the committee is dealing with was promulgated pursuant to the State Records Act and laid on the table of this Council on 25 May 1999. In fact, the regulation was promulgated at an Executive Council meeting on 25 March 1999. The regulation seeks to include an exclusion from the application of the State Records Act. The regulation provides:

3(a) Pursuant to section 4 of the Act, the official records of the Operations Intelligence Division of South Australia Police are excluded from the application of the Act.

These regulations were promulgated pursuant to the provisions of the State Records Act 1997. Section 4 of the State Records Act 1997 provides:

The Governor may, by regulation, exclude or modify the application of this Act to agencies or official records.

The regulations were first considered by the committee last week when evidence was provided by Mr Alan Jones, Secretary of the Friends of South Australia's Archives, in which he made submissions to the committee for the purpose of the committee's deliberations before it provided a report to this Parliament. Following the evidence given by Mr Jones, a copy of that evidence was sent to the relevant Ministers and also to the Crown. This morning, evidence was heard from Mr Kelly, who is Chief Counsel at the Crown Solicitor's

Office. Notice of this motion was given last Wednesday to enable the committee to consider properly whether or not these regulations should or should not be allowed. The evidence of Mr Jones talked in general terms about the object of the State Records Act and the exclusion. In that regard, I think it is incumbent upon me to speak to this Act and its objects.

First, the Act provides that its principal object is to provide for the preservation and management of official records; and to amend the Libraries Act, the Freedom of Information Act and the Local Government Act. In introducing this legislation into this Chamber on 13 November 1996 the Attorney-General said that the principal objects of the legislation were to achieve consistent and coordinated records management and archiving. He referred to the desire on the part of the Government, through the promulgation of this legislation, to achieve whole-of-Government savings and a whole-of-Government approach to the management of State records. The Attorney referred, first, to the elimination of the fragmentation of records and collections and also to the importance of accountability in the maintenance and preservation of records; and, secondly, the absence of responsibility in so far as the then existence of State records is concerned.

The Attorney then referred to issues of Government and public accountability in so far as records are concerned and said:

> Official records of enduring evidential and information value are preserved for future reference.

He also went on to say:

> Records of enduring value must be preserved and accessible.

He also said:

> The legislation is aimed at the management of official records and therefore applies to—

and he named a number of agencies—

the police force.

There were two major exemptions in so far as the Act is concerned. The first related to Parliament and members of Parliament, and the second related to the Courts Administration Authority and the judiciary. During the course of the debate, much time was spent on the separation of powers and the unique role that the judiciary plays in our system of Government and, indeed, the unique role that members of Parliament and Parliament play in the delivery of Government. Indeed, contributions were made in this place—and I must admit that I have not had the opportunity of considering the debate in the Lower House—by the Hon. Anne Levy and the Hon. Mike Elliott.

During the course of the Committee stage, much time was spent on discussing the independence of the courts, and some time was also spent in discussing then clause 26, now section 26, which dealt with restricted access to documents. Section 5 of the Act sets out the objects of the legislation which was passed with the support of all Parties in early 1997. In particular, section 5(1)(e) of the Act provides:

> 5(1) The objects of this Act are ...
> (e) to ensure that members of the public have ready access to official records in the custody of State Records subject only to exceptions or restrictions that—
> (i) would be authorised under the Freedom of Information Act 1991 or Part 5A of the Local Government Act 1934; and
> (ii) are required—
> · for protection of the right to privacy of private individuals or on other grounds that have continued relevance despite the passage of time since the records came into existence; or
> · for the preservation of records or necessary administrative purposes.

It also goes on at section 5(2) and provides:

> This Act must be administered and standards must be formulated and determinations and decisions made under this Act so as to give effect to the objects set out in subsection (1).

The Act also has a number of other provisions. A significant provision is section 8, which provides that the Manager of State Records may, by instrument in writing, delegate to a suitable person powers or functions of the Manager under this or any other Act. It also provides that a delegation is revokable at will and does not prevent the Manager from acting personally in the matter. There are other provisions in relation to the Bill, including the functions of the council, which has a responsibility to provide advice in relation to the disposal of official records and also advice to the Minister or the Manager, either at their request or on their own initiative, with respect to policies relating to record management or access to official records.

Section 13 of the Act requires agencies to ensure that official records are maintained in good order and condition. Section 19 of the Act sets up a regime for the mandatory transfer to State Records' custody. Section 20 talks about the restriction under other Acts on disclosure of information and, indeed, is relevant. It provides:

> (1) When an agency delivers into the custody of State Records an official record disclosure of the contents of which is restricted by any other Act or law, the agency must ensure that the Manager is advised of that restriction.
> (2) This section does not apply to records of a court.

Section 23 talks about the disclosure of the disposal of records by an agency. Section 25 talks about an agency's access to records in the custody of State Records. Section 28 talks about the delivery of documents and, in particular, provides:

> Official records may be delivered into the custody of State Records as required or authorised under this Act despite the provisions of any other Act or law (whether enacted or made before or after the commencement of this Act) preventing or restricting the disclosure of official information or information gained in the course of official duties.

The evidence given by the Friends of South Australia's Archives was open and frank. Mr Jones, on behalf of the organisation, made a number of assertions. The first of those was:

> The Friends and some other organisations are currently concerned about the exclusion by regulation of Police Operations Intelligence Division records from the State Records Act. . . Among the objects of the State Records Act is to ensure that official records of enduring evidential or informational value are preserved for future reference. This includes informational value to the community as a whole, not just the Government agency which created the records.

He explained how these records are to be maintained and the difference between the role of State Records (which has the responsibility of dealing with Government-type documents) and the Mortlock Library (which he described as a repository of private business and society records; in other words, non-government records). He said:

> The Police Operations Intelligence Division records are managed under the Order in Council of March 1998 and the updated version of July 1999. This Order in Council authorises the division to gather information about persons who may possibly carry out certain actions defined in clause 4 of that Order in Council, and clause 5 does permit the information to be disclosed to specified persons in specified circumstances.

He referred to the importance of such records for historical purposes. Indeed, in a written contribution he referred to two specific instances: first, the complaint by the court dealing with the Carmen Lawrence case, where records were destroyed, which may well have prejudiced her position in so far as her trial was concerned; and, secondly, referred to some regret at the destruction of Special Branch records. I will return to that issue later. He also referred to the practices of other agencies in other States.

Today we received evidence from Mr Kelly, and I do not have an actual transcript of what he said and in that regard must rely on the handwritten notes that I made at the time. First, Mr Kelly gave us a brief history of the Operations Intelligence Division. He indicated that it had been created on 22 December 1993 and replaced the Operations Intelligence Division of the police, which in turn had replaced Special Branch. He gave evidence about the effect of the Police Act, which this Parliament dealt with late last year, and pointed out that the new Police Act envisaged more detailed directions in so far as the Police Commissioner is concerned.

In that regard he provided us with a copy of the *Government Gazette* of 8 July 1999, at page 174, which outlines directions to the Commissioner of Police, and he took the committee through the various provisions contained within that notice. He pointed out that the direction from the Police Commissioner covered not only the issue of storage of material but also the issue of destruction of that material. One particular clause he referred to is clause 5(4), which provides:

> For the purposes of this clause the relevant period means—
>
> (1) 12 months from the date information is gathered or received; or
>
> (2) such further period as the auditor by direction may from time to time allow—
>
> (a) upon request in writing to that effect from the officer in charge; and
>
> (b) upon being satisfied that the further period is necessary for the proper and effective discharge of the functions of the division.

He went on and explained that documents are regularly reviewed within this relevant period, and if it fell within certain categories set out in these directions they were destroyed. Mr Kelly also explained to the committee the historical background to this direction. If I understand his evidence correctly he indicated that the history stems from the period of the upheaval in this State that led to the dismissal of Police Commissioner Salisbury by the Dunstan Government. He indicated that Mr Salisbury was dismissed as a consequence of misleading the Government over the issue of Special Branch records.

He then explained to the committee that the matters taken into account in coming to the conclusion that Special Branch records should be excluded were (although he gave them no particular priority and this was the order in which he gave them), first, the history of South Australia and, in particular, the upheaval of the Salisbury royal commission; secondly, that in lieu of the provisions contained in the State Records Act there was a fairly detailed direction to the Commissioner of Police in relation to the storage of these documents under the Police Act; thirdly, that there was an independent auditor who was to supervise that. I understand that the independent auditor is a retired Supreme Court Justice, the Hon. Mr Legoe QC.

Fourthly, Cabinet decided that there would be a balance in favour of a longstanding specialised scheme as opposed to the scheme that was legislatively prescribed by this Parliament in 1997; and, finally, that the Government was mindful of the highly confidential and sensitive nature of this material. Faced with that, the committee then turned to dealing with the evidence and how it ought to make a decision. The principles of the Legislative Review Committee have been referred to on many previous occasions by me, but for the sake of completeness I ought to repeat them today. Those principles are as follows:

> Subject to its responsibilities under section 12 of the Parliamentary Committees Act 1991 and section 10A of the Subordinate Legislation Act 1978, the committee has resolved to adopt the following principles in its examination of regulations—
>
> (a) whether the regulations are in accord with the general objects of the enabling legislation;
>
> (b) whether the regulations unduly trespass on rights previously established by law or are inconsistent with the principles of natural justice, or make rights, liberties or obligations dependent on non-reviewable decisions;
>
> (c) whether the regulations contain matter which in the opinion of the committee should properly be dealt with in an Act of Parliament;
>
> (d) whether the regulations are in accord with the intent of the legislation under which they are made and do not have unforseen consequences;
>
> (e) whether the regulations are unambiguous and drafted in a sufficiently clear and precise way;
>
> (f) whether the objective of the regulations could have been achieved by an alternative and more effective means; and
>
> (g) whether the regulator has assessed if the regulations are likely to result in costs which outweigh the likely benefits sought to be achieved.

These principles were tabled in both Houses of Parliament and no suggestion has been made to the Legislative Review Committee that any of these principles is inappropriate.

The other point I would like to make at this juncture is that the Legislative Review Committee, when dealing with this matter, is mindful of the fact that this is the last day upon which this Parliament can deal with these regulations by way of disallowance. In other words, it is not open to the committee or any other member of Parliament to move for their disallowance at a date subsequent to today as the time since the tabling of the regulations has long since expired.

The first issue that the committee dealt with was the question of whether or not the regulations are in accord with the general objects of the enabling legislation. In considering the general objects of the enabling legislation, the committee looked particularly at the general objects set out in the head, which states:

> The Act is to provide for the preservation and management of official records.

Secondly, it looked at the objects set out in section 5. It is clear without any other examination that the destruction of records outside this Act is clearly inconsistent (and I say this in general terms) with the application of the Act. That is not to say there are not cases where section 4, which empowers the Governor to regulate to exclude or modify the Act to agencies or official records, might not apply in certain cases. Indeed, the committee is mindful of the fact that the Parliament reserved to the Executive arm of government the opportunity to avail itself of the use of section 4 and its regulation making power at some stage.

The second question is whether the regulations contain matter which, in the opinion of the committee, should properly be dealt with in an Act of Parliament. In that regard, the committee is mindful again of the general policy direction that this Parliament set pursuant to the State Records Act. It is mindful of the fact that the issue of Special Branch (if I can use that term) records is a particularly sensitive one in the history of this State. It was also mindful of the fact that there

was little discussion that took place in so far as police records are concerned in the promulgation of the State Records Act.

Notwithstanding that, it was felt that, given the basics of the intent of the legislation, the position of these records in the life of South Australia's history, and the importance of the recording of our history and the increased interest in our history that has developed in recent years, the committee felt concern about that issue. Indeed, I refer to our deliberations and the following comment of one of our members:

> This was precisely the sort of issue that should have been properly dealt with in an Act of Parliament rather than by way of regulation with proper and appropriate scrutiny of exactly how these records are to be treated and dealt with.

The final issue that the committee considered in detail was the issue of whether or not the objective of the regulations could have been achieved by alternative and more effective means. The evidence given by Mr Kelly was that he had no knowledge as to whether or not the objective of the regulations—which is to ensure that sensitive material does not finish up in the wrong hands—could not have been achieved by an alternative and more effective means.

He did not have any specific view as to whether or not the delegation power pursuant to section 8 of the Act could be applied in relation to achieving the Government's objectives, nor did he have any view on how section 20 might be used and applied in relation to these records. To put the matter bluntly, it was the committee's impression, and it was put carefully to Mr Kelly, that there was an absence of any evidence on the part of the Government that any alternative or more effective means could have been used to achieve the objective of the regulations and, at the same time, promulgate the important principles that are set out in the State Records Act. I make no criticism of Mr Kelly, but much of his submission was directed to the issue of access to records. Indeed, the sympathy of the committee is with the Government in relation to ensuring that there is not inappropriate access to these records.

However, there was no evidence addressed to us as to why the objects of the State Records Act in relation to the preservation of records could not have been achieved by some alternative means. Indeed, the committee secretary made inquiries of other jurisdictions about how similar records are treated in other States and by the Commonwealth. So far as the Commonwealth is concerned, it is important to note that the *Gazette* refers specifically to the agreement of 1982, which regulates the relationship between ASIO and the South Australia Police, which was approved by the Governor in Executive Council on 2 September 1982. It is clear, based on that evidence, that there is an exchange of material between the Commonwealth agency and the South Australia Police.

Our inquiries of the situation in the Commonwealth show that there is provision for the preservation of records, albeit on the basis that there be extremely restricted access, but there is an acknowledgment of the importance of the issue of maintaining records for the purpose of recording history at some stage in the future.

We were informed that in Victoria and Queensland there are no exemptions from the requirement that all records generated within the State must be disposed of with the permission of or by the Queensland State Archives or the Public Record Office of Victoria. No evidence was offered by the Government as to whether or not the methods adopted in Queensland or Victoria had any problems. We were also told that Federal intelligence records are dealt with under the Government Disposal Authority 21, which is a document approved by and under the direction of National Archives. We were told that there has been no complaint regarding that regime.

We were also told that a similar disposal authority has been prepared in relation to the intelligence records of the Australian Federal police. We were told that even the most sensitive of intelligence records can eventually be released, if necessary, subject to expurgations pursuant to section 33 of the Federal Archives Act. We were also informed that New South Wales was in the process of preparing a disposal authority for classes of police records which will be under the direct control of State Records in New South Wales. I point this out to the Council because it may well be that the approach by the Executive arm of Government in this State is correct. However, we had no evidence in the time available to us—and, in making that assertion, I make no criticism of Mr Kelly—to suggest that any one of those other approaches adopted in other jurisdictions might be more appropriate, particularly having regard to the general policy direction made pursuant to the State Records Act.

The final issue that I wish to raise is the question of the role of Mr Jones and, in particular, the Friends of South Australia's Archives. I stand corrected by any of my committee colleagues if I make this statement out of step with the rest of them, but he gave his evidence in a very frank manner. He was also consistent with the general objects of the State Records Act and impressed the committee with his sincerity in so far as the recording of our history is concerned. I have no doubt that he did not give his evidence with any expectation or any view but that the Friends of South Australia's Archives—or, indeed, anyone who is currently a member—would have access to these documents. He gave his evidence on the basis that at some stage in the future, whether it be in 20, 40, 60 or 80 years, these records may well be relevant to a recording of the history of South Australia. We received no such contrary evidence, nor could we expect to have received any contrary evidence from Mr Kelly because, as he candidly said, he has never had access to, nor did he ever expect to, these documents.

In summary, the committee's position is this: first, there may well be good grounds for the exemption of these records. However, evidence to that effect was not presented to the committee. Secondly, the blanket exemption of an agency in the absence of any other explanation is inconsistent with the general policy of the Act. Thirdly—

The Hon. K.T. Griffin interjecting:

The Hon. A.J. REDFORD: The Attorney corrects me in a fair manner. It was not a whole agency; it was a particular division of a particular agency. The point is still to be made by the committee, that is, that no evidence was presented in that regard. Thirdly, no evidence was put to the committee that there were not alternative means by which this could have been dealt with. It may well be that, in considering the matters raised by the committee, the Government still wishes to persist with the promulgation of this regulation and the exemption. It may well be that the Government is seized of more information on this issue than the Legislative Review Committee. However, if that is the case, it is open to the Government to repromulgate those regulations, should the motion today be successful. If it does and the matter comes before the Legislative Review Committee on another occasion, it can deal specifically and precisely with the issues raised.

Unfortunately, the only way that the Legislative Review Committee and, indeed, Parliament can assure itself that the relevant policies of the Legislative Review Committee—which I might add are consistent with the policies of every other Legislative Review Committee in the Commonwealth of Australia—are upheld is to recommend the moving and carrying of this motion.

The Hon. K.T. GRIFFIN (Attorney-General): I note the remarks of the Hon. Mr Redford about the difficulties faced by the committee by virtue of the fact that this is the last opportunity in this session that the Council will have to retain control over these regulations. Therefore, it precipitated a course of action that is unusual in the sense that normally a report would be presented and evidence tabled from the Legislative Review Committee, and if additional—

The Hon. A.J. Redford interjecting:

The Hon. K.T. GRIFFIN: I am just putting it into context. In the light of the remarks which the Hon. Mr Redford has made about the lack of evidence, there should be an opportunity to present further evidence. It may well be that the only satisfactory way to deal with this is if the regulation is disallowed—and I would be arguing against disallowance (although I am doing so very much on the run)—and for the Government to repromulgate the regulation to enable the committee then to obtain all the evidence, which I would suggest will quite clearly demonstrate that it would be unacceptable for the records of the Operations Intelligence Division to be under the supervision of the authorities responsible for the State Records Act.

With that background, and acknowledging the difficulty of the committee which the Hon. Mr Redford has raised, I want to make a few observations about the substance of the issue. He went back to the debate on the State Records Bill and indicated that there was very little focus on this issue. I suppose there was very little focus on that issue because probably no-one turned their mind to the fact that Governor's directions have been in place since the late 1970s to deal with what subsequently became known as the Operations Intelligence Division but which, in the late 1970s, with the Salisbury royal commission, were regarded as the records of Special Branch.

Those records were much more extensive than those kept by the Operations Intelligence Division, but they were records that contained information on citizens of South Australia which the royal commissioner, then Justice Mitchell, remarked were scandalous or scurrilous or something of that sort and were records which should never have been kept because they contained material which did not bear any relevance to any suspicion of criminal conduct. Quite properly, from that point on, well over 20 years, a culling process has been in place.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: Justice Michael White did the culling and reported, as I recollect, to the royal commissioner. For the past 20 years, a regime has been in place that has authorised the culling of originally the Special Branch records and, more recently, the records of the Operations Intelligence Branch. No-one has complained about the way in which that has operated and, as I say, no-one probably applied their mind to whether or not there should be an exemption from the State Records Bill (now the Act) when it was going through the Parliament. As I recollect, one of the primary focuses for me, then in Opposition, was the issue of the courts, where the Executive arm of government, or an official in the Executive arm of government, would have had authority to tell the courts what to do or what not to do, and that was regarded as being unacceptable.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: I was going—

The Hon. A.J. Redford interjecting:

The Hon. K.T. GRIFFIN: —to come to that point in a moment. But certainly what Justice Michael White said was that they were wrong.

The Hon. A.J. Redford interjecting:

The Hon. K.T. GRIFFIN: No, many of them were wrong. So, the culling process went ahead. And I suppose in the context of the Operations Intelligence Division—

The Hon. T. Crothers: I think there was a story about 10 000 at the time—

The Hon. K.T. GRIFFIN: I cannot remember. There was a very large quantity, because they had grown over the years. And, of course, if we had retained those and they had become subject to this regime and could not be culled without the authority of the State Records Office or in accordance with the regime approved by the State Records Office, it is quite conceivable that, on some later day, those records might have become available publicly and I think could have caused quite a significant amount of damage both to the fabric of the community and to individuals, and particularly the descendants of those who might have been named. So, that is one of the important issues that does have to be addressed.

I do not often disagree with the Hon. Mr Redford but on this occasion I have to disagree, because the Government took the policy decision that it was inappropriate for the State Records Office to control the disposition, or destruction, of records in the Operations Intelligence Division for the very reasons that I have been referring to in relation to Special Branch. But if one looks at the information that is to be gathered by the Operations Intelligence Division—a much more restricted regime than the old Special Branch—one sees that the Operations Intelligence Division is to record and disseminate intelligence only with respect to:

(1) Any person:
  (i) who is reasonably believed to have committed or to have supported and assisted or to have incited the commission of; or
  (ii) about whom there is a reasonable suspicion that such person's activities may involve the commission of, the supporting and assisting or the incitement to commit;
    (a) acts or threats of force or violence directed towards the overthrow, destruction or weakening of the constitutional Governments of the States, the Commonwealth or a Territory;
    (b) acts or threats of violence of national concern, calculated to evoke extreme fear for the purpose of achieving a political objective in Australia or in a foreign country;
    (c) acts or threats of violence against the safety or security of any dignitary; or
    (d) violent behaviour within or between community groups.

(2) Any person who or property that is or may be at risk from the activities or behaviour of a person of the type referred to in subclause (1).

(3) Any person who may be able to provide information about a person or property of the type referred to in sub-clauses (1) and (2).

Of course, that means that you do not have to be under suspicion: if you are an informant and you provide information, you are on the records also, and the division is entitled to keep that information on the records and to disseminate intelligence.

Under the structure of the directions (now ministerial directions, formerly Governor's directions), an auditor was appointed and charged with a responsibility, as an independent auditor, to cull the records that were no longer relevant or appropriate. So, there was, in fact, a proper regime in place, which had been the regime in place in this area of policing for at least the past 20 years.

The Hon. Mr Redford says that the committee took the view, in looking at the application of its principles by which it makes decisions, that the destruction of records is inconsistent with the general objects of the Act. That may be so but, of course, there is a specific power to grant exemptions by regulation.

The Hon. A.J. Redford interjecting:

The Hon. K.T. GRIFFIN: I know you have said that. But it cannot be argued, with respect, that the Government, in seeking to promulgate a regulation to destroy records in accordance with the regime that is in place in the Governor's directions (now ministerial directions), is acting contrary to the objects of the Act, because the Act already allows that by way of exemption.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: If you are inciting the overthrow of the Government of the day, you are a legitimate object of interest by the Operations Intelligence Division. Then the reference is as to whether the regulations contain matter that should be dealt with in the Act. That relates, of course, to the debate—

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: —when the honourable member, quite rightly, said there was not much debate (as I recollect, anyway) about police and Special Branch or Operations Intelligence Division records, I think probably because most people thought that that was covered and they did not apply their mind to that issue. Again, I suggest that that is one of the reasons why there was a power of exemption by regulation; there were all those unforeseen propositions that we could not anticipate, could not remember—

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: Well—

The Hon. T. Crothers: If you oppose the apartheid regime in South Africa here, you are under that.

The Hon. K.T. GRIFFIN: Yes, I think that is right.

The Hon. T. Crothers interjecting:

The PRESIDENT: Order! The Hon. Mr Crothers can make a contribution.

The Hon. K.T. GRIFFIN: With respect to the issue of whether the material could have been dealt with differently—Mr Kelly had no view about that, and the Hon. Mr Redford has indicated that there was no criticism of Mr Kelly—that question, whilst being relevant to the committee, I would suggest, should not be a major area of concern. He indicated that there was an absence of any evidence that an alternative or other effective means to achieve the objective of the Act had actually been considered.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: The whole object of the Government's directions was to allow records which were no longer relevant and which it would be inappropriate or even improper to keep to be destroyed. What surprises me about members opposite, if they have this view, is that, notwithstanding the difficulties under which the committee laboured, that is, in terms of timing—

The Hon. A.J. Redford interjecting:

The Hon. K.T. GRIFFIN: I am not suggesting that, Mr Redford: I am acknowledging that there is a difficulty. But notwithstanding that, it is still somewhat surprising that, where you have information being kept about an individual, in circumstances where it relates to suspicion, or even about an informant, one could suggest that it was inappropriate to deal with this matter by way of regulation that is specifically provided for in the State Records Act.

Certainly, one could deal with the Operations Intelligence Division by way of a special Act of Parliament, and the culling of the records could be dealt with by way of special Act of Parliament, but the fact is that we were really following the approach which we believed was a consistent approach adopted over the last 20 years to the way in which these records are to be developed. Quite frankly, from my point of view, if I was on the file of Operations Intelligence Division and the information was quite wrong, and it was being culled, I would not want someone in 20, 30 or 40 years time—particularly 40 years time when I may not be around to refute it—to be scrounging through the records and finding, 'Ha! Here is this allegation that was made and information that was kept on the Attorney-General of the day,' with it therefore blown up into the greatest scandal that happened 40 years previously.

In my view that is an unacceptable approach. I am not suggesting that the committee is in any way suggesting that that should be the case, and I am acknowledging the difficulties under which it labours. But notwithstanding that, I would have hoped that the very rationale for the regulation, regardless of those other considerations, would have been acknowledged to be a substantive issue and one which could effectively be dealt with because the law allowed it in the way in which it was provided for in the regulation.

I certainly support the general thrust of the State Records Act. Where there are records of permanent value, records not maintained for prurient reasons or some other curious reason, those records of real permanent value should be retained for posterity. But we have to acknowledge that there are some special cases, and I have indicated those now, and I do not need to deal with them, where we do put in place some special regimes to deal with the destruction of records, particularly records about people, about individuals, which might, if raised in the public arena, be scandalous, scurrilous, defamatory or otherwise, or quite inappropriate to be the subject of close scrutiny by the public of the day in which these matters might be available.

I would suggest that the Police Operations Intelligence Division is a special case. There are special protections in the directions, and for that reason I would ask the Council not to agree with the committee in respect of its motion for disallowance. I come back to the point that I made right at the outset, that I am not critical of the committee, and I do not want the individual members to take the view which I presented as being a personal criticism of the committee. I acknowledge the procedural difficulties under which they labour, but I make the point as a matter of substance that, notwithstanding those difficulties, I do not believe that the regulations should be disallowed. They serve an important purpose. They are consistent with the purposes of the Act in terms of an exemption to deal with the special case and I

think it would be wrong in principle for the sorts of records which the Auditor may cull actually to be preserved for the purposes of some scrutiny by others, including the State Records Office, and maybe in the future some media or other persons who might ultimately gain access to them if they are preserved for posterity.

The Hon. R.R. ROBERTS: I rise to support the disallowance motion moved by my colleague on the Legislative Review Committee. My colleague Angus Redford has covered most of the substantial debate and the gathering of evidence that took place at the Legislative Review Committee. The Attorney-General has put a passionate argument about the sensitivity and the nature of the documents and some of the information that may be gathered by the Operations Intelligence Division and he has put up the worst case scenario.

I did table this morning a letter that I had received. It was actually presented to one of my parliamentary colleagues, who passed it on to me because this matter was going to be discussed today. It was a letter of great concern from the State Records Council, addressed to the Hon. Robert Lawson MLC. It lays out some concerns, which I need to read into the *Hansard*, about these particular matters, which were of great concern to me when I first read them. I note that Mr Kelly, who gave evidence this morning, obviously had a copy of this correspondence in his file and he did respond, when I asked him questions on this matter, that he had a letter from the Hon. Robert Lawson QC to the Chair of the State Records Council, Mr Darby Johns, and that he was going to seek to permission from the Minister to make that available to the Legislative Review Committee.

When one reads the letter, to which I will refer in a moment, it does actually address some of the concerns that were expressed by the Hon. Attorney. The Attorney-General referred to a regime that he claims has existed for 20 years in handling these particular records and one would have thought that a process would have been in place. He also mentioned, as did my colleague Angus Redford, that there was an Act of Parliament in 1977 covering these matters, the object of which the Hon. Angus Redford again expanded very clearly for the benefit of the Council here today.

It laid out what the objects of the Act were; the responsibility of the State Records Council to oversee these matters and provide advice to the Minister; and make decisions in the public interest. Some of their directions indicate that, clearly, they have to act in the interests of privacy and of individuals; in ensuring public access to documents subject only to exceptions or restrictions that are required for the protection and the right in the privacy of individuals; and in ensuring that official records of enduring evidential or information value are preserved for future reference.

So people who deal with these matters are dealing with sensitive papers and sensitive documents for every department in South Australia in a proper and professional manner, and to my knowledge there has never been a word of complaint about the operations or the conduct of those concerns charged on the State Records Council since its establishment. So we are talking about people of absolute integrity. The letter from the State Records Council to Mr Lawson said this:

> At the meeting of the State Records Council on 13 April there was discussion about Regulation 22 of 1999 under the State Records Act. The Council only became aware of this regulation by chance.

One starts to get a bit concerned. It continues:

> I have been asked by the Council to express to you their deep disappointment at the promulgation of this regulation without their being any consultation or even notification that it was being considered. Your Council is there to provide advice to you but we obviously could not do so on this occasion because we were not informed of the situation. Other comments from the Council meeting included:
>
> · The State Records Act was the culmination of a great deal of creative effort by the Government—

that is, the Government which introduced this legislation in 1977—

> with input from the wider community. The potential for the Act to produce meaningful and badly needed results is just starting to be realised.

So the legislation is working. It continues:

> The advent of this Regulation 22 will seriously erode the authority of both the Council and State Records. When it becomes more widely known that the regulation exists robust criticism may be expected.
>
> · The manner in which the regulation came into being could well be viewed as surreptitious.

That is strong language. It continues:

> As a result of South Australian Government record disposal actions, especially those which led to a royal commission in 1978, there are many who will be concerned when they hear of this latest development.
>
> · It is difficult to envisage that the Operations Intelligence Division of SA Police could be more sensitive than those of ASIO, the Federal Police or the Customs Intelligence operations, all of which are covered by the disposal and access provisions of the Commonwealth's Archives Act 1983.

What we are being asked to consider by those opposing the motion that the Hon. Angus Redford moved on behalf of the committee is that the operation of our intelligence gathering division in SA Police is more sensitive than that of ASIO and all these other bodies. Clear evidence shows that there has never been a problem when dealing with the papers that are held by ASIO or the Federal Police from its intelligence operations or the Customs Intelligence operations of the Commonwealth. This blows the argument away a little bit. The letter continues:

> · The attached press cuttings covering recent actions taken by the New South Wales Government would indicate that the 'cloak and dagger' days are well and truly over. The South Australian Government thus appears to be out of step with contemporary community thinking.
>
> · Regulation 22 is a serious blow to the credibility of the State Records Act and a precedent that indicates that there may be further intrusions by other agencies into your jurisdiction.
>
> As the council has not been party to the discussion which resulted in regulation 22 coming into being we are not aware of any counter arguments to the views expressed above. The council would welcome your advice. The most charitable explanation that I can come up with is that whoever drafted the regulation was not aware of the State Records Act. Having made that mistake it now appears to be a change of legislation for administrative expedience—a practice of which I feel sure you would not approve.

There he is talking to the Hon. Mr Lawson QC. The letter continues:

> It is my understanding that regulation 22 will be open for discussion in Parliament shortly. I think it may be prudent to advise the council members of your views before that happens.

He there refers to the Council for State Records. The letter continues:

> It may help to avert or at least modify a possible outburst of public criticism. I will certainly arrange for your comments to be circulated to councillors individually and without delay.
>
> As chair of the council I have been speaking at various venues praising the Act and explaining the role of the council. When this new regulation becomes public knowledge it is likely that I will become the target for questions from some disillusioned members

of the community. What would you have me say to them?. . . I could quickly convene a special meeting of your council if you would care to speak to us on this matter.

That letter is signed by the President after a direction was given to him by his council at a meeting in April. The direction is as follows:

The council's chair write to the Minister to express the council's deep disappointment at the promulgation of the regulations under the State Records Act 1997 to exclude official records of the Operations Intelligence Division of the SA Police from the application of the Act without consultation or discussion with the council which has a clear mandate and a responsibility to consider and approve the disposal of official records.

It is clear that the people who were appointed or elected under the 1997 State Records Act have expressed deep concern about the way this has happened. What we have here is an operational internal direction which I understand was gazetted, and that is covered in correspondence which I understand the Hon. Robert Lawson sent back to the committee.

The Hon. A.J. Redford: He never sent it to the committee.

The Hon. R.R. ROBERTS: No, it was sent to Mr Darby Jones, Chair of the State Records Council.

The Hon. A.J. Redford interjecting:

The Hon. R.R. ROBERTS: I thank the Hon. Angus Redford for clarifying that it was the State Records Council and not the committee. What was pointed out by Mr Kelly today was that the internal direction does not have the power of regulation or legislation, that it is an administrative matter that has to occur to allow things to run smoothly.

We have to judge today what ought to take precedence—the legislation or the internal directions of a department. Let us think what this may do. I believe that the majority of the police working in the Operations Intelligence Division are honest people who go about their business in a professional manner, but from time to time things occur in this area—and it is a sensitive area, as has been outlined by previous speakers. What was clear during the Salisbury royal commission was that the information was scandalously inaccurate in some cases, and that did cause problems.

Since that time a lot has changed: there is a vetting system and an independent auditor is being promoted—and, from information that I have received, I understand that he was junior counsel for Harold Salisbury during the royal commission. That may be a quirk of fate, but a lot of strange things take place. If, on the rare occasion, something has been done incorrectly within the operations of the intelligence gathering division, this provides an easier avenue to dispose of that evidence.

The proposal as outlined by the legislation in the State Records Act and the procedures clearly provide protections for individuals and proper access for records of an historical and important nature. As I understand it, it allows for exclusions where sensitive information, if released, may cause hardship, and if it is not of historical or archival importance it can be disposed of in one form or another.

Given the submission of my colleague the Hon. Angus Redford and the proper deliberations as measured alongside the principles of the Legislative Review Committee—just on his submission alone—I do not believe that this Council has any alternative but to disallow this regulation. Also, given the concerns of the people who are required under the Act of Parliament—it is not an internal direction—to provide oversight and protection for members of the public and for the historical records, I believe that is overwhelming evidence, and I think the Council ought to support the motion of the Hon. Angus Redford.

The Hon. IAN GILFILLAN: I also rise to support the motion and to commend my colleagues on the committee who have spoken so far—the Hon. Angus Redford and the Hon. Ron Roberts. I think that they have broadly covered the full aspect of the areas which led to the committee coming to a rather unusual decision. I recognise that the normal role of the Legislative Review Committee is to look more pedantically at the political correctness of the procedure rather than at the pros and cons of the issue before it. We are not constituted to make subjective judgments.

I think that it is not stretching that role of the committee too far to recognise that if there are to be powers for the *ad hoc* selection for destruction of certain categories of records, other than a consistent and long-term visionary approach to what should be appropriate to be retained as records, that then becomes very dangerous because it means that the people who are making that decision to some extent will be making it from a degree of comfort, if not necessarily for themselves but for others whom they believe will be discomforted if that information is made public.

We have the precedent of discrete disclosure of information in the long delay periods that surround Cabinet documents. It is not unusual for what would have appeared at the time to be scandalous revelations to be revealed in due course. One finds that it does not turn the country upside down or make the families of the individuals dramatically upset. Recognising the sensitivity, yes: recognising that records can quite properly be kept under certain circumstances away from access—and that is the point that the Hon. Angus Redford emphasised—the requirements are all available so as to minimise to the point of almost totally excluding the risks that have been alluded to by the Hon. Trevor Griffin in his contribution of some concern.

It is soundly based for this Council to pass the motion of disallowance, first, that the procedure has certainly not complied with what our committee normally would accept as proper procedure and the following of proper head powers through the legislation. That does not mean that we are denying that there have been these sorts of restraints on this material in the past. But what has happened in the past is not specifically relevant to the decision that this committee should make and this Council should now make today in relation to today's circumstances and the future.

First, the motion should be supported on the basis that, in our view, due process has been stretched to its limits and, in my view, not properly followed in a matter of this significance. Secondly, it is dangerously misplaced if the motive for the direction, as has been publicly expressed, is to protect people from what may be erroneous or embarrassing information. If that were the case, that argument could be transferred to a host of material, and it would seriously diminish the background, research and historical information which is essential for proper historical analysis of previous times in the years ahead. If we condone the destruction of material now because it could possibly be embarrassing to current people or families, we are depriving in quite an irresponsible way the quarry of material that succeeding generations will prize in researching and assessing. We will be punishing. Basically, that is one of the main reasons for the State Records Act. Therefore, the Council should support the motion of the committee.

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

SPEED CAMERAS

Order of the Day: Private Business, No. 5: Hon. A.J. Redford to move:

That the regulations under the Road Traffic Act 1961 concerning photographic detection devices, made on 13 May 1999 and laid on the table of this Council on 25 May 1999, be disallowed.

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

That this Order of the Day be discharged.

I will speak very briefly, because I am mindful of the stage in the parliamentary process that we are in. First, we dealt with the regulations under the Road Traffic Act concerning photographic detection devices in relation to two areas. First, we wanted to look at the machine, probably and principally to satisfy our curiosity. I thank the police for their cooperation in showing all members of the committee the device. It was interesting and, in terms of the development of cameras and speed cameras, it is probably akin to the development of the Gatling gun in relation to arms and weapons.

The other matter that exercised the mind of members of the committee was the continuing issue regarding expiation of offences, in particular, the expiation form given to members of the public. As has been said on a number of occasions by the committee in annual reports and the like, the committee is particularly concerned at the form whereby it tells the recipient that they are to work out the due date for payment themselves. The committee is mindful of the fact that the Commissioner of Police wrote to the committee and indicated that on occasions it proves difficult for police officers to calculate the due date for payment.

The committee has more confidence in the average police officer and, indeed, the officers who issue these tickets than perhaps does the Commissioner in that we are firmly of the view that it is within the capability and wit of police officers to put the precise date on the form. Indeed, one should be able to assume that the intelligence and training of the average police officer in this area would exceed the capacity of the average member of the public in terms of properly and carefully calculating the due date. It has been a long battle and, indeed, I acknowledge the role that the Minister for Transport played in relation to it. It was last week that the Minister informed the Parliament that she had given an undertaking in relation to transit officers in that they will put in the date themselves. Last week, I acknowledged the role of the Minister in that regard.

It is my pleasing duty today to be able to say that we now have had a similar undertaking from the Attorney-General, who has written to us by letter dated 28 July saying that, when the expiation offences regulations are next reviewed—and in particular the forms—they will be amended so that the police will have the opportunity of writing in the date of payment for an expiation notice prior to handing it to a member of the public. The committee has every confidence in the average police officer being able to make that simple calculation so that there is no argument in so far as the recipient of a notice is concerned. Indeed, it is appropriate that I read into *Hansard* the relevant paragraph. The Attorney said:

. . . I have accepted the position taken by the committee and am taking steps to put it in place. One of the results of the passage of the Statutes Amendment (Fine Enforcement) Act 1998 was amendments to the Expiation of Offences Act necessitating amendments to the Expiation of Offences Regulations. It was and remains my intention to incorporate our agreed position on the general expiation forms when those regulations are amended. I have so instructed Parliamentary Counsel. It is unfortunate that the implementation of the fine enforcement package has proved to be a complex undertaking so that the amendments to the regulations have taken some time. I am confident, however, that there will be significant progress and, I hope, finalisation of the implementation process by the end of the year. When that occurs, all expiation forms will have to be changed to reach the position that your committee desires.

The committee acknowledges and thanks the Attorney-General. We also acknowledge that this is not a simple task, and we certainly are in agreement with the Attorney's assertion that this will take some time; however, at the end of the day an appropriate position will be reached.

Order of the Day discharged.

POLICE ACT REGULATIONS

Adjourned debate on motion of Hon. P. Holloway:

That the general regulations under the Police Act 1998, made on 30 June 1999 and laid on the table of this Council on 6 July 1999, be disallowed.

(Continued from 28 July. Page 1735.)

The Hon. P. HOLLOWAY: I wish to complete my remarks of last week. Before I do, I acknowledge that the Hon. Ian Gilfillan has proposed a similar motion to disallow the police regulations and last week he put a very persuasive case as to why these regulations should be disallowed. The Hon. Ian Gilfillan particularly referred to clauses 20, 29 and 36. I believe that any one of those regulations provides sufficient reason as to why we should disallow the whole package of regulations. The Opposition also has concerns about a couple of other regulations, which I will briefly outline now. Last week I referred to some fears held by the Police Association about proposed new powers being centralised with the Police Commissioner. An article in this morning's *Advertiser* in relation to the Police Complaints Authority noted that allegations have been made that the Police Commissioner has failed to fulfil his statutory obligations, and the head of the Police Complaints Authority describes that as 'unacceptable, and serves to seriously undermine the credibility of the complaint process.' When one sees comments such as that in annual reports of this Parliament, it heightens my concern about any centralisation of powers with the Commissioner.

Let me reiterate the Opposition's reasons for opposing these regulations and why we wish to have the vote today. As I stated last week, there are concerns regarding the proposed expansion of community constables under regulation 4. The use of Aboriginal police aides began in response to the deaths in custody report, and their work is very specific. Any expansion of this role to include non-indigenous people working in the wider community is a great leap and one that would require further consultation and negotiation. At this stage, not enough information has been provided to show that it would not be a retrograde step. In addition, the issue of untrained public servants holding authority over trained police officers in an operational situation bears further thought.

It is already the case that public servants work in positions of authority in administrative areas, and it has been suggested by the Police Association that this regulation be amended to limit such authority to those areas. There was also a concern that public servants are not under the authority of either the

Police Act 1998 or the Police (Complaints and Disciplinary Proceedings) Act of 1985. Regulation 9 deals with the appointment of non-officers to ranks of or above senior constable. According to the Police Association, this regulation requires an amendment to protect police employees. The association seeks that the regulation include a requirement that external employees be appointed under the same conditions of the Police Officers Award and Enterprise Agreement in force at the time of appointment. This, it believes, will resolve the issue of the potential for an external employee to receive a different rate of pay from officers of the same rank.

There are also concerns about issues of negligence, and this refers to regulation 15, where the standard of negligence is not defined. There are concerns about confidentiality under regulation 20, one of the matters to which the Hon. Ian Gilfillan referred last week, where there is a concern that the requirement for confidentiality may extend to proper debate over management policies and practices. The Hon. Ian Gilfillan dealt with the concerns last week and I will not go over that again. Regulation 29 is of some concern to the Opposition as it centralises greater powers of appointment with the Commissioner. I understand that the intention of the clause is to recognise the higher duty relieving practices that are currently in place.

However, the clause is extremely broad and states that under section 47 of the Police Act the Commissioner may transfer a member of SA Police to a higher rank on such conditions as may be approved by the Commissioner for a period not exceeding three years. It is feared that this clause could circumvent the merit-based promotion and appeal process. In any event, the Police Officers Award deals quite adequately with the issues of higher duties. Further, it is believed that this provision serves to undermine confidence in the Police Act 1998 and is an unnecessary power. The Police Association believes that this regulation is not consistent with equitable selection procedures.

During debate on the Police Bill last year there was discussion on the issue of the power of the Police Commissioner to transfer officers. It was in fact one of the key issues during debate on that Bill. During that debate I stated:

> The reasons why transfers are such an important part of this Bill is that, as anyone who followed the situation in Queensland under the former corrupt Police Commissioner Terry Lewis would know, the transfer of police officers was the mechanism that was used to entrench corruption in the police force.

I still hold to that opinion, as I am sure do many others in this place. It is vital that the police force upholds fairness and merit as central tenets in the transfer process. Regulation 30 deals with the issue of transferring an officer to a position of lower rank, due to restructuring. Under this clause the Commissioner would have the power to transfer an officer to a position with lower ranked duties, with the officer maintaining his or her existing rank and seniority. This clause gives the Commissioner further power to transfer the officer to subsequent positions, which the Police Association fears could lead to an officer staying at lower ranked positions indefinitely.

Regulation 36 deals with the constitution of an Unsatisfactory Performance Review Panel. This clause states that the panel will be made up of three members who are appointed by the Commissioner, one of whom must be a member of SA Police employed in human resource management or development. The Police Association is concerned that this kind of panel is not independent enough, and seeks that the panel consist of one member appointed by the Commissioner, one member nominated by the Police Association and one independent observer.

While not all the regulations contained in those we are considering today are controversial, enough questions were raised by the Hon. Ian Gilfillan last week, by my colleague the Hon. Ron Roberts and by me, I suggest, to show that further consultation and negotiation is essential in relation to these regulations. Because it is not possible to exclude certain regulations, I am seeking to have all the regulations disallowed, the only option open to this Parliament. I sincerely hope that this will cause the Minister to return to the negotiation table with the Police Association of South Australia in order that these issues can be resolved in the appropriate way. I make the comment in conclusion, as I did last week, that our police force, the best police force in this country, deserves nothing less than that.

The Hon. K.T. GRIFFIN (Attorney-General): The Government opposes the motion by the Hon. Paul Holloway as it does the motion of the Hon. Ian Gilfillan in identical terms. The Hon. Paul Holloway claims, among other things, that it appears that the recruitment and use of non-indigenous people as community constables, with less training and lower pay than fully trained and sworn police officers, is being used by the Government as a stopgap measure to fill staffing shortages in SA Police. He is also claiming that when the community constable scheme was established it was accepted by the Police Association that there was a need for Aboriginal involvement in the police industry, because that was identified by the Royal Commission into Aboriginal Deaths in Custody as an important issue.

He is claiming that the provisions of regulation 7, relating to the responsibility of members on duty with other employees in the department, create a situation where trained police officers could be placed under the control of untrained public servants in an operational situation. Today he made some further observations on issues, some of which were referred to by the Hon. Mr Gilfillan, so I hope that in my response I will have addressed most if not all of those issues. I deal first with the issue of community constables.

In response to the matters raised by the Hon. Paul Holloway, it needs to be made clear in the first instance that any suggestion that community constables are being recruited to fill staff shortages indicates a possible lack of understanding or appreciation of the support role they play. Section 24 and division 2 of part 4 of the Police Act detail the differing role played by and expected of community constables from mainstream police appointed under section 21 of the Act. Regulations 4 and 6 also make clear that a community constable is not a rank within the command and structure of SA Police, and a person appointed as a community constable is the junior member in any situation when on duty with a member who is not a community constable.

Furthermore, the community constable scheme—a South Australia Police initiative—was established on the basis of the recommendations of a report in July 1985, with the first appointments made on 6 October 1986. The Royal Commission into Aboriginal Deaths in Custody did not commence until October 1987, with the report being forwarded to the Governor General on 15 April 1991. There was never any suggestion that community constables were introduced in response to problems identified by the royal commission and, in fact, the old Act and regulations were no more Aboriginal

specific than the Police Act 1998 and the police regulations 1999.

I turn to the use of untrained public servants. In relation to regulation 7 there are a number of areas in the department not involved in operational policing which are managed and controlled by professional, well trained and very capable persons employed under the Public Sector Management Act. Within those areas are also many well trained and capable police officers. Consequently, the Commissioner must be able to define the respective responsibilities of all employees within these types of areas. Hence the regulation relates to a specified employee responsible for a particular duty, and compliance with orders given relate to the performance of that particular duty. This provision is essential for the effective management and control of SA Police with its mix of Police Act and Public Sector Management Act employees.

I now deal with other matters. The Hon. Paul Holloway also alludes to other unspecified problems with the regulations. Unfortunately, at that stage he did not provide any details when moving the motion on 28 July 1999. He has raised several issues now and I will attempt to deal with them in a moment. Therefore, the Government is unable to provide any detailed response to the unspecified problems referred to on 28 July. However, I should say that any allegation that the regulations are *ultra vires* and will go against the spirit of the Police Act 1998 as suggested by the honourable member and the Hon. Ron Roberts is totally rejected.

In relation to the motion by the Hon. Ian Gilfillan, which of course is identical with the one before us, the Hon. Mr Gilfillan claims that the provisions of regulation 20 in relation to disclosure of information considered confidential will stifle debate over Government management practices and industrial issues and raises the possibility that it might inhibit whistleblower type disclosures. That issue was also raised by the Hon. Paul Holloway. The Hon. Ian Gilfillan also claims that the ability to transfer a member under section 47 of the Act, as covered by regulation 29, to a position of higher rank for up to three years, permits the Commissioner to circumvent the promotional, selection and appeal process and permits contract by stealth, nepotism and patronage.

Section 47 issues have also been raised by the Hon. Paul Holloway. The Hon. Ian Gilfillan also raised the issue of an amendment to section 47, which was passed during debate on the Bill and which provided grievance provisions to any member of SA Police aggrieved by transfer of themselves or any other member. The Hon. Mr Gilfillan also asserted that the Unsatisfactory Review Panel covered under regulation 36 lacks the appearance of credibility. I will deal first with the disclosure of information by police officers.

In response to the matters raised by the Hon. Ian Gilfillan, it should be understood that regulation 20 is directed at disclosure of information to unauthorised persons for favour or money or which could jeopardise an investigation or the privacy of a member of the public. However, if a member obtains information in or from SAPOL which discloses corruption, illegal conduct, maladministration or waste in the public sector, regulation 20 permits that information to be passed on in accordance with the Whistleblowers Protection Act.

In this instance the member would be disclosing that information in the proper execution of his or her duty, as is required by the Whistleblowers Protection Act. Regulation 20 does not prohibit this type of disclosure. In relation to managerial practices and industrial issues it is possible, in the same way it was under the old police regulations, that in some instances information provided exclusively to the Commissioner by perhaps the Crown Solicitor, police solicitors or other managers could be subject to regulation 20. It would be generally accepted that the Commissioner has a right to be able to keep confidential information which relates to the management of the force at a time before it becomes policy.

This does not preclude the establishment of a forum for discussion and debate on managerial or industrial practices, and there have been many of these during the change process taking place in recent times. The forums, together with workplace consultative committees, which have an ongoing brief, will access, use and disclose information in the normal course of the proper execution of duty. In the same way managers generally, including the Industrial Relations Officer, will discuss ideas, information (confidential or otherwise), points of view, strategies with various people within and outside the organisation. These discussions would normally be a forerunner to the development of policies. Any confidential managerial information they obtain within the organisation must be capable of being accessed, used and disclosed in the proper execution of their duties.

I deal now with transfers to positions of higher rank. In relation to the transfer to a position of higher rank covered by regulation 29, the old regulations provided no legislative basis for members acting on a temporary basis in positions attracting a higher rank to cover periods of leave and other temporary vacancies. The current regulations correct that anomaly in the same way as the Public Sector Management Act provides for those employed under that Act. This is an appropriate and necessary regulation to provide a legislative basis for the long-standing practice of temporary transfer and additional salary payments to cover positions during periods of leave, etc.

Regulation 37 covers the grievance process provided by section 47(4) of the Act for any member who is transferred. There is no provision—nor was there any intention to provide this—for a grievance process for members not the subject of a particular transfer. This type of provision in the old legislation made the transfer process completely unworkable.

I turn now to the Unsatisfactory Performance Review Panel. The final issue raised by the Hon. Ian Gilfillan related to the panel convened under regulation 36 by the Commissioner in respect of unsatisfactory performance. Termination of the employment of a member is a serious matter. Division one of part 8 of the Act is devoted entirely to reviews in relation to termination. Section 48 provides for a review by the Police Review Tribunal, and section 51 provides for the tribunal decision to be appealed to the court. The panel provided for by section 46(4)(c) of the Act is intended to provide quality assurance in the process; it is not to usurp the role of the tribunal and the court.

The stipulation in regulation 36 of one person on the panel being a member currently employed in the human resource management or development area of SA Police highlights the importance placed on ensuring the quality of the process and assessments. This panel is not empowered to make a decision in relation to the termination of a member but provides confirmation concerning the integrity and fairness of the processes and assessments. Any decision to terminate the employment of a member becomes an issue for the independent Police Review Tribunal and the court where appropriate.

I turn now to the comments of the Hon. Ron Roberts, who spoke in support of the motion stating, as had the Hon. Paul Holloway, that the regulations cover matters rejected in the debate on the police Bill. Like his colleague, he did not

specify the precise matters. As stated in the discussion of the motion of the Hon. Paul Holloway, any allegation that the regulations are *ultra vires*, or go against the spirit and the letter of the Police Act, is totally rejected. The Hon. Mr Roberts also commented on the assertion that the regulations will allow trained police officers to be placed under the supervision of untrained public servants. This assertion was also raised by the Hon. Paul Holloway and I have already dealt with that in my response to his observations.

It is important to relate briefly some of the history of the police regulations 1999 and their relationship with the Police Act 1998. The police regulations 1999 are made under the Police Act 1998. This Act came into effect on 1 July, the same day as the police regulations 1999. The development of the Police Act 1998 and police regulations 1999 was undertaken following a review of the existing Police Act 1952 and police regulations 1981. The review process was undertaken in consultation with the Police Association of South Australia and the Commissioned Officers Police Association of South Australia. Further, the suggestion by the honourable member that the Government has acted improperly in bringing the regulations into effect under a section 10AA certificate ignores the fact that the regulations provide essential support for the Police Act 1998. It was therefore necessary that the regulations came into effect on the same day as the Act, namely 1 July 1999.

Following the review of the Act and regulations, a new Act and regulations were developed. The rationale behind the development of the new Act and regulations was to create a more flexible management system for the South Australia Police, more in line with the principles of modern management laid down in the Public Sector Management Act 1995. To ensure that management of the South Australia Police moved with the times, the new Act and regulations established the foundation for performance management, including the streamlining of promotional appointments and appeals, and the introduction of a professional conduct and disciplinary system to streamline the processing of misconduct issues.

The 1998 Act was drafted following consultation. The final draft of the police regulations was developed after extensive consultation by the Minister with the Police Association. Where possible, the views of these organisations, including the Law Society, were taken into consideration and incorporated into the Act and the regulations. My recollection is that, in relation to the Police Association, some 10 of the proposals which were made in response to the draft regulations were actually adopted in the final regulations.

The regulations are essential for the day to day management and control of SA Police. Regulations support, amongst other matters, the human resource management process, the disciplinary process, including setting out the code of conduct under which police officers must operate, and prisoner handling: they provide the basis for general and special orders. Should the regulations be disallowed, the management of SA Police as an effective police organisation would be impossible. That is what the Hons Mr Holloway and Mr Gilfillan have to come to grips with. There will be a police Act under which the police should operate but there will be no supporting regulations and, unless regulations are immediately repromulgated, there will be a disastrous situation in terms of the management of SA Police. It may be that that is what honourable members want. I would urge members, though, to reject the disallowance motion.

If the disallowance motion is rejected, the regulations are still subject to disallowance in the next session. It is not as though, as with the earlier resolution with which the Legislative Review Committee moved disallowance, it is the last day for this to occur. It is not the last day, and disallowance can occur at some time in the future after evidence has been heard by the Legislative Review Committee. The Legislative Review Committee has not even heard evidence. It has not even considered these regulations. In the normal course, according to the usual conventions, the regulations would be allowed to continue, and they would be allowed to continue with a notice of disallowance as a holding motion put on file in the next session.

That would enable the Legislative Review Committee, the Opposition and the Australian Democrats to hold it through for another year, if they wanted to. At least it would follow the normal practices where the Legislative Review Committee would hear evidence, identify the concerns and present a report, and we would not be faced with the situation which now presents itself that, if a majority of the Council disallows, we have no framework under which SA Police might be properly managed.

The Hon. IAN GILFILLAN: I will treat this motion as replacing mine on the Notice Paper. I would like to acknowledge that the Hon. Paul Holloway very graciously offered to support my motion, so I have no compunction in supporting his motion and indicating, therefore, that we are both of one mind in wishing to have these regulations disallowed. It is very important that it be clearly known by this Council that, in comparative terms, there has been no consultation with the Police Association over the evolution of these regulations. If one defines 'consultation' as the exchange of the odd written note, then it certainly does not fit my understanding of it. Contrary to the scare tactics that the Attorney raised about the non-operation of the Act, I believe that the reverse is true: the pressure will be on the Minister and the Government to come forward with an acceptable, workable set of regulations, and the pressure will be on for some meaningful consultation to take place.

It is far too long to leave it adrift for more than likely over two months before it will be addressed and, under these circumstances, I do not see that there is any serious danger in passing this motion of disallowance. As we have seen in the past, Ministers, departments and Governments have the option of introducing regulations again in a very short period. So I refer honourable members to my contribution on my own motion in the previous week as to the reasons why the Democrats are opposing these regulations. Those reasons, coupled with the other observations that the Hon. Paul Holloway made, make a very substantial case. It is long overdue that we should have some mechanism to be able to amend or alter regulations rather than having this 'lose them all or keep them all' option. That is just an observation of something we really need to address to increase the efficiency of this place. I urge the Council to support the Hon. Paul Holloway's motion, recognising that it is identical to mine, with which I will not proceed.

The Hon. P. HOLLOWAY: In reiterating my opposition to these regulations, I point out that no proper consultation was carried out. Circulating a copy of regulations and inviting comment on them, followed by a few minor amendments at an early stage, is not really proper negotiation. It is not really the sort of consultation we would expect. I wish to make this

comment to finalise the debate: police officers have a duty to enforce the law. They have the power to exercise discretion in their interpretation of the law but they, more than any other group in our community, would know that, when matters go before the court, their interpretations of that law must be clear, explicit and unambiguous. Therefore, it is not surprising that police officers, when they see these regulations that govern their own behaviour and the operations of the police force, would look closely and carefully at them. They would expect that they would be clear, explicit and unambiguous. They would not be prepared to accept indications of good intention: nor should they. They have every right to expect that the regulations that govern their operations should be unambiguous, clear and explicit. They are not like that at present.

The Attorney said that, if we disallowed these regulations now, it might create some chaos in the operation of the Police Act. I suggest that the Minister should reintroduce those parts of the regulations, except those five or six clauses that we have indicated. They can be reinstated: there is no argument with those. I believe he should then engage in urgent negotiations with respect to those six or seven clauses that are in contention, and I am sure that the matters could be settled if the Government acted in good faith in a fairly short time. So, there is a way around it. I do not accept the Attorney's argument that this would be the end of life as we know it if these amendments were rejected. I call upon all members of the Council to reject these regulations so that the Government can go back and properly negotiate this matter with the Police Association.

The Council divided on the motion:

AYES (11)

Cameron, T. G.	Crothers, T.
Elliott, M. J.	Gilfillan, I.
Holloway, P. (teller)	Kanck, S. M.
Pickles, C. A.	Roberts, R. R.
Roberts, T. G.	Weatherill, G.
Xenophon, N.	

NOES (8)

Davis, L. H.	Dawkins, J. S. L.
Griffin, K. T. (teller)	Laidlaw, D. V.
Lawson, R. D.	Redford, A. J.
Schaefer, C. V.	Stefani, J. F.

Majority of 3 for the Ayes.

Motion thus carried.

TAXIS AND HIRE CARS

Adjourned debate on motion of Hon. T.G. Cameron:

That the regulations under the Passenger Transport Act 1994 concerning vehicle accreditation, made on 17 June 1999 and laid on the table of this Council on 6 July 1999, be disallowed.

(Continued from 28 July. Page 1735.)

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I urge that the regulations not be disallowed. I note that the honourable member has talked to two of the three regulations, the first dealing with residency in South Australia, and regulation 27(1) has been issued by the Government on the advice of the Crown that this regulation should be repealed on the basis that it is invalid and that we should introduce new methods of operation in terms of residential requirement. So, I would ask that members respect the Crown's legal advice in this regard.

The honourable member also addressed regulation 72, which relates to vehicle age limits. Simply, the regulations seek to confirm the Passenger Transport Board's policy regarding age limit approvals and that it will undoubtedly eliminate any confusion for operators regarding these requirements. For instance, we are seeking to implement current practice whereby the traditional category of vehicle must be under the age of 15 years, and the prescribed age limit for small passenger vehicles is a maximum of 6.5 years. Again, legal advice received by the Passenger Transport Board was that the policy that it had been implementing for some time should now be formally and properly reinforced by regulations. This is what the Government is seeking to do by the regulations, and I would urge that they not be disallowed.

I also highlight that the honourable member, in speaking to this motion, spent little time on the regulations but did seem to use the reference as a platform for canvassing various options for reform in the taxi and hire car industry. He finished with—

The Hon. A.J. Redford: A policy speech.

The Hon. DIANA LAIDLAW: Perhaps his first policy speech as SA First. But he ended with a plea, as follows:

For these and other reasons, which time does not permit me to go into, I believe that the new regulations should be disallowed and the whole of the regulations under the Passenger Transport Act reviewed with the consumer in mind, as stipulated in the objects of the Act.

It is that comment—that the whole of the regulations under the Act be reviewed—to which I want to refer briefly and alert the honourable member that, as part of national competition policy, all Acts that have industry references and any restriction on business practice and competition must be reviewed. I highlight to him that in February 1999 an issues paper was released by the Passenger Transport Board as part of a commission undertaken by Bronwyn Halliday and Associates and economic research consultants. They were specifically engaged by the Passenger Transport Board in terms of the national competition policy review. There have been specific meetings with various industry sectors from the bus and coach industry to taxi, hire vehicle and public transport operators.

There have been specific meetings with drivers in the disability access cab sector and in the hire vehicle and taxi sectors in addition to the industry consultations. I have received a copy of the report. I made reference to that at the recent Taxi Industry Association annual meeting at the Hilton Hotel. I am now required to forward that paper to the Department of Premier and Cabinet to ensure that all the matters that are addressed by the consultants adequately address the issues that the National Competition Commission requires in terms of these reviews. Once we have a sign-off from Premier and Cabinet I can then take all the matters addressed in the review to Cabinet and determine how we will act on the matters.

I can assure the Council, therefore, that the honourable member's plea for a complete review of the regulations under the Passenger Transport Act with the consumer in mind has already been undertaken in the earlier part of this year. He would appreciate, as I do, and as the national competition policy does, that the National Competition Commission is driven to address competition issues with the consumer in mind.

The Hon. T.G. Roberts: The drivers have a bigger problem than the consumers at the moment.

The Hon. DIANA LAIDLAW: As I indicated, there have been meetings with taxi drivers as well as hire vehicle drivers and access cab drivers, in addition to owners and the industry sectors at large. I should be in a position shortly to outline the outcomes of that review. I have indicated in an earlier question from the Hon. Mr Cameron that this review is being taken very seriously in this State and will be looked upon with great interest here, and also interstate, because this is the first review of its kind, looking at the taxi and hire vehicle industry, that has been completed on a State basis. Other States are keen to see what may unfold here. What I do know, as the Hon. Mr Cameron did mention in his address, is that with the deregulation of the hire vehicle industry in South Australia in 1991 we have a greater degree of competition in this State between the various industry sectors than any other State.

Also, the Passenger Transport Act was prepared in 1994 and progressed through this place with the knowledge of national competition policy principles, and therefore does provide for increases in licences in the taxi industry, and that is not always the case in other States. But I appreciate very acutely the sensitivities in this whole sector and having witnessed deregulation, and the rampant effects in some instances of the deregulation of the taxi industry in New Zealand and other places, this matter will be handled with care in the interests of all participants in the industry as well as consumers. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

POLICE ACT REGULATIONS

Adjourned debate on motion of Hon. I. Gilfillan:

That the General Regulations under the Police Act 1998, made on 30 June 1999 and laid on the table of this Council on 6 July 1999, be disallowed.

(Continued from 28 July. Page 1738.)

The Hon. IAN GILFILLAN: I move:

That this Order of the Day be discharged.

Order of the Day discharged.

NATIVE VEGETATION (MISCELLANEOUS) AMENDMENT BILL

The Hon. M.J. ELLIOTT obtained leave and introduced a Bill for an Act to amend the Native Vegetation Act 1991. Read a first time.

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

That this Bill be now read a second time.

The Democrats have been strong supporters of native vegetation legislation which, as I recall, was first introduced fairly early in the last Labor period in government. At that time the Democrats played a role by inserting amendments into the legislation to ensure that, while it fulfilled its primary role of conservation, it did not leave farmers disadvantaged. The amendments allowed for compensation when clearance rights were denied, and so on. I invite members to read the *Hansard* record to check that that was the case.

I remind members that, when about seven years ago this legislation came up for review with regard to the clearance of isolated trees, the Democrats supported that basic concept. It was argued that, on occasion, farmers, in seeking to carry out their business, suffered a significant disadvantage because of the location of the odd one or two trees. The attention of the Council was drawn to the fact that a centre pivot does not work very well when there is a river red gum right in the middle.

The Hon. T.G. Cameron: It creates a bit of a problem.

The Hon. M.J. ELLIOTT: It does create a bit of a problem. I do not believe that anyone had ever anticipated that after the legislation had been passed there would be applications to clear 1 200 trees on a single property—which was precisely what was approved for a pine plantation on one property in the South-East. I do not think that anybody anticipated clearance applications for a couple of hundred eucalypts at a time in the Barossa Valley and other places so that vineyards could be planted.

Everybody involved in that debate on isolated trees believed that 'isolated' meant just the odd one or two trees in a particular paddock, not 1 200 trees all under the one clearance application. At the time nobody anticipated the significant growth in horticulture that we have seen in this State during the past decade for the expansion of vineyards and other crops. In fact, at the time I came into the Parliament we were pulling out vines: I remember that clearly. I had a small fruit property in Renmark and I was committed to not—

The Hon. T. Crothers interjecting:

The Hon. M.J. ELLIOTT: Absolutely none. Not only did I have no grape vines on the property but I was firmly committed not to, and to this day I would not plant them, because they have peaked and the next three years will see a steady and significant decline in prices. Some people will still get a good return but, frankly, I would not want to be an independent grower of grapes in about five years, because I think that we will see the late 1980s revisited. But that is another story.

There has been a rapid expansion of vineyards and we are seeing a rapid expansion of olives. If you go to the South-East, you will see new plantations of apples, cherries and various other horticultural crops. I think that is a great thing. Anybody who cares to look at the *Border Watch* will see that, over many years, I have been saying that horticulture could and should be much bigger in the South-East: I have consistently said that and believed it to be the case.

I reiterate that never in my wildest dreams did I anticipate that this legislation would involve the level of tree clearance that is now becoming evident. I suppose that I did not contemplate it because the major limitation in South Australia is not a lack of land but a lack of water. You have a fair degree of discretion about planting because it is the water that makes or does not make the land productive. Even in the relatively wet South-East, without irrigation, particularly once you get into horticulture, your productivity would be pretty ordinary to say the least.

I would argue that it is the application of water that makes the land productive and gives it its value. The cost to plant a vineyard or an orchard is tens of thousands of dollars per hectare in some cases. The big money is not in the land but in the trellising and the plantings, but it is worth nothing if you do not have the water to apply to the land. I am arguing that there is an enormous amount of flexibility—

The Hon. T.G. Cameron interjecting:

The Hon. M.J. ELLIOTT: It's a fact. I am arguing that there is an enormous amount of flexibility—

Members interjecting:

The Hon. M.J. ELLIOTT: I do not have a great deal of sympathy for those people who go into an area that is heavily treed, buy land, get their water right and then apply for clearance, saying, 'We have to be able to clear this.' They

choose which property to buy. They are buying land which is broadacre and which has relatively low value compared to the value of the land once it has water applied to it, and also—

The Hon. T. Crothers interjecting:

The Hon. M.J. ELLIOTT: But even the value of that is dwarfed by the actual cost of putting the plantings into the ground. Despite all that, trees within a property are not a problem. One only needs to talk to people like Prue Henschke, the viticulturalist for the Henschke family and Hill of Grace. She is an ardent exponent of growing crops in conjunction with trees and an ardent opponent of what is being done, largely, might I say, by the big operators—

An honourable member: Wolf Blass.

The Hon. M.J. ELLIOTT: Yes; the Wolf Blass's of this world. It is no longer Wolf Blass: that is just a brand name.

The Hon. T. Crothers: Mildara.

The Hon. M.J. ELLIOTT: Mildara; that's right.

The Hon. L.H. Davis interjecting:

The Hon. M.J. ELLIOTT: Yes, which is headquartered outside South Australia and has no commitment to South Australia other than wanting to get the grape juice out.

An honourable member: They used to make good brandy at Mildara.

The Hon. M.J. ELLIOTT: You can talk about various brand names. Yahl cheese is great, but it is not made in Yahl any more. In fact, it is not made in South Australia any more, although the label still says 'Yahl, Mount Gambier'. But that is another story and it has nothing to do with wine and nothing at all to do with trees.

The point I am making is that there are top quality South Australian based viticulturalists who know the business and say that there is no justification for doing it, and they are not talking theory but practice. We are finding that about 50 per cent of the trees that are subject to an application for clearance are being cleared. You could almost apply a formula to it: apply for 100 and 50 will be approved; apply for 200 and 100 will be approved. Unfortunately, that is almost the way in which the Native Vegetation Council is working at the moment.

Nobody in this Parliament, at the time the legislation went through initially, considered that trees in a broadacre situation would be at threat. The legislation, in the first instance, was drafted to confront issues of broadacre clearance. On the whole, that is no longer a problem in South Australia, although there are still some illegal practices going on which the Native Vegetation Council, because of a lack of resources, is simply not tackling.

Individual trees became an issue by the late 1980s and early 1990s. The Act was amended to try to contemplate that, but nobody contemplated the dramatic expansion of horticulture, and even with that dramatic expansion I would argue that nobody would have contemplated that we would see the level of clearance being approved that we are now seeing. I have pointed out in this place, having made a freedom of information request, that the pattern of tree clearance changed in March, four months after this current Government was elected—and it was a dramatic turnaround.

It reflects a change in the composition of the Native Vegetation Council itself, which also changed at that time. I have the graphs and the material in my office to show members who are interested. In one month it went from about 20 per cent approval to 70 or 80 per cent approval—that is how much the pattern changed. It has now settled down: it is closer to 50 or 60 per cent approval, but it is pretty much a one-way street.

The issue that I am tackling within this Bill, though, is not the issue of whether or not trees should be cleared: it is about how we can have more confidence in the Native Vegetation Council itself. The Bill that I present—knowing that this is one of the last days of the session, but also mindful that the Government intends to introduce changes to the Native Vegetation Act in the next session—and the issue I am confronting relate to public accountability and openness, something that the Democrats and I believe in very strongly in relation to native vegetation.

In fact, we have even had before this Parliament today changes to a regulation in relation to police records, and I believe that that regulation will be knocked out for the same reason: because most people believe in openness in Government. If you want true accountability, the first thing that must happen is that information must be available for people to see. Of course, in relation to police records, there are an awful lot of provisos about that, but at least historians must get to see it some time. I would argue in relation to the Native Vegetation Act and the Native Vegetation Council that we need to see a level of accountability and openness that simply does not exist at present.

The Native Vegetation Council does not advertise the fact that it is meeting—I believe it should. Its meetings almost always are not open to the public—I believe they should be. I have no problems with the council having a right to exclude members of the public, but it really should be only for reasons of utmost commercial importance that a meeting is closed. It is important that the minutes of the Native Vegetation Council are kept and that copies be available for scrutiny. The council, before determining applications for consent to clear vegetation, should publicly advertise so that the public is aware that such a proposal is being made. In many cases, applications are made in secret and approvals are given, and the first people know that there has even been a proposal is when the chainsaws and bulldozers have already gone to work. That is simply not acceptable.

I have addressed issues of public accountability directly within this Bill. I gave drafting instructions in relation to trying to make the legislation more stringent in terms of approvals regarding individual trees, but I was unhappy with the draft that I had within the Bill. I did not find it acceptable, let alone asking anybody else to find it acceptable; and, as a consequence, I have not proceeded with that. But it is important that people are aware that in the next session the Democrats will be pushing for much more stringent legislative controls in relation to individual clearance.

In fact, that section of the legislation which relates to individual clearance has been interpreted in a way that was not intended. Hence, in the provision which refers to what clearance is allowed and what is not, the legislation says that clearance shall not be approved where it is greatly at variance with the principles contained within the schedule. It does not say that no clearance will be approved: it simply says 'where they are significantly at variance'. This really means that the door is already open under some circumstances to allow clearance to occur. In the amendments we made about seven years ago a further subclause was added which referred to isolated trees. Then there was reference to where an isolated tree, which was defined in the legislation and which caused difficulties for farming operations, might be cleared regardless of what else the clause said.

So, essentially there was already an open door at the beginning of the clause, and it has been slammed wide open with that further amendment. As I said, it was slammed open in a way that I do not believe anybody involved in the debate at that stage anticipated it would be. That provision needs to be amended simply to say, 'No clearance shall be approved where it is at variance', and then perhaps there might be an exceptional circumstance subclause. But to say that there is an exceptional circumstance and then to open that door even further in the way that that provision is constructed simply does not work. We will pay a real price for that in years to come—and not just in terms of amenity.

I am sure that a certain number of people reacting to the clearance of trees do so simply because of the loss of amenity, particularly in the Mount Lofty Ranges where the big red gums and blue gums are an important part of the landscape. Speaking biologically, it is only when trees are a couple of hundred years old that they start getting the sort of hollows which over half the species of birds in South Australia need in terms of nesting, and a large number of our mammals also need those hollows. While the legislation envisages the possibility of clearing a tree and having replacement plantings, if you like, in the corner of a paddock, it is another 200-odd years before those replacement trees get the hollows used by the birds, the mammals, etc.

There are also issues concerning salinity. Those very large trees are enormous water pumps. Again, that is largely being ignored at this stage. They have a very significant capacity to impact upon watertables. Much to everybody's surprise, salinisation of soils is occurring even in the Mount Lofty Ranges. Salinisation of soils is not just a problem occurring in the Upper South-East or in patches of Eyre Peninsula and Yorke Peninsula: salinisation is a problem that is occurring in the Mount Lofty Ranges. The loss of those big pumps is of concern.

I will now flag a couple other issues which need to be addressed within this legislation, including offences. Currently, prosecution under the Act is made difficult because it is considered a criminal offence. This has meant that courts have required proof beyond reasonable doubt, and therefore it is almost impossible to achieve effective prosecutions. This situation would change if it were to become a civil offence.

I refer to the clearance application fee structure. The assessment fees should be based upon the number of trees applied to be cleared. For example, an application to clear 2 000 trees would involve a hefty fee. Why indeed do we not charge $1 000 a tree for a clearance application? One might say that that is a lot of money to apply to have a tree cleared if it is not approved, but if the Act were interpreted very clearly you would know before you applied whether or not you had a reasonable prospect. In fact, at this stage the rules are such that you can almost be guaranteed of getting half of what you asked for. So, if you seek clearance approval for 2 000 trees, you will be allowed to clear 1 000.

There should be a significant fee attached to each individual tree, and I was surprised, in conversation with people linked to the Native Vegetation Branch, at how much the actual assessment process is costing. That is all being borne by the assessment branch itself at this stage, because the fees simply do not match the cost. It seems to me that, if the general expectation is that clearance in South Australia should have stopped, a person should be prepared to bear the cost himself if he is asking for an exception to be considered, and I advocate very strongly a hefty fee based on each individual tree.

There are major problems in relation to clearance for subdivisions. It is worth noting that in the Mount Lofty Ranges there is very little remanent vegetation left, and over half of that remanent vegetation is found on private land. Some of that is still subject to subdivision, and the cumulative effect of regulations at this stage is quite deadly. For example, if you take 800 hectares, you could divide it into 20 40-hectare blocks and then use 10 metre fencing width, because that is what the Act allows you to clear. By the time you have finished, you have perhaps cleared over half the vegetation. If you then decide to build a house and sheds and need to clear round each of those, it has gone even further. Issues surrounding subdivision and the consequent clearance really need to be tackled, particularly in some areas of the State where remanent vegetation is fairly low.

There needs to be an extension of the role of the Native Vegetation Council. Extra funds should be allocated to the council so that the general public can be better informed as to its role in the administration of the Act. I have already argued within this Bill that more public openness will help achieve this sort of goal. The Native Vegetation Council should be looking at grazing and clearance of native grasses and actively promoting the economic and environmental advantages of replacing poorly adapted exotic grasses and their associated weeds with drought tolerant, perennial native grasses.

I turn to fire management and the promotion amongst the CFS movement of the value of native vegetation. As an example, a level 1 CFS course at Swan Reach placed native vegetation last on its priority list. We need to look at the selection criteria for Native Vegetation Council members. Although a number of the members are practising farmers, it is essential that they also be leaders in areas such as salinity management, catchment issues and the conservation value of plant and animal species. In terms of absolute expertise on the committee, the Minister's nominee should be a person who is a trained botanist or ecologist. Unfortunately, the Native Vegetation Council at this stage is top heavy with people who are actually not qualified and do not necessarily have a deep understanding of the very issues they are asked to act upon.

It does not mean that they are not well meaning (and this is not aimed at any one individual), but there is not sufficient expertise overall on the Native Vegetation Council at this stage. Just as Governments over the past 10 or 15 years, Liberal and Labor, have been working to make sure Government boards always have a lawyer in them and often have an accountant, it is bizarre that the Government does not have a nominee who is a trained botanist or ecologist on the Native Vegetation Council. I suspect at this stage that an accountant might have more chance of getting on the Native Vegetation Council than a botanist or ecologist.

There is clearly a lack of resources to administer the Act, and I have reflected upon that already. One of the big problems with the lack of resources is that illegal clearance is being reported on a regular basis and simply not being acted upon or being enforced. I have touched on other matters that also relate to that. One person has reported to me that he is aware of 22 illegal clearances in the South-East alone last year, which is quite stunning.

The Hon. Diana Laidlaw: Do you have examples and evidence?

The Hon. M.J. ELLIOTT: I can present that to the appropriate persons. I have rung up on previous occasions and have not got too far. I have actually rung the Native Vegetation Council on a few occasions. In addition to the

need for increased staff availability to monitor adherence to these programs, it is recommended that a bond system be created that would apply when approval has been granted to clear but revegetation has been part of the clearance approval. If a bond were placed on the revegetation program, that would be the best surety you could have that it was carried out. Again, these revegetation programs are being carried out by people spending enormous sums of money on horticulture and, frankly, the cost of the revegetation program is nominal by comparison.

The last issue is this: the recent application for 22 trees in the Hills face zone at Angaston was granted on the basis that the Barossa Council no longer had any interest in the clearance application. However, one person I spoke to knew of two Barossa councillors who had voted against the application on the basis of the amenity value of the trees. When this person checked with the environmental manager of the council, who then checked with his staff, he found that they had not issued any pro-clearance response and were most concerned that the council's view on this application was misrepresented at the Native Vegetation Council.

I have covered a number of issues. The prime issue on which this Bill is focused is openness. That is something that all people are realising increasingly that modern society expects from Government and Government instrumentalities, and I hope that all members would agree with that. I will bring the Bill back in the next session and will also be tackling a number of the other issues raised during the second reading.

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

[Sitting suspended from 6.2 to 7.45 p.m.]

WINE EQUALISATION TAX

Adjourned debate on motion of Hon. P. Holloway:

That the Legislative Council—

I. Notes that—

(a) the Howard Liberal Government intends, through its proposed 29 per cent wine equalisation tax (WET) to—

(i) increase the rate of taxation on wine from the existing 41 per cent wholesale sales tax to the equivalent of a wholesale sales tax of 46 per cent;

(ii) raise an additional $147 million more in tax than the industry currently pays; and

(iii) tax cellar door sales;

(b) the increases in the price of wine that would be caused by the WET proposals of the Howard Government would break the Prime Minister's promise that prices would not rise by more than 1.9 per cent under the GST;

(c) industry estimates that the proposed tax would cost 500 jobs nationwide; and

(d) the tax would have disproportionate adverse effects in South Australia which accounts

II. Calls on the Howard Liberal Government to—

(a) reduce its wine equalisation tax proposal to the equivalent of revenue neutrality or 24.5 per cent; and

(b) provide exemption from the wine equalisation tax to the value of at least $100 000 per annum for cellar door sales, tastings and promotions,

to which the Hon. C. Zollo has moved the following amendment:

Leave out paragraph II(b) and insert the following—

(b) Provide exemption from the wine equalisation tax to the value of at least $300 000 per annum for cellar door sales, tastings and promotions, with costs to be met by the Commonwealth.

(Continued from 7 July. Page 1589.)

The Hon. R.I. LUCAS (Treasurer): In one respect this is a difficult motion to debate, because the simple fact is that the Commonwealth Government and the Australian Democrats are still, from the point of view of the States, trying to work out the details of what it is that they agreed to in relation to the rebate/exemption scheme for small wineries.

The Hon. Carmel Zollo interjecting:

The Hon. R.I. LUCAS: It may be that it is quite clear to them but, to the rest of us, it is not. As was indicated in a question in this Council last week or this week, there has been a press report indicating that the Leader of the Australian Democrats has a view that perhaps she and the Government do not have a similar interpretation of this aspect of their agreement. I hasten to say it is not always advisable to rely on press reports as to the accuracy of the views of the Federal Australian Democrats and the Federal Government in relation to this issue. I am not sure whether the Hon. Mr Elliott, with his entree to Senator Lees' office, might be in a position to throw any light on the situation, but I can indicate that, with the limited entree I have to the Federal Government, I cannot throw any light on the attitude of the Federal Government.

There have been discussions with Commonwealth Treasury by State Treasury officers and we have not been able to ascertain exactly what the Commonwealth Government's policy is in relation to the exemption/rebate position for small wineries. In that light, it is therefore very difficult for anyone sensibly to vote on this motion. Therefore, it is my view that it would be sensible that this motion be adjourned and revisited early in the next session when we know the Commonwealth Government's position and the deal between the Commonwealth Government and—

The Hon. T.G. Cameron interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Cameron says, 'Perhaps after the horse has bolted.' The issue is that there is a deal and it is simply that the rest of us need to understand what the deal is. I have to say that we just do not know. Therefore, whilst it might be appropriate for members of the Labor Party to express views about what they believe it should be, at this stage it is difficult for the Government to indicate what our position is in relation to whether it be an exemption or a rebate for small wineries. First, we would like to know what the Commonwealth Government has agreed to and then we can get some advice from the industry and Treasury and finalise the Government position on it.

If we were forced to vote and there was not an agreement from the Hon. Mr Holloway to further adjourn the motion, at this stage the Government would probably have to oppose the current drafting of the motion because, on the advice provided to me, paragraph I(b) is factually incorrect. The motion asks us to note:

the increases in the price of wine that would be caused by the WET proposals of the Howard Government would break the Prime Minister's promise that prices would not rise by more than 1.9 per cent under the GST;

They have been the claims made by the wine industry, and I know they are vigorously refuted by the Commonwealth Government and the Commonwealth Treasurer, as I have seen letters from the Commonwealth Treasurer to the wine industry to that effect. Therefore, I asked State Treasury officers to go back to the original national tax reform package

document (ANTS), and the advice to me from State Treasury is that it does not believe that the Commonwealth provided an assurance that wine prices would rise by no more than 1.9 per cent. The ANTS document states that cask wine prices would rise by 1.9 per cent; medium price wines by 3.1 per cent; and expensively priced bottles by 2.4 per cent. Treasury officers, having looked at the claim and counter claim in this, have gone back to the Commonwealth Government's commitments in the ANTS document, and that document is quite explicit: some wine prices would increase by up to 3.1 per cent.

Therefore, it is important to note that, if we support this motion, as we are being asked to do by the Hon. Mr Holloway, it will break the Prime Minister's promise that prices will not rise by more than 1.9 per cent. As I said, I hope that the Hon. Mr Holloway might agree to adjourn the motion. However, if he does not and chooses to reply and force a vote on this, I ask him to indicate where the information I have provided this evening is wrong, that is, an explicit commitment by the Prime Minister that some medium price bottle wine prices would rise by 3.1 per cent, explicitly outlined in the ANTS document that was originally released in relation to the national tax reform package. I ask him to explain where that—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: Let's be fair about this. The document that was released by the Government for the introduction of the goods and services tax was an expensively produced package of documents that you could not jump over, and it was the dotting of the i's and the crossing of the t's of the Government's tax reform package. That document was the Bible as to what the Government was promising in Committee. In that document, there is a clear indication that some wine prices would rise by up to 3.1 per cent. If the honourable member is going to force a vote even though parts of his motion are factually incorrect, the Government would have to oppose it, although the Government has a good degree of sympathy with considerable parts of it. The Government has supported the wine industry in relation to—

The Hon. T.G. Roberts: Amend it to make it suitable.

The Hon. R.I. LUCAS: I must admit that, given what we have to do on the last private members' evening of this session, this has not been a priority issue for me on either the Government or the private members' program. Therefore, I accept a rap across the knuckles for not making this a priority. I did have a couple of suggested amendments from Treasury which admit some aspects of what the Government would have been prepared to support but missed some of the political elements I would have otherwise wished to incorporate. I must admit, in the time available, I gave up seeking to craft an appropriate amendment that was suitable to the Government.

However, we are sympathetic to the good parts of this motion. It is consistent with the Government's support for the wine industry. However, the bit we are obviously not able to support is what we think is an incorrect and invalid criticism of the Prime Minister regarding the 1.9 per cent, and we are not in a position either to criticise or to congratulate the honourable member on part of the package if we are not aware of the details—that is, the deal the Labor Party has done with the Federal Democrats in relation to the exemptions or the rebates for small wineries. When we know the detail, we will then be in a position to form a judgment.

I do not intend to go on any longer. I indicate that the Government's position is that we would prefer to adjourn the motion. However, if forced to vote at this stage, we will oppose it. In doing so, we indicate that we support significant elements of the motion and, indeed, if it was reintroduced early next session, we would be happy to vote for some recrafted amendment that was consistent with, first, the facts and, secondly, some resolution as to exactly what the Commonwealth Government is seeking to do with respect to small wineries.

The Hon. T.G. CAMERON: I rise on a point of clarification. Clause 1(d) just does not seem to make sense to me. I wonder whether it is a typing error.

The Hon. R.I. Lucas: There is a line missing.

The Hon. M.J. ELLIOTT: This is one of those rare occasions when I agree with the Treasurer, so I hope he relishes the moment.

Members interjecting:

The Hon. M.J. ELLIOTT: Just calm down! I also agree with substantial parts of the motion. However, I must begin by suggesting that this is clever dick politics at its absolute epitome, and I will explain why. I lived in the Riverland during the late 1970s and early 1980s. I remember the Labor Government introducing the first wine tax. Not only do I remember it introducing the first wine tax but also I remember when it increased it again in the late 1980s. During the 1980s, the wine industry was on its knees and the Labor Party started taxing it. It was not happy with that. When it got further on its knees it increased the damn tax.

When the Democrats in the Senate moved that that tax be struck out, it was opposed. When the Democrats moved that at least the tax should be phased in to ease the impact, it was opposed. That is why I say that this stuff today is nothing more or less than clever dick politics. That is all it is about: nothing more, nothing less. Members of the Labor Party are a bunch of hypocrites. These are the people who introduced the wine tax and increased the wine tax when the wine industry was in desperate trouble. What hypocrites!

The Hon. G. Weatherill: There's no doubting that you've got a good memory.

The Hon. M.J. ELLIOTT: My memory is very good. And I remind the honourable member that the second increase occurred while he was in this place. My memory is very good. I presume this is being done for David Cox; it has his fingers prints all over it. I guess he handed it to Paul and said, 'Paul, would you do this for me, because it might be worth two votes in McLaren Vale, if I am lucky, on a good day?' People in the wine industry have very long memories, and they will remember that, while the vine pull was going on, wine taxes were going up. The wine people will remember that very clearly. They are not silly.

I have not been intimately involved in this debate over the past couple of months, and obviously over the past six weeks when our own Parliament has been sitting. I am under the clear impression that there is supposed to be a cellar door exemption of $300 000. In fact, it is interesting to note that the Labor Party proposed $100 000, while the Democrats have struck an agreement with the Government that it be $300 000, and the Labor Party then panics and moves an amendment to take it to where it was going. Not bad stuff. Labor members are going for $100 000 when the agreement has already been struck for $300 000.

Members interjecting:

The PRESIDENT: Order!

The Hon. M.J. ELLIOTT: That is another lot of clever dick stuff. Really, members of the Labor Party are opportunists—nothing more and nothing less—and they are exposed.

The Hon. T.G. ROBERTS: I detected a note of fear in the voice of the honourable member while he was making his contribution. Far from it being clever dick politics, over the past decade and a half the Labor Party has looked at the wine industry with all its ups and down—

The Hon. M.J. Elliott: You want it to go down.

The Hon. T.G. ROBERTS: I don't think the honourable member is right. We have looked at it over a long time in relation to how the industry wanted to progress in the 1980s. Unfortunately for the industry, the industry recommendation to the Government was to pull out vines. There was a request by the industry, particularly the red wine industry, to provide concessions. Because the time frame for laying down wines is three and in some cases four years, the industry wanted some relief for storage and made requests for changes to the taxation laws. But Governments have to recognise that there are other beverages competing with wine. I think any tax that is increased by Governments is unpopular. When increased taxes were floated, the industry and Governments got together at Federal and State levels and there was a lot of lobbying. There was at least—

The Hon. M.J. Elliott: Particularly for the beer industry.

The Hon. T.G. ROBERTS: Yes, the beer industry was one of those that was lobbying. But the Government kept its eye on making sure that the industry paid its way, and I am sure that the honourable member now would understand that the measure that has been put forward by the Government and the Democrats is one that is necessary for some sort of shake out. That is the way in which the tax was framed. So, I do not think it does anyone any good to say that one Party or another is shaking a tree that has unlimited funds tied to it. I suspect that the industry has been successful in lobbying both major Parties in relation to deferring taxes for some considerable time, but the iniquitous way in which this tax has been levied at this stage is what the motion is aimed at. I think the best thing I can do is seek leave to conclude my remarks, and then some of those minor points that the Treasurer has indicated perhaps need fixing may be fixed up.

The PRESIDENT: Is the honourable member seeking leave to conclude his remarks?

The Hon. T.G. ROBERTS: Yes, Mr President.

Leave granted.

The PRESIDENT: I am sorry, the Hon. Mr Crothers: the last speaker who was called has the call, and he wants to conclude. Leave has been given for him to conclude.

The Hon. T. Crothers interjecting:

The PRESIDENT: Yes, I will do that in a second. Leave has been given to conclude. What is the Hon. Mr Crothers asking for?

The Hon. T. CROTHERS: On a point of clarification, I understood the last speaker, the Hon. Terry Roberts, to say that he was seeking leave to conclude his remarks. He did not say that he was seeking leave to conclude the motion—which is, in any case, standing in the name of the Hon. Paul Holloway. The question I ask is: if he is seeking leave to conclude his remarks only, does that then prevent other speakers from making a contribution?

The PRESIDENT: It does, but I then have to take it back to the Hon. Paul Holloway as to what he wants with respect to when those remarks will be concluded. He might put it on motion: I do not know that. I will ask the Hon. Paul Holloway for some direction about when the Hon. Mr Roberts will conclude his remarks.

The Hon. P. HOLLOWAY: It was my intention to move that this motion be adjourned until the next Wednesday of sitting, but I had not realised that there were other members who wished to debate it. I thought we had—

The PRESIDENT: So, you are saying the next Wednesday of sitting?

The Hon. P. HOLLOWAY: That is what I was going to propose.

The PRESIDENT: I do not want to hurry it: I would like members to be comfortable with what is happening.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Roberts has sought leave to conclude his remarks, and leave has been given.

The Hon. T.G. ROBERTS: I withdraw that request.

The PRESIDENT: Will the honourable member continue?

The Hon. T.G. ROBERTS: No. I have concluded my remarks.

The PRESIDENT: Before the Hon. Mr Crothers makes his contribution, I inform members about the missing line to which the Hon. Terry Cameron alluded. I am advised that it went missing last Thursday. I can read it to members and it will be back on the Notice Paper, if necessary. The line under I(d) should read:

> for 50 per cent of national wine output, as well as an adverse impact on small wineries.

The Hon. T. CROTHERS: Sir, I thank the Hon. Terry Roberts and you for being so accommodating to me. As a former secretary of the union that covers this industry, I say, I suppose in modesty, that I know at least as much as any other member in this Parliament about the industry. I support the comments of the Hon. Mr Holloway, because it seems to me that one of the things that has happened here is that perhaps the Australian brewers have been able to convince the Federal Government that, so that there is a much more level playing ground, there be an equalisation tax on the production of wine. I find that absolutely inordinate from a Coalition Government that purports, on behalf of half of the Liberal Party, to represent metropolitan Australia, and in some rural electorates, and the Country Party, whose seats lie in the rural heartland—and the important rural heartland—of Australia.

For the first time this year, wine exports will exceed $1 billion, which is an extraordinary growth in the industry over the past decade or so. When I was secretary of the Liquor Trades Union, up to 1987, I think several years before that our wine exports, mainly emanating out of Hardys, were about $35 million. So, that is an extraordinary performance in respect of the balance of payments of this nation in that a lot of those wineries are still Australian owned. In fact, some that were owned by overseas companies have now reverted back to Australian ownership.

For this Government to place this huge, unnecessary impost of tax on the industry is a strike against the National Party's rural heartland. This is probably one of the major manufacturing industries in rural Australia. Certainly, South Australia produces some 60 per cent or more of Australia's wine. And, with respect to some of the niche market wines for which Australia has found a market—basically the premium red—some of the grapes for those vintages are grown within the Coonawarra, Penola and Padthaway areas

of the South-East. To the best of my knowledge, when I was secretary of the union, we had 2 500 members in wineries employed in rural South Australia. There would have been at least as many again who belonged to other trades and other occupations or who, if you like, were management and therefore were still employed nonetheless but not covered by the constitutional ambit of the union I represented as State secretary for so many years.

I find this appalling. The export value of South Australian wines overseas exceeded $700 million, according to this year's latest Bureau of Statistics figures. It might help members to understand better that, in spite of the fact that there was a downturn in eastern Asia, with the German economy struggling as it tried to come to grips with its regained long lost province, and with the Japanese economy almost operating at negative growth, the exports from this State increased by 6.6 per cent this last statistical year. This is in spite of the fact that, overall, throughout the rest of Australia, there was a downturn in exports. We were one of the few States, if not the only State, whose export performance this year grew—and it grew, indeed, by 6.6 per cent.

The matter, of course, that played no small part in that increase was the enhanced export of wine, which is now basically a product of the rural hinterland of South Australia. There are the great wine growing areas of Eden Valley—to which the Hon. Mr Elliott referred as the Barossa Valley when talking about Wolf Blass and the gum trees—and the valley that runs parallel to the Eden Valley on a different sort of geometric tangent with the Barossa Valley: I refer, of course, to the Clare Valley. And I refer also to the South-East, as my colleagues on the other side in the South-East would know—Penola, Padthaway and the Coonawarra. Some of the best red wine varietal grapes in the world are grown on the *rossa* soil of the Coonawarra.

The Hon. M.J. Elliott: Port Lincoln.

The Hon. T. CROTHERS: Port Lincoln has a small winery, too, yes, on the mainland, and growing, I understand, as well. The vineyards that did exist within the broad metropolitan area, I guess still exist in some measure. There is Oxford Landing and those Hills areas and those outer metropolitan areas still exist. The Southern Vales is another great area for premium red wine grapes. A large proportion of the wine industry's product is now exported overseas earning hard balance of payment dollars for this nation. It is the largest by far, certainly in South Australia, employer of labour of any manufacturing industry, the largest employer by far of any rural industry that enhances the value of its products by processing it from vineyard right through to cellar door sale.

I find it absolutely appalling that there should be this lack of street savvy by the Reithian, hard, draconian powers of darkness that currently seem to be roaming the corridors of the Parliament in Canberra, talking to all sorts of sprite like ghosts of the ether world in trying to get some price equalisation in respect to wine versus beer. There is not very much beer exported, though there is some, and maybe Cooper's again with its home brew kit. It probably exports as much as any other brewery, having got 60 per cent of the Australian home brew kit market both here and in the Eastern States and having established strong markets for that kit.

The Hon. A.J. Redford interjecting:

The Hon. T. CROTHERS: That is gone. That was a product of Mr Max Cooper, who is the only Cooper to have a brewer's degree from the college that deals with those things in Leeds in England. He produced that as a bottom-up brew, as opposed to Cooper's traditional method of the fermentation from top down. I may have got that the wrong way round.

The Hon. A.J. Redford interjecting:

The Hon. T. CROTHERS: Yes, but they do not export anywhere near the quantum dollar amount of wines that we export, and bearing in mind that South Australia's latest figure was in excess of $740 million of export dollars earned from the wine industry in this State. I would trust—and I know that he has done it before—that Premier Olsen will go and endeavour to persuade the upper echelon of his Parliamentary Party colleagues in Federal Government as to the wrong-headedness of this particular approach in respect to the tax impost—unnecessary and far too high—on the wine industry. I argue that, not as a point of self-interest but rather as a point on which I am convinced of the rectitudinality of that industry to repeal and rebel against this particular impost.

I have considerable pleasure in supporting the Hon. Mr Holloway's motion, although I do note that a previous Federal Labor Government just about destroyed the South Australian brandy industry, and that was then followed by the Fraser Government, with Ian Sinclair as Agriculture Minister, imposing just as large a tax. I can well recall addressing a meeting up at Renmark with some several thousand at the football ground. It was virtually me versus Sinclair, and every time I spoke everybody cheered. I could have told them to go and get bleeped and they would still have cheered; every time Ian Sinclair got up everybody booed—and I loved that.

The Hon. M.J. Elliott: That was a tax on fortified wine.

The Hon. T. CROTHERS: It was indeed. Port and brandy, because you make fortified wine out of the brandy, for port. So that just about closed down a number of the pot stills in this State.

The Hon. M.J. Elliott: It did. Renmano closed down.

The Hon. T. CROTHERS: Yes it did, and Tarac was reduced. Hardy closed, and Black Bottle and Seppelts do not make so much any more. So that, again, was a strike by both political Parties against the wine industry, going back some 12 or 15 years—perhaps longer. I well recall that, from the robust interexchange that was taking place between myself and the Right Hon. Mr Sinclair, and, if I remember rightly, the rostrum for that was the Renmark Football Club.

Having said that, I hope that the Labor Party is fair dinkum in respect of this proposition of the Hon. Mr Holloway, which I will support, and that it is not politically correct electoral enhancing expediency that is the motivating factor here but, rather, one of sound commonsense, on behalf of this State, and indeed on behalf of Australia's balance of payments. There is much truth in the wording of what the Hon. Mr Holloway says. I have great pleasure in supporting it, albeit that I have put some backward looking observations in there.

The Hon. M.J. Elliott: There is no GST on exports, though.

The Hon. T. CROTHERS: That is true, there is no GST on exports, and you do not even need a thermometer to put into the wine vat to determine whether it is GST tax free or otherwise—another advantage. It is an advantage that some of the fast food shops may not have, thanks to the sort of Burnside, Leesian billion dollar tax cuts, which ensure that there is no GST on yoghurt, no GST on grain bread, no GST on imported water, and so on—whatever the Burnside electoral Democrat supporting yuppies have determined is all to be found in the so-called Meg Lees billion dollar cuts, that were supposed to help the workers. I do not know too many

people living at Burnside who are on less than $35 000 or $40 000 a year.

The Hon. M.J. Elliott: It is not our top booth, I can assure you.

The Hon. T. CROTHERS: Well, it is probably aimed at that fact, because it wasn't your top booth. It will probably electorally enhance you there. All of those things in respect of the GST have, in fact, put more loopholes into the reform tax position—and I would have sooner supported the Costello original thing—than there are in respect of the present creaking, antiquated system of tax that we have now. I did not want to touch on that, but interjecting remarks put me off my stride and momentarily distracted me, Mr President. I will conclude by saying that I wholeheartedly support the motion standing in the name of the Hon. Mr Holloway. I would hope that there is no dissentient voice in respect of what is, after all, a commonsense rectitudinal pursuit of truth and justice.

The Hon. T.G. CAMERON: I will be very brief, Mr President, considering the hour of the night and the length of the last speech. SA First will be supporting the Holloway motion.

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

JETTIES, COMMERCIAL

Adjourned debate on motion of Hon. P. Holloway:

That the Legislative Council calls on the Minister for Government Enterprises to guarantee continued safe public access to commercial jetties for recreational purposes, including fishing.

(Continued from 28 July. Page 1749.)

The Hon. P. HOLLOWAY: I thank those members who contributed to the debate.

Motion carried.

FIREARMS (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 7 July. Page 1596.)

The Hon. R.R. ROBERTS: On this occasion the Labor Opposition will not be supporting the Hon. Ian Gilfillan in his moves to change the firearms laws affecting South Australians. The Bill seeks to do a number of things. One can understand the logic of the Hon. Ian Gilfillan; I know that he puts considerable effort into considering these Bills.

The reality is that South Australians, by and large, have complied with safe gun practices for many years. It can fairly be said that South Australia led the way in firearms control up until the unfortunate incident in Tasmania, and we then asked our South Australian gun owners to comply with the Federal legislation. In many cases that meant great hardship and the loss of firearms that they had owned in some cases for many years, and in many cases they had to give up more than other gun owners who were not faced with the strict regimes that affected gun owners in South Australia.

The Bill seeks to do two or three things, and one is to ban paintball, which, I understand, is a game played by adults where, for some reason or another, they fire paintballs at one another. To my knowledge no person involved in paintball has been involved in an offence with firearms. In fact, it could be said that it is a diversion which prevents that.

The Hon. Ian Gilfillan also has an amendment which talks about the right to own firearms after a criminal offence. On the basis of logic it does have some attraction, but when we compare it with the argument that we have to fall in with the national regulations we would be placing a further impost on South Australian gun owners. Therefore, the Labor Opposition will not be supporting it.

There is another proposition in his Bill which states that there has to be an inspection of the storage of firearms. Again, I understand what the Hon. Ian Gilfillan is aiming to do, but I point to the requirements of the Federal legislation. South Australian gun owners were obliged to fall in with the national standards. During the debate on the firearms legislation when people were proposing what appeared to be sensible recommendations I remember that they were ruled out on the basis of the need for uniformity in gun laws across the country. South Australian gun owners are complying with that. It is the considered view of the Caucus of the Australian Labor Party that they ought not to have imposts different to those that apply to gun owners in other States. Therefore, on this occasion we will not support the Bill.

The Hon. IAN GILFILLAN: I thank the Hon. Ron Roberts for making a contribution to the Bill. It is a rather sad reflection on this place that no-one else has seen fit to speak to it. No-one can deny that the use and misuse of firearms is at the forefront of people's consciousness, particularly today and yesterday when there were two shootings which resulted in deaths. This only highlights the ongoing effects of having a community in which firearms are about.

The Hon. R.I. Lucas: I was told that Trevor had spoken on this.

The Hon. IAN GILFILLAN: In which case, I apologise to Trevor.

The Hon. R.I. Lucas: And to all of us.

The Hon. IAN GILFILLAN: No, I apologise to the Hon. Trevor Griffin. The issue I want to summarise to conclude the debate on the Bill is that we have an advantage over America and other countries that have more lax firearm laws because the data shows fewer casualties from the misuse of firearms, whether it be accidental or deliberate, since the buy-back. With that in mind, it is a pity not to have kept the momentum going.

I will respond to some of the comments of the Hon. Ron Roberts. First, there is no uniformity. There was a push for uniformity but there is no compulsion for uniformity: in fact, there is a variation between the States. However, there was uniformity in the agreement of the Police Ministers and the Federal Minister in the aftermath of the Port Arthur massacre. Two recommended and agreed aspects are the two that are in the Bill relating to the prohibition on a person convicted of a violent crime from having ownership of a gun for five years after the offence; and that the storage of weapons should be inspected. I repeat that the legislation covering storage is futile unless there is a process to provide a reasonable form of inspection. That is quite feasible, not expensive and important.

The third point is the effect of paintball. A lot of young people play paintball. The significance of paintball is highlighted by the work of Professor David Grossman, a retired lieutenant colonel of the American army. His book on killing is achieving worldwide notoriety as it relates to altering the mind-set of soldiers and people involved in combat to overcome our instinctive reluctance to shoot directly at one of our kind. The data on response percentages

regarding soldiers in both the First and Second World Wars indicate that 15 to 20 per cent were prepared to pull the trigger on others they could see on the opposite side: there was a remarkable incidence either of failure to fire or firing deliberately above the enemy.

The armies of the world were perplexed by that and made it a major challenge to get a higher kill intention performance from their armed forces. That was achieved, and it was dramatically illustrated in the Falklands War where the British troops were outnumbered 4:1 by the Argentinians but were five times more likely to shoot to kill. It produced the result we all know so well: the British prevailed. The way it was done, and is still being done, was to condition those armed services personnel who will have firearms to be prepared to shoot at simulated human beings. So, they are put through a completely different process. They no longer fire at a target: they fire at human images. They are made to move from position to position. Their response time has to be measured to see how quickly they can achieve it, and they get immediate gratification by seeing the immediate impact of a hit on the image.

That process has been expanded by Grossman to reflect that it has the same effect on young people who play video games where they actually hold firearms. Earlier, my example of the 14 year old who killed three people and seriously injured five others with a firearm he had not ever had to fire before dramatically illustrated that.

My point is that, although paintball may appear to be an innocuous pastime, ideally it is the training that modern trainers of armed forces use to condition their personnel to use firearms with serious intent. If that mental process occurs in the so-called game of paintball, the effect is unavoidable. It may be that only a very small percentage of people will be affected by it, but you do not need very many people with firearms and a mind-set to kill to wreak the havoc of the massacres we in Australia have endured over the last decade—and, supposedly, Australia is a low gun population and a low massacre incidence country.

It does appear as if my Bill will be defeated, but whether or not that happens it is much more important that we inculcate Australia with an anti-gun culture. The pro-gun culture does not give up. They will be delighted that my Bill has had minimal interest in this place and that it falls with hardly a murmur. When I am invited to speak, as I have been at various places—in this case on firearms control (or even on the killology or the training to kill work of Grossman)—members of the Sporting Shooters Association turn up *en masse* to be part of the debate. They are very well schooled in the sort of argument that can be proffered to debunk the position put by people who promote stronger gun control. They are very well briefed by the American Rifle Association and have a very well prepared presentation. They debunk any of the authorities one quotes to defend gun control; they try to demolish their status. Simon Chapman, who was in Adelaide for some years and who was a strong advocate of anti-tobacco campaigns, has provided some very effective analysis of gun control versus the pro-gun culture in Australia. In a public forum they ridicule his credentials, and that is just one of many.

The failure of this Bill must not be our failure to continue to fight for stronger gun control and, moving laterally, we must take the Grossman message. Grossman spoke on Radio National earlier this morning—I did not hear it. But a lot of people are listening to the message. He is saying that we are conditioning our young, that we are preparing the potential massacre perpetrator, by allowing these simulated killing activities to be portrayed as games.

The Hon. A.J. Redford: When we were kids we played war all the time.

The Hon. IAN GILFILLAN: Well, you might have, but you did not actually have what appeared to be simulated firearms with which you shot at human targets.

The Hon. A.J. Redford interjecting:

The Hon. IAN GILFILLAN: The Hon. Angus Redford raises an interesting and worthwhile point. Of course, most of us, if not all of us, have been involved in cowboys and indians and in what appeared to be the quite innocent pointing of sticks and 'Bang, Bang: you're dead.' I am not arguing that all those activities are damaging the mind-set of all the people who are perpetrators of them. Nonetheless—and I think the Hon. Angus Redford would agree—preceding generations have not been perfect in so far as there has never been abuse of firearms. I do not think that it is a black and white issue, but in my opinion the warning signs stand free from any destructive argument that, if we continue to invite exposure to graphic violence, particularly for young people, there is a conditioning of tolerance which increases to the point that in some quite graphically violent films the audience in the young and mid teens actually laugh at the graphic portrayal of death, disembowelment and blood. The argument is that that proceeds to dehumanise our instinctive responses to be reluctant to hurt and injure our fellow human beings.

I am sorry that it appears at this point as though, unfortunately, the Bill is doomed not to pass. I urge members to look very seriously at the value of the issues under this Bill and to join with me and many others in trying to retain, as far as possible, a gun free culture in Australia. If we do not take a proactive step, there will be a slide into Americanism, and I do not think anyone wants that.

The Council divided on the second reading:

AYES (6)

Cameron, T. G.	Crothers, T.
Elliott, M. J.	Gilfillan, I. (teller)
Kanck, S. M.	Xenophon, N.

NOES (15)

Davis, L. H.	Dawkins, J. S. L.
Griffin, K. T. (teller)	Holloway, P.
Laidlaw, D. V.	Lawson, R. D.
Lucas, R. I.	Pickles, C. A.
Redford, A. J.	Roberts, R. R.
Roberts, T. G.	Schaefer, C. V.
Stefani, J. F.	Weatherill, G.
Zollo, C.	

Majority of 9 for the Noes.

Second reading thus negatived.

NATIVE VEGETATION ACT

Adjourned debate on motion of Hon. M.J. Elliott:

That the regulations under the Native Vegetation Act 1991 concerning exemptions, made on 21 August 1998 and laid on the table of this Council on 25 August 1998, be disallowed.

(Continued from 2 June. Page 1295.)

The Hon. T.G. CAMERON: I oppose the motion. I have had a look at this issue and took the opportunity to go and visit a number of farming properties that were experiencing very real problems with native vegetation. I think the problem that was pointed out to me was woody weed. I looked at a number of properties with the owners of the properties and

the South Australian Farmers Federation, who were good enough to take me and one of my staff on a day visit. I also took the opportunity to discuss native vegetation issues with a number of councils on a number of country trips that I have made.

The Hon. A.J. Redford interjecting:

The Hon. T.G. CAMERON: Yes, we have set up some. Whilst I concede that there is some point in what the Hon. Mr Elliott is saying, I do not have any intention to traverse all the arguments here tonight.

The Hon. M.J. Elliott interjecting:

The Hon. T.G. CAMERON: I understand that you do support some of the regulations but there are a couple in particular that you wish to knock out. The problem with this system is that you can knock out all of them or none of them, so you get caught both ways. On balance, I will be opposing the motion. It is a pity that we are not able to accept some and reject others of these regulations.

The Hon. M.J. Elliott: They can bring them back tomorrow.

The Hon. T.G. CAMERON: I understand that if it is opposed they can bring it back tomorrow. It is a very messy process, but on balance I will be opposing the motion.

The Hon. T. CROTHERS: I have given this very careful consideration, because there are many elements of the Elliott proposition that do require very careful long-term looking. I listened to the Hon. Mr Elliott's speech. Whilst he probably has the most scientific bent in this Chamber and I heard many things that I thought were correct and proper, to me there were too many questions left unanswered. For instance, European mistletoe bears a red berry, and some of the native birds in the United Kingdom and Europe have learned to subsist on those berries as well as on other fruits which, over time, their stomachs have been evolved to digest. I do not know enough about the Australian wild mistletoe, as to whether it bears berries, but whether or not it bears berries it certainly bears careful thought in respect of its eradication if, in fact, it does bear berries and is part of the food chain for some of our rare specimens.

There is much to commend parts of the Hon. Mr Elliott's motion, but I thought it too far reaching. We have made so many other environmental mistakes in this country, such as the introduction of the cane toad, which has had its effect on the carnivorous mammalia of this nation and on other native raptors that seize on it. Young, untrained birds just out of the nest have not been taught by mum and dad that to eat the cane toad is absolutely fatal.

The Hon. T.G. Cameron: Spit it out!

The Hon. T. CROTHERS: That's what I'm trying to do.

The Hon. M.J. Elliott interjecting:

The Hon. T. CROTHERS: Stop squawking and give us a go, will you? Whilst I believe that 80 per cent of what is contained in the Elliott motion is worthy of support, it is just the fact that it is so all embracing that I think it outreaches itself in respect of the good it will do versus the harm some elements of it might also do. For that reason I shall, however reluctantly, oppose the motion.

The Hon. M.J. ELLIOTT: Luckily, this Chamber is big enough that it does not take too long to count the numbers and work out what is happening. I am disappointed that it appears that the motion will not succeed. I will not go over the substance of the debate again, but I make a couple of key points. I and the conservation groups that I have spoken with are not opposed to some 90 per cent of the regulations. In discussions I have been involved with there is no disagreement with the fact that there are some problems that the other regulations are seeking to fix.

For instance, one of the regulations that is causing concern relates to where you have perhaps a pest plant growing among native vegetation. There are some problems in the State, and that is readily acknowledged by conservation groups. Their particular concern is that, effectively, the regulation virtually gives open slather. Unfortunately, the experience with native vegetation regulations is that exemptions are often put in place for a good reason and then they are used as an avenue to cause clearance that really was not necessary.

For example, there is one famous case of a property in the Mid North where there were a number of mature trees. As I understand it an adjoining landowner catered for tourists by having picnics among these trees on the property. They were not causing any problems but the property manager took affront to this and erected a fence. He fixed them by putting in a fence, but it did not run in a straight line. He put in a fence that weaved its way around the trees and then he went in and knocked them all over. He used the regulation that allows the removal of trees along a fence line. He deliberately built a fence that wandered around these trees so that he could stop people having their picnics among the trees.

I can understand that he could have a problem with people having picnics on his property, but to stop them he used a regulation that was put there for good reason. A number of property owners do not want trees along their fence lines, but then people get smart and start doing things like that. Sometimes they cut down trees for fence posts. It is amazing how many fence posts are created under that loophole.

The problem is that a couple of these regulations, in the view of some groups, were tackling a legitimate problem but they were so wide open that they were capable of not only being used for legitimate reasons but people were able to claim that they had a pest plant problem and they no longer had to seek the sort of permission they had to seek in the past and clearance occurred. When asked why they did it, they could say, 'I had a pest plant problem.' End of story. That is what we are concerned about. Members have to acknowledge that conservationists do not want pest plants in Australia any more than farmers want them. Conservationists do not want broom and all these other things going wild. It is not that they are opposed to pest plants being removed; it is just that they are concerned about having proper checks and balances in some cases.

I am disappointed because I moved this motion of disallowance on 25 August last year—almost a year ago. I put it on notice and said to the Government, 'I am not going to rush this because I recognise the regulations are all there—

The Hon. Diana Laidlaw interjecting:

The Hon. M.J. ELLIOTT: I have not. I have not rushed this because I recognise that all the regulations were put there for good reason, and I was not trying to undermine the whole system. I spoke about the Native Vegetation Act earlier in another contribution. I am a supporter of the Native Vegetation Act, but it does have a couple of flaws, just as there are a couple of flaws in these regulations. I was quite happy—until the numbers eventuated tonight—to let it sit there in good faith, trying to give the Government a chance. The Government has not legitimately tried to discuss this issue by sitting all the parties around the table. It has consciously avoided that, and that is really disappointing. The Govern-

ment just did not tackle the issue at all. It appears that it has been lucky because, if two members of the Labor Party were still members of the Labor Party, I would have had the numbers and the regulations would have been disallowed.

By being reasonable, by doing the right thing and giving the Government 12 months to address a problem which it has not sought to address seriously at all, has worked against things, as the situation has evolved. So much for being reasonable about things.

The Hon. P. Holloway interjecting:

The Hon. M.J. ELLIOTT: Yes, you give the Government an even break and see what happens. I know absolutely that a couple of loopholes will be abused and abused badly. There is no doubt in my mind that that will happen, and I will be left to say, 'I told you so.' There is no comfort at all in saying that. It is doubly disappointing because the Government is now saying that the whole Act is under review anyway. I would prefer it if these issues, which are covered under the regulations, were tackled as part of a full review of the Act, hopefully with full consultation. It is worth noting that a whole set of regulations were recommended by the Native Vegetation Council. However, the Government did not pick them up, and they were ignored.

The regulations we are now considering came largely from a Government back bench committee rather than from the Native Vegetation Council and the Native Vegetation Branch. Again, that is very disappointing. I am worried about the direction this is all heading. We have to have something that works and produces a win:win. Unfortunately some people make problems when agriculture and environmental issues overlap. It need not be so, and I cite people like the Henschkes who have proved that you can be enormously successful without having to be an environmental vandal. A large number of primary producers know that and live that way. Unfortunately, we have a set of regulations that are open to abuse, and the truth is that there are enough people out there who will abuse them and as a result we will regret that the regulations were not disallowed. I can only say that I am disappointed. Being reasonable with the Government is not the way to go and perhaps I have learned a lesson.

The Hon. T. CROTHERS: I rise on a point of clarification. Will the Minister inquire of her colleague in another place whether or not she will consider calling for submissions from interested MPs in respect of the matter under review, that is, the Native Vegetation Act? Points have been mentioned in this Council and in the other place that might have pertinency in such a review.

The PRESIDENT: It is a most unusual request.

The Hon. T. CROTHERS: It is a point of clarification for the edification of members.

The PRESIDENT: We do not have a structure for such clarification. The debate has been closed and I have to put the motion to a vote, but I am sure the Minister will take on board the remarks the honourable was able to sneak in.

The Council divided on the motion:

AYES (10)

Elliott, M. J. (teller)	Gilfillan, I.
Holloway, P.	Kanck, S. M.
Pickles, C. A.	Roberts, R. R.
Roberts, T. G.	Weatherill, G.
Xenophon, N.	Zollo, C.

NOES (11

Cameron, T. G.	Crothers, T.
Davis, L. H.	Dawkins, J. S. L.
Griffin, K. T.	Laidlaw, D. V. (teller)

NOES (cont.)

Lawson, R. D.	Lucas, R. I.
Redford, A. J.	Schaefer, C. V.
Stefani, J. F.	

Majority of 1 for the Noes.

Motion thus negatived.

MEMBERS OF PARLIAMENT (REGISTER OF INTERESTS) (RETURNS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 17 February. Page 703.)

The Hon. P. HOLLOWAY: The Opposition supports this Bill. This is the first Bill in our Bill folder, so it has been around for quite some time. It was introduced by the Hon. Terry Cameron last year. It is identical to a Bill that he introduced in 1996, which was supported by the ALP Caucus. The Opposition believes that the case in favour of the Bill now is just as strong as if not stronger than it was then. The fact is that there are loopholes in the current MPs Register of Interests. The Hon. Terry Cameron, in his second reading explanation to the Bill, explained some of them in relation to business arrangements and investment vehicles. We believe that these loopholes should be closed.

It is fortunate that, within this State, there have been very few occasions when allegations or insinuations have been made against members of Parliament regarding their pecuniary interests. That is a fortunate thing, and it probably indicates that the quality of our register and the ethics of members in this area in this Parliament are higher than in other Parliaments, particularly the Federal Parliament. Over the past few years in the Commonwealth Parliament there have been a number of instances of what I believe have been quite serious breaches of ethics in relation to pecuniary interests. We certainly would not like to see that here.

We should close any loopholes. I will indicate some of them, as they were pointed out by the Hon. Terry Cameron, since it was so long ago. He is proposing a reduction from 50 per cent to 15 per cent in an MP's shareholding in a family company before full disclosure of the company's investments is required. That is an eminently sensible measure. Similarly, the honourable member provides a requirement to declare the assets contributed by another party to a joint business venture arrangement with an MP, to ensure that all assets from which an MP derives financial benefit are disclosed; a requirement to disclose all investments in a superannuation scheme, established wholly or substantially for the benefit of the member of Parliament, their family, a family company, a family trust or some joint venture in which the member has an interest; removal of the present exemption for declarations in relation to a testamentary trust; and so on. There is a good case for closing these potential loopholes in our Members of Parliament Pecuniary Interests Register. As I said, we have not had some of the problems that we have seen particularly in the Commonwealth sphere, and let us hope that we do not. Our tightening up this register is one way in which we can help guard against that happening. We support the Bill.

The Hon. T.G. CAMERON: I thank all members for their contributions and record my appreciation to the Australian Labor Party, the Australian Democrats, the Independent Labour member, and the Independent No Pokies member, the Hon. Nick Xenophon, for their—

The Hon. K.T. Griffin interjecting:

The Hon. T.G. CAMERON: If you would be silent for a moment and let me finish my sentence, you would find that I was going to thank them for their indicated support for the Bill. I thank the Hon. Trevor Griffin for his interjection, because he reminded me that someone had not spoken on this Bill. One of the things that should be noted in connection with this Bill is how few members of the Government were prepared to outline their opposition to the Bill.

I also place on the record my disappointment at the Government's attitude towards this Bill and, in particular, its attitude towards me as the person who introduced the Bill. I cannot recall—and I think this Bill has been before this Parliament twice—that any Government member, including the Attorney, indicated to me that they were prepared to sit down and talk about this Bill. That is all right; that is the Government's prerogative. However, I would contrast that to the attempts I make to meet with the Government on all occasions and to discuss with it any Bill or matter that it wishes to raise with me. I wonder where the Government would sit if I adopted the same position that it adopted on Government legislation. It is just interesting to note.

I do not believe for one moment that people such as the Attorney-General, the Hon. Robert Lawson QC, the Hon. Angus Redford and the Hon. Legh Davis, with his legal background and his knowledge of accounting and tax matters, do not agree with all the comments that have been made by those who spoke in favour of this Bill that there are loopholes in the current legislation. I take on board the Attorney's comments when he says that he believes that I am attempting to go too far with the Bill that I have before the Parliament. That may be the case, but the Government could always amend the legislation or indicate to me specifically where I have gone too far, and I would always be more than prepared to discuss alternatives with it.

The simple fact is that this legislation was drawn up a long time ago, and the world has moved on since then. One example is superannuation trusts. Any member of this Parliament could have $5 million sitting in their own personally managed superannuation trust. I declare that I do have a personal superannuation trust, but I hasten to add that it does not contain $5 million. Be that as it may, a member of this Council could have $5 million sitting in their own personal superannuation trust and they could be shareholders in Morgan Stanley. They would not have to declare an interest: they could keep their interest completely cloaked under the secrecy of their superannuation trust and no-one would ever know that there had been a conflict of interest and that a member of this Parliament had used his position to further their own financial interest.

As I said when I introduced this Bill, I am not suggesting for one moment that any member of either House of Parliament of any political Party is currently in breach of the existing Act or would be in breach if my Bill was passed in total. However, it will not be lost on those members of the public who are interested in matters such as this as to why Government members on two occasions have unanimously opposed this Bill and have failed at any time to indicate that they are prepared to support even one clause in it. They will be judged on that.

The Council divided on the second reading:

AYES (11)

Cameron, T. G. (teller)	Crothers, T.
Elliott, M. J.	Gilfillan, I.
Holloway, P.	Kanck, S. M.
Pickles, C. A.	Roberts, T. G.

AYES (cont.)

Weatherill, G.	Xenophon, N.
Zollo, C.	

NOES (8)

Dawkins, J. S. L.	Griffin, K. T. (teller)
Laidlaw, D. V.	Lawson, R. D.
Lucas, R. I.	Redford, A. J.
Schaefer, C. V.	Stefani, J. F.

PAIR(S)

Roberts, R. R.	Davis, L. H.

Majority of 3 for the Ayes.

Second reading thus carried.

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

That this Bill be given consideration and that the Committee stage be moved to the next Wednesday of sitting.

Motion carried.

WINGFIELD WASTE MANAGEMENT CENTRE

Adjourned debate on motion of Hon. Sandra Kanck:

That the following be referred to the Standing Committee on Environment, Resources and Development—

1. The economic, social and environmental impacts of the closure, at various heights, of Adelaide City Council's Wingfield Waste Management Centre;
2. The economic, social and environmental impacts of transporting waste to alternative near metropolitan and rural waste depot sites as a consequence of the closure of the Wingfield Waste Management Centre; and
3. Any other related matter.

(Continued from 26 May. Page 1195.)

The Hon. T.G. ROBERTS: The Labor Party supports the motion promoted by the Hon. Sandra Kanck. I will not go into too much detail. It is a referral motion to a committee. The committee will consider it and will report back to the Council.

The Hon. SANDRA KANCK: I thank honourable members for their speeches on this motion. The Government's position was fairly predictable. I am a little bit more elated about the Opposition's support for the motion. Certainly, I have believed, as I made clear when I first moved the motion, that the matter of the Wingfield Waste Management Centre and its height closure still needs to be properly and scientifically resolved, and the information provided for the Parliament when a Bill was passed earlier this year to set a height closure did not have that adequate scientific information.

We had recommendations made by the EPA, which we have seen in recent times to have made some very dodgy decisions. The recommendation about where one should locate a foundry in Mount Barker is one. We have seen a somewhat dismal performance on the Port Stanvac oil spill. I raised a question this afternoon about recommendations that the EPA had made about what one does with the filters from cars and trucks when they are changed. Again, they seem to be developing a record of giving poor advice. I think it is going to be valuable for the ERD Committee to be able to look at this and to be able to get independent scientific advice. So, I thank members for their contributions.

The Council divided on the motion:

AYES (9)

Elliott, M. J.	Gilfillan, I.
Holloway, P.	Kanck, S. M. (teller)
Pickles, C. A.	Roberts, R. R.
Roberts, T. G.	Weatherill, G.

AYES (cont.)

Zollo, C.

NOES (12)

Cameron, T. G.	Crothers, T.
Davis, L. H.	Dawkins, J. S. L.
Griffin, K. T.	Laidlaw, D. V. (teller)
Lawson, R. D.	Lucas, R. I.
Redford, A. J.	Schaefer, C. V.
Stefani, J. F.	Xenophon, N.

Majority of 3 for the Noes.

Motion thus negatived.

ELECTRICITY, PRIVATISATION

Adjourned debate on motion of Hon. Mr Xenophon:

I. (a) That in the opinion of this Council a joint committee be appointed to inquire into and report upon the South Australian electricity market arrangements and the impact these arrangements have had and are likely to have on electricity prices and security of supply for South Australian consumers, and in particular, to inquire into—
  (i) local generation options;
  (ii) regulated interconnectors; and
  (iii) unregulated interconnectors.
(b) And that this committee assess these arrangements as to their ability to achieve the most economically efficient outcome for South Australia.

II. That in the event of a committee being appointed, the Legislative Council be represented thereon by three members, of whom two shall form a quorum of Council members necessary to be present at all sittings of the committee.

III. That joint Standing Order No. 6 be so far suspended as to entitle the Chairperson to vote on every question, but when the votes are equal, the Chairperson shall have also a casting vote.

IV. That the joint committee be authorised to disclose or publish, as it thinks fit, any evidence and documents presented to the joint committee prior to such evidence and documents being reported to the Parliament.

V. That a message be sent to the House of Assembly requesting its concurrence thereto,

to which the Hon. Sandra Kanck had moved the following amendment:

Paragraph 1—Leave out all words after 'the South Australian Electricity Market arrangements' and insert—
their relationship to the National Electricity Market and the impact these arrangements have had and are likely to have on electricity prices and security of supply for South Australian consumers and, in particular, to inquire into—
(i) local generation options including the appropriateness of the disaggregation arrangements made in South Australia and the potential for the use of ecologically sustainable energy and demand management;
(ii) regulated interconnectors;
(iii) unregulated interconnectors;
(iv) the need for a State energy policy;
(v) the need for a Standing Committee of the Parliament to monitor South Australian involvement in the Electricity Market and;
(vi) any other related matter.
(b) And that this committee assess these arrangements as to their ability to achieve the most economically efficient and ecologically desirable outcomes for South Australia.

(Continued from 7 July. Page 1605.)

The Hon. CARMEL ZOLLO: On 2 June 1999 my colleague the Hon. Paul Holloway indicated that the Opposition intended to support this motion. Since that time we have seen the legislation to privatise our power utility pass this Parliament, on 10 June. Following the passage of that legislation the Opposition has reconsidered its stance on its motion. On behalf of my colleague who cannot speak again in this debate I wish to place Labor's position on the record. The Opposition has repeatedly made it clear that we see the Parliament's decision to support a long term lease of ETSA as irreversible. We believe it now would not be prudent to continue to support the setting up of a joint committee to primarily inquire into and report upon the SA electricity market arrangements, and the impact these arrangements have had and are likely to have on our electricity prices and security of supply to South Australian consumers. Such an inquiry could detract or obstruct negotiations for the long term lease of the utility.

While we do not support privatisation, we believe that the optimum long term benefits for the State should now be negotiated from the lease process. We appreciate that the privatisation of electricity assets will involve lengthy and complex due diligence and should be free from distractions such as the proposed inquiry. However, I commend the Hon. Nick Xenophon for the initiative in seeking to set up a joint committee of the Legislative Council and the House of Assembly. We in the Opposition appreciate his obvious commitment to see the introduction of a truly competitive market in South Australia and hence the appropriate flow-on benefits to consumers in South Australia.

As my colleague the Hon. Paul Holloway said during his contribution, it is extraordinary that the introduction of such reforms in this country have occurred with almost no specific debate in Parliament and, in particular, the State Parliaments. Clearly, it would have been in this State's best interests to first have had a good look at various aspects of South Australia operating under the national electricity market.

Another concern of the Opposition is that the nature of the electricity industry will change dramatically after privatisation, and it is likely that any conclusions of a select committee based on the current structure of the industry will soon become obsolete. Following the passage of the Electricity (Miscellaneous) Bill, an Electricity Supply Industry Planning Council and other bodies will be established. It would make sense to address many of the terms of reference should that be required when the new private operators of the industry and the Government regulatory and planning bodies are established.

We believe that the future of the electricity industry under private ownership remains a vital issue for this Parliament and it is inevitable that key questions concerning the Government's role in a privatised industry will ultimately need to be considered by Parliament. It is for these reasons that the Opposition will not support the motion, should it proceed to a vote now. Our preferred position is that the motion be adjourned and revisited next year when the lease process is concluded. In taking this position we believe it was appropriate for the Hon. Nick Xenophon to raise this matter when he did, and we dissociate ourselves from many of the incorrect and patronising remarks made by the Treasurer on this matter in his speech on 7 July.

The Hon. M.J. ELLIOTT: I rise to speak briefly in support of this motion. When the debate was going on about electricity legislation generally, it appears to me that people made the mistake of focusing very much on one issue, and that issue was the issue of privatisation itself, when I think there were some other fundamentally important questions that essentially got ignored during that debate, but they were relevant to the debate. One question was about the structure of the electricity industry—what structure in private hands

and what structure in public hands would produce the best price? When I say the 'best price' I do not mean the best price for the Government in selling it but what would give us the most competitive power prices.

I think a far bigger question, and one which the Hon. Sandra Kanck has sought to include in her amendment, is a State energy policy. We have focused on electricity alone, but electricity is only one way that energy may be used in a workplace: it may be delivered as gas, and there are other options as well. It would be very dangerous to focus on electricity alone and not to look at the issue in a wider context.

Since the passage of the legislation, I have had occasion to talk with a number of senior business people from around the State—and when I say 'senior' I mean very significant players in South Australia—and I can tell members that they are deeply concerned about the future. In fact, there has been a dawning realisation amongst some of them that power prices are about to increase, and they are becoming quite concerned. Unfortunately, the Employers Chamber allowed itself to be trapped in the debate about private versus public, which was almost a rhetorical debate; and some people got caught up in the debate about State debt. I am saying not that those are unimportant questions but that there are two other very important fundamental questions: the question about the best structure within the electricity industry to deliver the best price of electricity for both domestic consumers and business users; and that is really a subset of a much bigger debate about State energy policy generally. There is not a State energy policy, and it is quite appalling that we are making decisions about the electricity market in a vacuum.

The Hon. T.G. Cameron: What vacuum are you talking about?

The Hon. M.J. ELLIOTT: In a policy vacuum. The Government went to an election saying that it would not sell and it did the opposite.

The Hon. L.H. Davis interjecting:

The Hon. M.J. ELLIOTT: It is a vacuum because it was an *ad hoc* decision. What about Boral, which went through proper planning processes and was about to build a plant of the same size and, having gone through due process, found another group being fast-tracked. That is not the essence of the proposal: I am saying that it was *ad hoc* and was not part of a State energy policy. It seems to me—

The Hon. L.H. Davis: The Democrats don't mind the odd blackout? They have enough of them.

The Hon. M.J. ELLIOTT: If you had one you would do the world a favour.

Members interjecting:

The Hon. M.J. ELLIOTT: Permanent, yes: close him down. He's redundant; ancient infrastructure. He has been around for too long, and the generator is clapped out and delivering no power.

Members interjecting:

The PRESIDENT: Order!

The Hon. M.J. ELLIOTT: The decision about the sale of electricity has been made, so this committee is not about the correctness or otherwise of that: it seems to me that this committee is about where we go from here, and hopefully in an apolitical climate, because there is potential for an awful lot of politics to climb in over the next couple of years. Frankly, South Australia is paying too much for gas, and right now the politics of gas and the linkages can be quite dangerous.

The Hon. T.G. Cameron: When Labor is in government, Santos will tip some money into its pockets and, when the Liberals are in government, some money into their pockets.

The Hon. M.J. ELLIOTT: By way of interjection, the Hon. Terry Cameron has reflected on the capacity of some companies to be able to assist political Parties from time to time. I believe that, if members take the time to look at this motion, they will find that it is really about looking to the future. It seems to me that there is nothing about this proposed committee and the motion that refers to the past. It would be extremely helpful if we had members from both places and all political Parties having the opportunity, in a non-partisan fashion, to look at the energy future of this State. That is one of the fundamental questions, along with water, and population perhaps: there are probably three or four fundamental questions that really need to be addressed.

It would be a great pity if members of the Council did not look at the motion carefully and did not see that it does not reflect upon decisions made but looks to the future, particularly with the amendments moved by the Hon. Sandra Kanck, which broaden the debate into the necessary energy debate—a debate that this State desperately needs.

The Hon. T.G. CAMERON: I indicate that SA First and Independent Labour, after having given the motion very careful consideration, will not be supporting it at this time. The Hon. Nick Xenophon and the Hon. Rob Lucas would be aware that I have also entered the debate in relation to regulated and unregulated interconnectors. I do not accept what the Hon. Mike Elliott said, that the decision to go ahead with Pelican Point was *ad hoc*: I think that it was more a decision based on necessity, that is, that if we do not do something quickly, we will end up having power blackouts here in the summer of 2000 and 2001. I would have thought that any Government would be un-electable if it were to preside over blackouts for South Australian industry and domestic consumers.

With this motion the Hon. Nick Xenophon has put the spotlight on some of the issues that can impact on electricity prices. There is no doubt that, unless one is very careful about the interaction between supply and demand and unless one creates a tension in that competitive market, electricity prices will rise, and rise quite quickly. I do not take issue with the Hon. Nick Xenophon when he talks about the need for interconnectors, but I think he appreciates that I do not necessarily agree with the position as outlined by Professor Blandy.

My quarrel with the position adopted at that time was, 'Let's welcome all interconnectors into South Australia. The more electricity we have feeding into South Australia, the more likely we are to put real downward pressure on electricity prices.' My quarrel was whether it should be via a regulated or an unregulated interconnector. I think that that matter should be looked at, and whether it be by a joint committee or a committee of this Council or the House of Assembly is a moot point. When one considers the importance of electricity, one can be persuaded that the way to go is with a joint committee.

I have looked at the amendment moved by the Hon. Sandra Kanck and I think that it adds another dimension to the motion moved by the Hon. Nick Xenophon. At a more appropriate time I would be prepared to support the amendment which was moved in her name and which picks up all the matters contained in the Hon. Nick Xenophon's proposal plus a couple of others that I believe add to it.

However, like the Australian Labor Party, I do not believe that now is the appropriate time to commence an inquiry into these matters. Some individuals—I do not include the Hon. Nick Xenophon in this—may seek to make mischief on this committee while the 99 year ETSA lease is being processed. I would not like to see this Parliament take any action which in any way could impact upon the price that we get for the lease of our ETSA assets. As we are all well aware, every cent that is obtained from that process will be used to discharge debt. That must be seen as a priority for South Australians.

Whilst I support the intent of what the Hon. Nick Xenophon seeks to do with this measure and the need for a proper debate—and perhaps an inquiry is the appropriate way to do that—into local generation options, regulated interconnectors and unregulated interconnectors, at this point I will not support the resolution. But, once the ETSA leasing process is finalised, I invite both the Hon. Nick Xenophon and the Hon. Sandra Kanck (if the resolution fails today) to collaborate and put forward a joint resolution on this subject at a subsequent date. I indicate that at this stage I would support such a resolution at that time.

The Hon. T. CROTHERS: I support what my SA First colleague and members of the Labor Party have said in that time is somewhat of the essence in endeavouring to get in place a lease as quickly as possible without there being any strictures on the capacity of the negotiators to construct and obtain a suitable lease to maximise what we get. In addition, this is essential because the next move in interest rates will be up. With respect to the amount of principal on which our interest is payable, $7.5 billion, Greenspan has said—and the markets seem to indicate this—that interest rates will increase reasonably substantially. The effect of this will be to impose substantial increases on the weekly interest bill, which will be a burden for all citizens of this State.

So, it is in the best interest of stopping an enhancement of our debt by increased interest rates to deal with the question of the lease as expeditiously as possible. I believe that there are very good grounds for the Xenophon proposition amended by Sandra Kanck to be revisited in this Parliament once the leasehold arrangements are in place. I oppose the Xenophon proposition and the Kanck amendment.

The Hon. NICK XENOPHON: I thank members for their contributions. I am most disappointed that, in effect, the Labor Party has done a backflip on this issue. I do appreciate the eloquent and supportive remarks of the Hon. Carmel Zollo, but more so I appreciated the Hon. Paul Holloway's remarks of 2 June 1999.

An honourable member interjecting:

The Hon. NICK XENOPHON: Perhaps I should ignore the Hon. Legh Davis, because some of us would like to get home before—

Members interjecting:

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order! The Hon. Mr Xenophon has the floor.

The Hon. NICK XENOPHON: On 2 June 1999 the Hon. Paul Holloway said:

> Regardless of the ultimate ownership of the electricity industry—whether it is private, Government owned or a hybrid (as we effectively have at present with National Power coming into it)—it is necessary that there should be some parliamentary oversight of that industry and some input into its development.

I could not agree more with the Hon. Paul Holloway's remarks in that regard. The Hon. Terry Cameron says that he cannot support this motion at this time. For reasons on which I will elaborate, this is the time to deal with it. The Hon. Trevor Crothers says that time is of the essence—and I agree with him. There ought to be a very clear inquiry into the nature and structure of the electricity industry in this State before we go through the privatisation process.

Members interjecting:

The Hon. NICK XENOPHON: Well, on 7 July I proposed a motion to establish a parliamentary committee of inquiry into the structure and operation of the electricity market arrangements. It is a case of better late than never. I proposed these arrangements for two main reasons. In practice, South Australia will not be able to alter the arrangements once the electricity assets have been sold. The Treasurer knows this, and that is why he urged Parliament to agree, if it must, to an industry inquiry after the completion of the lease process. My position is that an inquiry after the fact is a waste of time and money.

In the past, the Treasurer has consistently avoided answering fundamental questions regarding the details of the market arrangements, for instance, the details of the Pelican Point contract, the gas supply arrangements for Pelican Point, restrictions on ETSA Power's ability to compete on a level playing field, the Government's backflip on Riverlink, and the vesting contract arrangements—although it is pleasing to see that there has been some movement in relation to the vesting contract arrangements relatively recently.

The reason for this inquiry is probably best illustrated by the Treasurer himself. The Treasurer attacked me in Parliament for suggesting that the reforms in South Australia were aimed at protecting the value of electricity assets and not focused on making the community better off through lower prices. It would be fair to say that the Treasurer was indignant that I should suggest such a thing. On 7 July, the Treasurer, in his plea to Parliament to reject any notion of proceeding with this inquiry, said:

> The Government, on behalf of the taxpayers of South Australia and now on behalf of the Parliament, has commenced going through a difficult process of trying to maximise the value of lease contracts for our electricity businesses.

It really begs the question: what are the Government's policy objectives? Are they about maximising the price or about protecting consumers and delivering benefits through lower prices via the electricity industry in this State? I would have thought the latter to be much more important, and the issue of price is important. If it is all about competition, it should be about cheaper prices for consumers and manufacturing industry in this State so that jobs can grow and so that we as a State can prosper with a strong manufacturing base.

The Treasurer may claim that because buyers pay what he describes as 'top dollar' it does not mean that customers do not benefit. The Treasurer may assert that a sale process which delivers an enormous amount of money in terms of debt reduction is the primary objective but, if as a result of achieving that objective the consumers of this State end up paying a disproportionate amount in relation to increased private taxes in terms of additional electricity charges, it seems entirely counterproductive.

We should not be under any illusion that the buyers of these electricity businesses do not know their business. They know it much better than this Government, the Opposition, me or anyone else in this Council: they are experts at it. If these buyers pay top dollar, they will expect to make top

dollar, plus some, from South Australian electricity consumers. Unless we have the competitive framework right and market arrangements in place that maximise competition, I fear that consumers and businesses will miss out.

If top dollar is paid for these assets, this will no doubt reduce debt, and that is important. But what is the long-term effect on the State in terms of lower electricity prices and what is the long-term effect on the State in terms of the impact on small businesses, larger businesses and particularly significant manufacturing concerns, where electricity prices are a significant input? That is the question that this inquiry would fundamentally deal with. What I find particularly curious is that in recent months the Labor Party seems to be no longer asleep at the wheel on the question of electricity reform. The shadow Treasurer, Mr Foley, has recently spoken about a competitive market, stating that it is important that lower prices be delivered, yet the Labor Party does not support this motion.

This is a case of an inquiry now or never, in many respects, for the inquiry to be fully effective, to be meaningful and to deliver benefits to the community as a whole. Once the current policy is implemented, there is no going back. It is almost the same as the GST: it is there for good. No foreign buyer who has paid top dollar will let the Government come along afterwards to tear the market apart and make it more competitive. I expect that a major corporation that has paid hundreds of millions if not billions of dollars for these assets will be fighting tooth and nail to keep its market position and not to affect its cash flow in the way in which a cutthroat competitive market inevitably would.

I do not know what the Government's position is in relation to this. At one moment the Government seems to be portraying itself as a born again reformer committed to low prices, and at the next it wants to maximise the value of the businesses to get top dollar. Surely there ought to be a priority, and the priority ought to be the consumers and businesses in this State. On 23 June this year in the other place Mr Foley challenged Mr Lucas on the issue of competitive pricing, and talked about the Pelican Point power station. He said:

> What is important for this State is long-term viability of our manufacturing industry. That is where jobs will be created in the long run. If you are saying that it is worth risking the optimum outcome of a market structure so that we can have a power station employing 35 South Australians whilst our manufacturing industry is put at risk because it does not have the cheapest power, I would find that logic somewhat bizarre coming from a Treasurer in office.

And 'bizarre' is what characterises this whole issue. What is more bizarre is that the ALP is now not supporting this inquiry. On the issue of Riverlink there has been a backflip on the part of the Government. When the Premier was infrastructure Minister he signed a memorandum of understanding with the New South Wales Government. He no longer supports that. Until the Premier changed from his avowed opposition to selling the community's assets, he was a zealous proponent of Riverlink. That is on the record. He was arguing that it was the cheapest and best option for the State. His now discredited position is well known, and I have a very real concern that consumers will miss out. I hope I am wrong: I hope that history judges me to be entirely wrong. The Hon. Legh Davis may shake his head on this, but—

The Hon. L.H. Davis: I will do more than shake my head.

The Hon. G. Weatherill: What else are you shaking?

The Hon. NICK XENOPHON: In response to the Hon. George Weatherill, I do not know what else the Hon. Legh Davis is shaking.

The Hon. L.H. Davis interjecting:

The Hon. NICK XENOPHON: I suggest that the Hon. Legh Davis is being somewhat mischievous in relation to that. He should read the material that has been forwarded to him. These sudden changes of heart worry me and they should worry this Parliament and the community at large. I believe that some fundamental errors have been made in terms of policy, but that is why an inquiry could get to the bottom of this. That is why an inquiry could get to the truth of the matter in terms of the structure—

The Hon. L.H. Davis: You don't think time is important in this?

The Hon. NICK XENOPHON: I agree with that wholeheartedly.

The Hon. L.H. Davis interjecting:

The Hon. NICK XENOPHON: Obviously, the Hon. Legh Davis has not been paying due attention to what I have been saying. This is the best opportunity for us, perhaps our last and best hope to get it right in terms of the structure of the electricity industry. With the Hon. Legh Davis, I want a good outcome for consumers in this State, but it seems to me that the Government's policy direction is entirely the wrong direction, and a direction that will be disastrous in the long term for manufacturing industry. That is the feedback I am getting from businesses that contact me that are concerned about this issue. I do not think that the Government will hear the end of it.

Going back to the Government's position on Riverlink, one minute the Government is saying that it is the best option for the State and the next we are giving a foreign company a 20 month contract with unknown terms so that we can effectively have 35 South Australians employed. It simply does not make sense. In relation to a regulated or unregulated link, one of the key points of the inquiry, the Treasurer has said that a regulated link is expensive, that it implies that it is subsidised, that it will require a guaranteed stream of payments of $20 million a year for the next 40 years and that it does not compare well with other options in terms of the competition it provides in South Australia.

On this basis, the Treasurer has said that he will not provide any assistance to a regulated interconnector but supports an unregulated investment. Let us look at that. More than half of consumers' electricity costs are currently and will continue to be regulated in the national electricity market and in South Australia. It must therefore follow, if we believe the Treasurer, that all these regulated costs in South Australia are inflated and contain subsidies. If this is the case, why is the Treasurer not trying to convert all regulated assets into unregulated assets? To gain regulated status the investment must show unambiguously that it is the lowest cost option. I am pleased the Treasurer has joined us. Therefore, by definition—

The Hon. R.I. Lucas: You're still singing the same tune.

The Hon. NICK XENOPHON: But what a beautiful tune it is! By definition a regulated interconnector guarantees that customers are supplied at lowest possible costs; unregulated interconnectors do not make any such guarantees.

The Hon. L.H. Davis interjecting:

The Hon. NICK XENOPHON: I find the remarks of the Hon. Legh Davis offensive. I think that if he is suggesting that I—

The Hon. L.H. Davis: If the cap fits, wear it.

The Hon. NICK XENOPHON: I think it is a very offensive comment. The Hon. Legh Davis is suggesting that I am not acting in terms of my own beliefs in the best interests of the State. I am not here to give any free kicks to New South Wales—

The Hon. L.H. Davis: You take more notice of the New South Wales Government than you do of the South Australian Government.

The Hon. NICK XENOPHON: I take notice of the NEMMCO decision.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Xenophon will keep going with his remarks.

The Hon. NICK XENOPHON: I refer members to the NEMMCO decision in terms of Riverlink: it said that it was the lowest cost option but it was a question of timing. If a regulated interconnector becomes less valuable to customers in the market, the ACCC is obliged to reduce the price in line with the decline in value, therefore there is no guarantee of revenue for investors. If the Treasurer needs any convincing that this can and does happen, he only needs to look east. The ACCC has recommended an annual reduction of some $30 million to $40 million per annum in Transgrid's annual revenues, because the ACCC did not believe that customers valued their assets as much as Transgrid. The same can and will happen to any regulated investment in the national electricity market, including Riverlink.

'Regulated' does not mean 'guaranteed'. Riverlink is by far the cheapest option available to South Australia, looking at the NEMMCO decision. The Treasurer has consistently claimed that he will have to guarantee payments of $20 million per annum for 40 years. Lately he has graciously downgraded these wild claims to figures as low as $10 million on occasions. Again, the facts do not support these claims, and it is important that they be put on the record. A recent analysis has shown that the cost of Riverlink for South Australia will be approximately $15.9 million in 1997 dollars, amortised over 40 years. This produces an annual cost in 1997 dollars of $1.27 million. That is less than one fifteenth of the cost the Treasurer has put as the annual cost of SANI for the State, of $20 million per annum. The most recent estimates by NEMMCO place a total capital cost of developing SANI at $104.5 million—

The Hon. L.H. Davis interjecting:

The Hon. NICK XENOPHON: —look at the NEMMCO analysis—with the South Australian share accounting for $35.9 million. However, the South Australian proportion of costs may be partly reduced by future network developments in South Australia. In particular, it appears likely that the Riverland augmentation will be completed prior to the construction of SANI. This would enable SANI to construct the South Australian network close to the border rather than at Robertstown as presently proposed, substantially reducing the costs of SANI. Detailed estimates of the cost of constructing SANI after the Riverland augmentation have not been prepared, but preliminary analysis indicates that the cost to South Australia may be reduced by as much as $20 million in 1997 dollars.

The implications of this analysis are that, if the Riverland augmentation goes ahead, the cost of SANI (whenever it is developed for South Australia) will be approximately $15.9 million (in 1997 dollars) amortised over 40 years to produce a cost of $1.27 million (in 1997 dollars). A fully loaded Riverlink of 250 megawatts—and there is little reason why it will not be fully loaded given the high cost of South Australian power stations—would involve a capital cost of some 60¢ per megawatt hour. This compares very well with Pelican Point. If we include just the capital cost of Pelican Point alone, and even if the plant was run flat out (which they will not do), the cost will be $8.50 per megawatt hour, assuming $400 million for a 500 megawatt Pelican Point power station. This means that Riverlink is less than a fifteenth of the cost of Pelican Point, and that does not even include the high cost of paying monopoly gas prices to run the power station. That is a very real concern.

I will be concluding shortly, Mr President. I am sure I have some agreement from the Treasurer. I have touched on only two aspects of the Government's electricity reforms that some people may well say put us in a Clayton's competitive market. In both cases, I think it is clear that there are inconsistencies in the Government's position and that there are errors of fact in relation to the costs of Riverlink, and I do not believe that as a Parliament we will be able to serve the interests of the public with an inquiry after the electricity businesses have been privatised. If we are not convinced that the arrangements will not support an effective South Australian economy into the future, then we must act now. However, I am trying to be a practical person in relation to this. I recognise that a far-reaching drawn-out inquiry will distract the privatisation process and it is not intended to have that effect.

This can be a short, sharp inquiry that is directed to some positive outcomes in terms of the structure of the electricity market. I do not accept at all that an inquiry will necessarily be detrimental to the lease price and, now that we have gone down this path, I sincerely wish that the Government gets the best possible price but tempered in the context of the competitive market, a market that will deliver net benefits to consumers. An inquiry that reveals the facts and allows the Government to defend and explain the details of the market arrangements can serve to silence critics such as myself—it may silence me once and for all! As they say, silence is golden. It seems that this Government takes the approach that silence means tacit support for these arrangements and it may mean greater certainty for buyers—and this will be reflected in higher prices for the assets—but it could also mean significantly higher prices for consumers.

Most of my concerns relate to the competitiveness of the generation sector. That is the only sector about which the Government, in terms of regulatory framework, effectively can do nothing once the assets are sold. There is no prospect of regulating private generators ever again. We have a regulatory framework for which I commend the Treasurer in relation to the poles and wires, the transmission, but concerning generators there is a big gap in terms of the regulatory framework because that is the way in which the market operates. I understand that. However, if new owners of the generators have unchecked market power, and I believe that this is a risk, then there is nothing that this or an alternative Government can do about it. The South Australian electricity customers will just have to pay the prices that these generators demand in the absence of a fully competitive market.

Generation assets will be sold last. This means that we have time to conduct a review of the market arrangements, and I believe that a focused inquiry that examines the arrangements that impact on the competitiveness of the generation sector would at least be a compromise solution. I commend the motion to members.

Amendment negatived.

The Council divided on the motion:

AYES (4)

Elliott, M. J.	Gilfillan, I.
Kanck, S. M.	Xenophon, N. (teller)

NOES (17)

Cameron, T. G.	Crothers, T.
Davis, L. H.	Dawkins, J. S. L.
Griffin, K. T.	Holloway, P.
Laidlaw, D. V.	Lawson, R. D.
Lucas, R. I. (teller)	Pickles, C. A.
Redford, A. J.	Roberts, R. R.
Roberts, T. G.	Schaefer, C. V.
Stefani, J. F.	Weatherill, G.
Zollo, C.	

Majority of 13 for the Noes.

Motion thus negatived.

CONSTITUTION (CITIZENSHIP) AMENDMENT BILL

In Committee.

Clause 1 passed.

Clause 2.

The Hon. CARMEL ZOLLO: Will the Hon. Angus Redford explain the mechanics for the next election and the intention under this clause for future elections?

The Hon. A.J. REDFORD: I thought I was going to get something tricky. It is simple. To get here, the honourable member went through an election, although she may not recall it. We have an election and the Act comes into operation 14 days prior to the election: 14 days after the House of Assembly is next dissolved or next expires, this Act comes into existence. It is pretty straight forward.

The Hon. CARMEL ZOLLO: Will the Hon. Mr Redford confirm that one has to renounce any perceived heritage before nominating?

The Hon. A.J. REDFORD: That is correct. I correct the member: we are not talking about renouncing heritage. There has been much misinformation about this. It is basically renouncing foreign citizenship. No-one has suggested at any stage of the debate that anyone would ask for any renunciation of anyone's heritage. No Parliament, no legislature and no law could ever do that. Your heritage is part of you.

The Hon. CARMEL ZOLLO: Can the honourable member confirm that the provision affects candidates?

The Hon. A.J. REDFORD: Yes, I do confirm that.

The Hon. T. CROTHERS: I am concerned about this clause and others so I will direct my question to the Hon. Angus Redford. I am advised on good legal advice regarding my being a son of the native heath of Ireland and an Australian citizen, whose only passport has ever been an Australian passport. I am concerned that this Bill involves the laws of other nations that we cannot control. For instance, since the 26 counties of Ireland gained their independence as an independent republic, their Constitution commits any citizen born in Ireland to claim citizenship of Ireland and to travel on an Irish passport. Moreover, should that position be embraced, that Irish citizenship is also inherited by the son and daughter and the grandson and granddaughter of such an Irish born person, even to the third generation. The impact of this Bill, if carried, on my legal advice, would rule out Australian born citizens from the right to run as a parliamentary candidate even to the third generation.

I can further travel on a British passport. I have never had a British passport, nor do I ever intend to claim one. I do not know what the laws of that nation are regarding its former citizens who have taken up other citizenship, as I have done. What concerns me—and it is the question I put to the Hon. Angus Redford, and I put it because I have had legal advice on this matter—is this: how can you carry a law such as this imposing certain obligations on people who are running for Parliament, for example, when you have the conferment or the claimant of Irish citizenship being passed through to the second and third generations? What rectitudinality is there in that that would deny Australians of the second and third generation of an Irish parent born here the right to run for any Parliament in this nation? I ask the Hon. Mr Redford to answer that question.

The Hon. A.J. REDFORD: I am not sure what that has to do with clause 2 and the commencement, but I answer in this way. These provisions reflect what is currently in the Federal Constitution. I acknowledge that Senator Bolkus, of Greek descent, and Senator McTiernan, of Irish descent—and you and I have had a number of talks about what a wonderful—

The CHAIRMAN: Order! It is very hard to hear the Hon. Mr Redford.

The Hon. A.J. REDFORD: —Irish Australian member of Parliament he was—had absolutely no difficulty in complying with the requirements of the Federal Constitution. All this piece of legislation does is to bring us on all fours with the requirements under the Federal Constitution. It seems, with the greatest of respect to the honourable member, that it is within the wit of his Federal colleagues to be able to deal with this legislation but not within the wit of his State colleagues.

The Hon. T. CROTHERS: The honourable member has not explained the point. What happens to the disfranchisement of second and third generation people of Irish extraction? Such a right is imposed on them by the nation of the birth of their father and mother or their grandfather and grandmother. Does that disfranchise them—people who are born and bred here, second or third generation removed from the grandparent or the parent? Answer that question. I do not want any barristerial comment: just answer the question to me as a simple layman.

The Hon. A.J. REDFORD: I will try to do it in this way, because the point I made is this: the honourable member's Federal colleagues seem to be able to deal with this in a simple fashion. I invite the honourable member—

Members interjecting:

The CHAIRMAN: Order! The Hon. Mr Redford is trying to answer the question.

The Hon. A.J. REDFORD: —to read the High Court decision in the case re Wood. In that case, Mr Wood was elected to the Senate and subsequent to his election the Senate was informed that he had only received Australian citizenship in January 1998, some six months after his election. During the course of argument and in the judgment of the High Court, the High Court said quite explicitly, clearly and in a manner sufficient to enable people like Senator McTiernan and Senator Bolkus to serve at a Federal level that, provided a member takes all reasonable steps to renounce their citizenship, the conduct of a foreign power trying to impose a citizenship on such a member is not a relevant factor in so far as the exclusion or ineligibility of a person to serve in the Commonwealth Parliament is concerned.

One would imagine that, if this came before the State Supreme Court, it would take a similar view. It is certainly not the intention of the Bill and, given that the wording of the Bill is similar to that of the Australian constitution, it is

highly unlikely that the Supreme Court would take a different view, because the Supreme Court is bound by precedent by decisions of the High Court. It is a relatively simple matter.

The Hon. T. CROTHERS: There have been a number of High Court decisions in respect of eligibility of citizens. There was the Cleary decision; there was the decision of the One Nation lassie who was elected to the Senate; and there was another decision with respect to a Green Senator elected from somewhere. There are any number of decisions. However, those rulings were given under Australian constitutional law. The Hon. Mr Redford misses the point. What happens if a smart barrister introduces the law of another nation into the argument and says that, because of that law, it confers foreign citizenship on a person to the third generation? What view would the High Court take in respect of eligibility if a smart barrister introduced that matter into an appellate hearing of the High Court? It is all right for the honourable member to say that they are decisions of the High Court, but they have been based purely and solely on Australian constitutional law. What happens if a really smart barrister—

An honourable member: Unlike those here!

The Hon. T. CROTHERS: I haven't named any names at all, nor is it my wont to do that. But if the cap fits, I guess one must wear it. What would happen if a really smart barrister—

The Hon. Diana Laidlaw: You are!

The Hon. T. CROTHERS: I am not really. I am just a ragged trousered simpleton from Ireland whose grandchildren can inherit any citizenship. If a smart barrister introduces that other slant—and we must remember a lot of our laws are based on case history set in England; and, in more recent times, they are based on case history set in the United States—what decision is taken? Is there not a window of opportunity for the Australian High Court—given that Ireland is an English speaking country—to reverse its previous decisions with respect to Cleary and the One Nation Senator from Queensland? Is there not a situation there where, if that position is given weight to an accountability in respect of an appellant matter, the High Court would give a different rendition of its versions, based solely and purely on Australian constitutional law?

The Hon. A.J. REDFORD: It is a bit like shelling peas. If someone who purported to be a smart barrister put an argument such as that to the High Court or, indeed, our Supreme Court, he would no longer be considered a smart barrister—just a barrister. The second point I make is that the honourable member refers to the case of Cleary and the case of Jackie Kelly. Neither of those cases had anything to do with citizenship; citizenship was not even mentioned. Those cases revolved around whether or not they offended the Australian constitution by holding an office of profit. If I can just clarify those two points for the record, because I would not like to think—

Members interjecting:

The CHAIRMAN: Order!

The Hon. A.J. REDFORD: —that that would become the colloquial facts in so far as this Bill is concerned. Indeed, there has been a lot of misinformation about this Bill to which that has just been added. The question can be answered simply by reference to clause 3 of the Bill. If we are talking about an Australian, someone born in Australia, who attains citizenship of this country by way of birth, then how can it be said that that person is the citizen of a foreign State or power or is under an acknowledgment—and one would assume that that is an acknowledgment by a member of Parliament—of allegiance to a foreign state or power if they have done nothing in relation to that foreign power? I cannot see that any court of any wit—the High Court or the Supreme Court—would take that into account if, say, some country like the Dominican Republic claimed the whole of Australia to be Dominicans in order to give Australians an opportunity to be on the Dominican Olympic team.

However, if there is such a problem, it is not that difficult for your son, grandson or great grandson—if that is what the Irish Republic wants to do—to simply write to the Irish Embassy and say, 'I don't want your citizenship. I renounce it.' That is not dissimilar to the conduct of Senator Bolkus, and they tell me that he did it so quickly that that no-one saw him move.

The Hon. Carmel Zollo: He is a law abiding citizen.

The Hon. A.J. REDFORD: The honourable member interjects. Indeed, a member of her own faction, Senator Quirke, could not be seen for dust when going down there and renouncing his citizenship. It is not that difficult. It is certainly something that the honourable member's Federal colleagues seem to be capable of achieving. I have always considered my Federal colleagues to be on an equal level to State members of Parliament.

Members interjecting:

The Hon. A.J. REDFORD: I am dealing with the honourable member's question. If necessary, why should that person in those circumstances not be required to renounce their citizenship? I would suggest that candidates get their own legal advice. If they came to me and they were born in this country, I would not see a problem. It certainly has never been raised by any argument by the alleged or fictitious smart barrister referred to by the Hon. Trevor Crothers in any court in this country.

The Hon. L.H. DAVIS: I just want to make a few brief comments and then ask a question of my colleague the Hon. Angus Redford, who has the carriage of this Bill. As we understand, this Bill relates only to the 69 persons who are members of the South Australian Parliament at any particular time—

The Hon. Carmel Zollo: That's not correct.

The Hon. L.H. DAVIS: —and the candidates.

The Hon. Carmel Zollo interjecting:

The Hon. L.H. DAVIS: Yes, I understand that. The nub of the Bill is to require any person who is a candidate or a member of Parliament to give up any citizenship they hold other than their Australian citizenship. The Hon. Mr Redford, in his introduction to the Bill in this Chamber, said:

> I believe that people who represent the public interest in Parliament should not have dual citizenship.

The question may well be asked, 'If that standard is required of members of Parliament, why should it not also be required of judges? Why should it not also be required of members of the armed forces or the Federal or State police or, indeed, senior public servants? The fact is that amongst current members of Parliament in South Australia there are a number with dual citizenship. I understand that there are members of the Legislative Council who hold dual citizenship. It is worth remembering that until 1949 there was no such thing as Australian citizenship; we were all British subjects until that time.

However, the world has changed. Australia's links with Britain have been progressively diminished; for example, we no longer have legal appeals to the Privy Council. The High Court of Australia is now the absolute apex of the Australian judicial system. Similarly, whereas the bulk of the migrants

to Australia in the late 1940s, 1950s and early 1960s were from the United Kingdom, increasingly migrants have come from other lands. The first wave of non-English migrants in the late 1950s and 1960s were Italian, Greek, Dutch and German. Then we had the political refugees from the Baltic countries. In more recent years we have had large numbers from New Zealand, South Africa, Asian countries, Middle East countries and Eastern European countries. Of course, many of these people have fled their home countries because those countries have been ravaged by war. They have been political refugees: in some cases, of course, earlier, they were economic refugees.

Only last night I was driven home in a taxi by a Bosnian refugee who has been in this country for but two years. He spent a few months in Canberra and is now in South Australia. He is a surveyor by profession who is now driving a taxi by night. He is intent on again taking up his profession as a surveyor by doing a TAFE course starting next year. He has a young family with him. I asked him whether he had maintained his Bosnian citizenship. He said that he had. One can understand, in a situation such as that, where people have been unwillingly torn from their homeland for fear of their very lives and the lives of their family, that that person has a love of their homeland but still has an attachment to his new land, which has given him a new opportunity. One day, perhaps, he may well be a candidate for Parliament in South Australia, and who is to say that he should not maintain his Bosnian citizenship? What would be the disadvantage of that citizenship if one day he was to become a member of Parliament?

Indeed, I cannot think of another country in this world that can boast that 45 per cent of its population was either born overseas or has one or more parent born overseas. Australia is unique in that respect. And in this shrinking world, where globalisation is a buzz word, where multiculturalism has been one of the great broadening influences in Australian society over the past five decades, we recognise and we rejoice in that fact and see it in our midst in the Legislative Council—people who have come from other lands, on both sides of the Parliament, and have made a wonderful contribution in their new homeland. Just like those Latvians, Estonians and Ukrainians who settled in Australia, they remained passionate about their old homeland but also made an outstanding contribution to their new homeland of Australia. And people, understandably, retain dual citizenship as a link with the past, and perhaps because of loved ones left behind. In some cases I know of people who have retained their dual citizenship because of relatives lost in war: it is their last link with a family that might have been obliterated in a war.

There are also others who have foreign citizenship conferred on them by overseas Governments, as the Hon. Carmel Zollo said in what I believe was a very persuasive contribution, I quote from page 1193 of *Hansard* of 26 May 1999, when the Hon. Carmel Zollo said:

> Prior to 1992 Italian law revoked Italian citizenship for individuals and minors born in Italy who took out Australian citizenship, but it was permitted that subsequent children born in Australia had the right to take out Italian citizenship. Similarly, Australian-born children of Italians who did not take out citizenship would also be eligible for dual citizenship, as would anybody taking out Australian citizenship post 1992 when the law was changed.

In other words, it was a roll of the dice as to whether an Italian, or a child of an Italian, might maintain their Italian citizenship as well as their Australian citizenship. If the roll of the dice goes the wrong way, they cannot be a member of Parliament or a candidate and, if it goes the right way, they can be. How bizarre! A different sort of person? Not in my view. The Hon. Carmel Zollo continued:

> . . . I also understand that a renouncement as proposed in this legislation [which we now have before us] has no legal standing under Italian law and therefore would not be recognised. A candidate, prospective candidate or member would need to attend the consulate personally and make a declaration to the consulate representative under oath. If one were not to do so, does that not provide mischief for legal challenge on the grounds of not having taken reasonable steps?

I have already noted the changing nature of Australia's links with the United Kingdom. In little more than 15 months, this country will celebrate the centenary of Federation. The colonies of the country which Matthew Flinders called *Terra Australis* came together to form a Commonwealth with its own Constitution. But, of course, for most of the twentieth century the Queen's representatives at the Commonwealth level and for the six States were British born. Indeed, it is only a generation ago that South Australia appointed its first Australian-born Governor. That was in December 1968, when Major General Sir James W. Harrison was appointed Governor of South Australia. The first South Australian Governor was appointed immediately after Sir James Harrison, and that was, of course, the world renowned scientist Sir Mark Oliphant, who was appointed on 1 December 1971. It was barely a generation ago that our first South Australian Governor was appointed.

Curiously, though, there are monarchists who support this Bill before us. Queen Elizabeth is Queen of England and Queen of Australia. The High Court has recently—and perhaps not surprisingly—ruled that Britain is a foreign nation. So, we have monarchists arguing that the Queen of Australia should remain as our head of state, although she is also head of a foreign nation, while at the same time insisting that any candidate for or member of the South Australian Parliament must not have dual citizenship. I would describe that, respectfully, as a logic gap. When the newly crowned Queen Elizabeth II visited South Australia for the first time in the early 1950s, many people waved Union Jacks—and I suspect I probably was one of them. As I recollect, the Queen, as head of state, has not visited Australia for eight years. But that debate is for another day. There will be a referendum on the republic later this year.

Apparently, to be eligible for election to the House of Assembly or the Legislative Council, a member must be an Australian citizen or must have been enrolled within three months of 23 October 1983 as a result of their status as a British citizen. Therefore, at present, a person with dual citizenship is eligible to stand for election to the South Australian Parliament—and, of course, people voting may well have dual citizenship. And why not? Dual citizenship, we should all remember, was virtually unknown when the Commonwealth and State Constitutions were first drafted. Migrants to Australia, as I have already mentioned, were invariably subjects of the Queen. Now, of course, dual citizenship is far from uncommon.

So, what is the particular problem that exists if someone who has both Australian citizenship and citizenship of another country is a member of the Legislative Council? What is the problem? Quite frankly, I would be far more worried if, for example, a member of Parliament had a conflict of interest that was not declared in his or her register of interests than if a person held Italian citizenship and was a member of the Legislative Council. As the Hon. Carmel

Zollo has explained, it is simply a quirk of timing as to whether or not some Australians have retained Italian citizenship. I respect the fact that Carmel Zollo is not an Italian citizen, but she could well have been. However, that would not change my view of her as a Legislative Councillor and her commitment to being an effective member of the Legislative Council representing her Party. In my view, this is a nonsense argument, because how does dual citizenship affect a member of Parliament's capacity to make a contribution? Not once have the proponents of this legislation made an argument that dual citizenship is dangerous.

This is a Bill which, in my view, is simply unimportant. It ranks along with, say, the Natural Death Act 1983 as non-legislation. I respect the rights of the original sponsor of the Bill in another place—the member for Hartley—but I simply do not agree with him. Indeed, it is hard to think of one problem that arises from dual citizenship. And the remote possibility of a conflict arising from a member of Parliament with dual citizenship could simply be addressed by requiring members of Parliament to list dual citizenship in their register of interests. So, my one question to the Hon. Angus Redford is: can the Hon. Angus Redford articulate to the Committee one problem that he can see from someone having dual citizenship and also being a member of this Council?

The Hon. A.J. REDFORD: Perhaps I can draw the honourable member's attention to the numerous contributions made during the second reading debate by—

The Hon. L.H. Davis: I didn't find one. That's why I am asking you now.

The Hon. A.J. REDFORD: If the honourable member wants to get aggressive about it, I can respond accordingly. But I will try to maintain the decorum that is normally maintained between colleagues on this side of the Council. What I will say to the honourable member is that there have been a number of second reading speeches that have dealt with the very issues that the honourable member has raised. I have no doubt and every confidence that the honourable member has sat down and read them and considered them. If the honourable member has not found them persuasive that is a matter for the honourable member, his conscience and the reaction of various people following this particular vote.

Members interjecting:

The Hon. A.J. REDFORD: If the honourable member wants to revisit on clause 2, which deals with the commencement date, a series of second reading speeches, then I am happy to do so, at quarter to 11 on a Wednesday night on the second last night of Parliament when we have seven or eight very important and significant Government Bills to get through. At the end of the day, as I said to the Hon. Legh Davis, these issues have been canvassed. He made a couple of comments about the difficulties in terms of renouncement. All I can say—and I can repeat it over and over again—our Federal colleagues have not had the same difficulty. If you want to talk about people of Italian heritage, whether they were born there or here, I draw members' attention to two well respected Federal members of Parliament, Con Sciacca and the late Senator Panizza.

The Hon. T. Crothers: Mario Feleppa.

The Hon. A.J. REDFORD: He was a member of this place, not the Federal Parliament. The Hon. Legh Davis said, 'Why shouldn't the same apply to judges, the Armed Forces and senior public servants?', and perhaps that might be an issue that the honourable member may care to raise at a subsequent date. At the end of the day this is an Act to amend the Constitution Act. It will not be an Act to amendment the Judges Act or the Public Service Act and, indeed, it would be well beyond the power of even the illustrious Legislative Council to deal with any legislation pertaining to our Armed Forces.

The honourable member also quoted with approval the comment by the Hon. Carmel Zollo that, with the problem in terms of Italian citizenship, it is a quirke of timing. But one could say that about anything. One could say that the fact that I happened to born in Australia is a quirke of geography. At the end of the day we deal with these sorts of things in legislation all the time.

An honourable member interjecting:

The Hon. A.J. REDFORD: I am dealing with the new and novel arguments, because I dealt with all the honourable member's old arguments when I summed up, and there was a significant attempt to gag me on one issue, which we will get to shortly. At the end of the day the Hon. Legh Davis is well versed with the arguments. There have been substantial arguments put in the Lower House, and I am sure the honourable member observed and read those, and there have been here. Very simply, the fact of the matter is that we owe a simple and single-minded loyalty, and that is to this country, to this Constitution, and we have a single-minded duty to follow all our rights and responsibilities as a citizen of this country, without any suggestion or without any question of any divided loyalties, or without any question or any suggestion that there is a conflict in so far as our loyalty is concerned. It is a simple proposition. It is a straightforward proposition. If the honourable member does not agree with it, then, as is the case within our great Party, the honourable member can exercise his viewpoint in a particular way, unlike members opposite.

Clause passed.

Clause 3.

The Hon. CARMEL ZOLLO: Under clause 3(2)(a), can the Hon. Angus Redford explain exactly how does this Act deem one to be a subject or citizen of a foreign state or power? Does it make reference to a schedule of eligibility of foreign nations perhaps?

The Hon. A.J. REDFORD: I can only draw the honourable member's attention to the fact that this is a pretty old concept, the concept of whether or not one is a subject or citizen of a foreign state or power. In fact, it has been the subject of litigation going back since William the Conqueror, and courts have been able to deal with it on many occasions, and I have every confidence that our courts will be able to determine whether or not someone is a subject or citizen of a foreign state or power.

The Hon. CARMEL ZOLLO: You still haven't answered the question; let's come to 1999. Under clause 3(2)(b), exactly how would one be under acknowledgment of a foreign power or state? What is your criterion?

The Hon. A.J. REDFORD: I do assume a certain intellectual capacity and level in this place when I answer questions; but I repeat what I said earlier. Again, if one is under an acknowledgment or allegiance to a foreign state or power it is a very simple concept. If the honourable member cannot understand it or come to grips with it then the honourable member ought to seek her own advice.

The Hon. NICK XENOPHON: Before I ask the Hon. Angus Redford a question in relation to this clause I would like to congratulate the Hon. Legh Davis for his statesman-like speech in relation to this Bill, and I mean it. I think it was a very erudite contribution that really summed up the arguments, and I congratulate him for it. My question to the

Hon. Angus Redford is: with subclause (2)(a), in relation to the subject or citizen of a foreign state or power, does he acknowledge that whether a person is a subject or citizen depends on the quirks or laws of a foreign state or power, that different foreign states can have different criteria as to whether you are a subject or citizen, unbeknownst in many cases to the person who may be subject to that?

The Hon. A.J. REDFORD: All I can say to the honourable member is that I invite him to read the decision and the reasons in the judgement *in re Woods* where the High Court addressed that specific issue, where it basically said that in those circumstances where there is some doubt then there is a duty on the part of the person affected to take all reasonable steps to renounce any allegiance to that foreign power, and that the High Court said that that would be sufficient. I am also pleased to hear the Hon. Nick Xenophon acknowledge the Hon. Legh Davis's erudite argument. It is certainly a complete backflip on his acknowledgment of Legh Davis's interjections in a previous argument this evening.

The Hon. NICK XENOPHON: I thank the Hon. Angus Redford for his considered response, in parts. Does the Hon. Angus Redford concede that whether a person is a subject or a citizen of a foreign state or power is really a shifting sand depending on the whims of that foreign state or power, depending on the quirks of that foreign state or power? That really is the case is it not?

The Hon. A.J. REDFORD: In answer to the honourable member the simple answer is, 'No, it is not.' It is entirely dependent upon the person taking reasonable steps to renounce that foreign power, and the High Court in its discussion, and I am happy to provide a copy to the honourable member, although I do not have it handy, focused on the conduct of the person concerned, not the conduct of a foreign power.

The Hon. CARMEL ZOLLO: In making reference to 'reasonable steps' is the Hon. Angus Redford saying that it is reasonable steps according to a foreign power, in our own courts?

The Hon. A.J. REDFORD: I must stay that I am getting two standards of questions here, really good ones and really dumb ones, and members can make their own judgments accordingly. The reasonable steps are to be taken by the member in renunciation. It has nothing to do with a foreign power.

The Hon. T. CROTHERS: Is the Hon. Angus Redford aware that it is a basic tenet of the philosophical beliefs of the Iroquois confederation of Indians in North America that any decision that generation took had to be weighed in the balance against the impact it would have on the next seven generations of members of that confederacy?

The Hon. A.J. REDFORD: I have to say that this one has come from right out of the blue. To my knowledge the North American Indian seventh generation rule has not been the subject of any litigation, but I stand to be corrected if it has. I will repeat what I have said over and over: it is a matter for the candidate to renounce that citizenship or that obligation.

In relation to the North American Indian seventh generation rule, I am not sure what country the honourable member is referring to, whether it is Canada, the United States or some other country. If it is the United States and you become a citizen of Australia, then by operation of American law that is deemed to be renunciation of United States citizenship. For those people who happen to be United States citizens it is a very simple matter: you become an Australian citizen and by that very act you have renounced your American citizenship.

The Hon. CARMEL ZOLLO: As this Bill seeks to imitate Federal legislation, can the Hon. Angus Redford tell me what were the unreasonable steps challenged in recent Federal cases, and did they involve reference to foreign nations?

The Hon. A.J. REDFORD: In relation to recent High Court cases, in particular that of Senator elect Hill, the fact of the matter is that she did not do anything, and that is the problem. She assumed that, by taking up Australian citizenship, she had taken all reasonable steps. The High Court said in relation to her case that she had not taken all reasonable steps.

If you were endorsed as a candidate for the Federal Parliament, you would be told by the secretary, by Trades Hall, that you should take reasonable steps. I have absolutely no doubt, should you be in a position of being endorsed as a candidate, that Trades Hall would provide you with some fairly fulsome advice as to what steps you would need to take to renounce your citizenship. I repeat: it has not been beyond the wit of many a Federal member to be able to fulfil those steps.

Unfortunately the One Nation Party machine is not as efficient as the ALP machine, and unfortunately for Mrs Hill she did not receive appropriate advice about the steps she needed to take. I repeat: all the High Court says you have to do is to take reasonable steps as an individual to renounce your citizenship, and that is more than simply taking up Australian citizenship where your country of origin recognises dual citizenship.

The Hon. CARMEL ZOLLO: I move:

Page 2, lines 1 to 7—Leave out subsections (4) and (5).

The Opposition's amendments have the effect of reverting the intention of the Bill to that originally introduced in the other place, that is, it will affect current and former members. They, too, will be required to renounce their eligibility for citizenship or possible citizenship of their place of birth or family heredity, even if it means that they will be renouncing nothing more than their heritage. It is the least that we can do as an Opposition—oppose this legislation and remove the more than obvious hypocrisy of self-interest as was amended in the other place. As my colleague the Hon. Paul Holloway said in his contribution, if it is necessary for all future parliamentarians to jump a particular hurdle, why should we not expect those of us in here to jump that same hurdle?

The Hon. A.J. REDFORD: I have two amendments on file from the Hon. Carmel Zollo: one talks about the rejection of the eligibility of members who accept any foreign title, award or order, other than a title, award or order of the United Kingdom or the British Empire. It is on my file and it says—

The CHAIRMAN: It has not been moved and it is not on file.

The Hon. A.J. REDFORD: Does the Hon. Carmel Zollo intend to move that and, if not, why not?

The Hon. CARMEL ZOLLO: If I had intended to move it I would have done so.

The Hon. A.J. REDFORD: Why hasn't the honourable member moved it?

The Hon. CARMEL ZOLLO: If I had intended to move it I would have done so.

The Hon. A.J. REDFORD: Will the honourable member—

The Hon. T.G. ROBERTS: I rise on a point of order, Mr Chairman. It is my belief that we are here to debate only

those amendments that have been tabled and not those that have not been tabled.

The CHAIRMAN: They officially have not been moved.

The Hon. A.J. REDFORD: With all due respect, I had something that I am anxious to raise, and because of a ruling from left field I was prevented from raising it during the course of the second reading. One can only assume that I am entitled to raise it during the Committee stage. The fact is that at some stage the honourable member wanted to move a whole series of amendments to clause 3—and when I say 'wanted to move', they were filed in writing, one and a half pages—

The Hon. R.I. Lucas: Under her name?

The Hon. A.J. REDFORD: —under her name, in my book. She then came along and said, 'I'm now going to move these other amendments.'

The Hon. CARMEL ZOLLO: I rise on a point of order, Mr Chairman. Am I moving my amendments or my proposed amendments? What is going on here?

The CHAIRMAN: The Hon. Carmel Zollo has moved, as I understand it, an amendment to clause 3, page 2, lines 1 to 7, and has spoken to it. That is what the debate is about.

The Hon. A.J. REDFORD: What concerns me is that, in considering the merits of this new amendment, I am having to weigh up, as we all do in this place, what our options are. One of those options might be these other amendments which the Hon. Carmel Zollo filed on 7 July 1999 and in which she suggested that any person who accepts a foreign title or award, other than a title from the United Kingdom—

The Hon. CARMEL ZOLLO: I rise on a point of order, Mr Chairman. I think you have already ruled that we must debate the clauses before the Committee.

The CHAIRMAN: There is no point of order.

The Hon. A.J. REDFORD: We have one amendment that has been moved and another one that could potentially be moved by anyone in this place, in which the honourable member has proposed that a member who accepts a foreign title or award, other than a title or award from the United Kingdom or the British Empire, be excluded from being eligible for this place. I am wondering what led the honourable member to decide that the amendment that she has moved is preferable to the one that she indicated back in July that she would move.

The Hon. CARMEL ZOLLO: I think that the Hon. Angus Redford asked why I contemplated those amendments which I have not moved. I do not intend to move them because we already have a ruling that the table recognises the amendment with the last date. Obviously, the honourable member cannot read. The reason why we contemplated those amendments was to demonstrate the great folly of this legislation: I think that says it all. The Hon. Angus Redford, more than anybody else, reminds me of those three great words, *Tu sei Pagliacco*, from the well-known aria Vesti la Giubba in Leoncavallo's opera *i Pagliacci*.

The Hon. A.J. Redford: What does that mean?

The Hon. CARMEL ZOLLO: He obviously doesn't know his opera.

Members interjecting:

The Hon. Carmel Zollo: You're a clown.

The Hon. A.J. REDFORD: Mr Chairman, I would ask the honourable member to withdraw that remark.

The CHAIRMAN: I can ask the honourable member whether she will withdraw it. I do not understand the words so I cannot make a comment.

The Hon. CARMEL ZOLLO: I said the words were, 'You're a clown.' Opera is written in a foreign language and I translated it.

The CHAIRMAN: The honourable member has asked the Hon. Carmel Zollo to withdraw her comment. I assume that she is not willing to do so.

The Hon. A.J. REDFORD: I refer to the honourable member's amendment. One would assume that the honourable member is doing this for a genuine reason as opposed to the motion that she filed but did not move on 7 July. I draw the attention of those who are interested in this debate to that. I do not know whether the mind of the member for Spence or that of the Leader of the Opposition came up with this stunt, but it is to be deplored. What is to be deplored even more is that the Hon. Carmel Zollo was the stooge who was led into doing this at that point. I will acknowledge and congratulate the honourable member: she obviously developed some courage at some stage during this process and stood up to both those Machiavellian gentlemen by saying, 'I will not do this.'

I am pleased about that, because the fact is that the Labor Party, even by intimating that this would occur, has smacked in the face the Greek community and the Italian community in particular, and those recipients of quite serious and important awards, all for the sake of a political stunt. It demonstrates the depths to which those two Machiavellian gentlemen will sink in order to play politics on so many issues. They stand absolutely condemned.

An honourable member interjecting:

The Hon. A.J. REDFORD: I challenge the honourable member who interjected to name any stunt that I have pulled which is remotely akin to this.

The Hon. T.G. Roberts: On these amendments.

The Hon. A.J. REDFORD: I have not moved any amendments.

The Hon. T.G. Roberts: Haven't you played politics on these amendments?

The Hon. A.J. REDFORD: Despite, I think on last count, nine points of order in an attempt to gag me, I have attempted to draw everybody's attention to the sort of stunt in which the honourable member has engaged.

I refer briefly to the amendment and indicate that I oppose it. The House of Assembly—and I am saying this in my most charitable fashion—considered this in great detail, and there was lengthy debate about it. The logic and commonsense of House of Assembly members in reaching an appropriate conclusion, having listened to the debate of all members, in my view this Legislative Council should support.

The Hon. T. CROTHERS: I seek leave to make a personal explanation about my being misquoted in this debate.

Leave granted.

The Hon. T. CROTHERS: The Hon. Angus Redford alleged when I brought up the question of the Wills by-election that I did not know what I was talking about. Let me tell the honourable member that I do. Let me explain that, when the Wills by-election case was before the High Court, there were three candidates, all being candidates for Wills in the by-election.

The CHAIRMAN: The honourable member cannot debate the point: he must make an explanation.

The Hon. T. CROTHERS: It is true that Cleary was carted out because he was held to be in an office of profit as a part-time teacher for the Victorian Education Department. But in the cases that were joined to him, Kardanitsis, who was born in Greece and who was the ALP candidate, was ruled out because he had not renounced his Greek citizenship in accordance with the renunciation requirements of Greek law. The other candidate, the candidate for the Liberal Party in the same by-election, Delacratez, was born in Switzerland and was ruled ineligible on the same grounds as Kardanitsis. That has some bearing on another question I asked the honourable member about Irish citizenship.

The CHAIRMAN: Order! I will put the question on the amendment moved by the Hon. Carmel Zollo.

Amendment carried; clause as amended passed.

Clause 4.

The Hon. CARMEL ZOLLO: I move:

Page 2, lines 17 to 23—Leave out subsections (4) and (5).

These amendments are exactly the same: they refer to the House of Assembly.

The Hon. A.J. REDFORD: This is consequential on the previous amendment. It is the same principle and argument.

Amendment carried; clause as amended passed.

Title passed.

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

That this Bill be now read a third time.

The Council divided on the third reading:

AYES (8)

Cameron, T.G.	Dawkins, J. S. L.
Kanck, S.M.	Laidlaw, D. V.
Lawson, R. D.	Lucas, R. I.
Redford, A. J. (teller)	Schaefer, C. V.

NOES (12)

Crothers, T.	Davis, L.H.
Elliott, M. J.	Gilfillan, I.
Holloway, P.	Pickles, C. A.
Roberts, R. R.	Roberts, T. G.
Stefani, J.F.	Weatherill, G.
Xenophon, N.	Zollo, C. (teller)

Majority of 4 for the Noes.

Third reading thus negatived.

DISABILITY DISCRIMINATION ACT

Adjourned debate on motion of Hon. R.R. Roberts:

That this Council condemns the actions of the Liberal Cabinet for its contrivances in knowingly preventing South Australians with disabilities from accessing proper compensation for work related injuries in contravention of the Disability Discrimination Act 1992 in respect of permanent mental disability, and, in particular, the Attorney-General (Hon. K.T. Griffin, MLC), the Minister for Government Enterprises (Hon. M.H. Armitage, MP) and the Minister for Human Services (Hon. D.C. Brown, MP).

(Continued from 28 July. Page 1743.)

The Hon. K.T. GRIFFIN (Attorney-General): The Government opposes the motion. The Hon. Ron Roberts has moved that this Council condemn the actions of a Cabinet and, in particular, three Ministers, concerning the Commonwealth Disability Discrimination Act and the Workers Rehabilitation and Compensation Act. He appears to suggest that the conduct of the members of Cabinet has been in some way improper or deceitful. There is no truth or substance in this contention. The Workers Rehabilitation and Compensation Act 1987 has been many times amended. The amendment of concern to the Hon. Mr Roberts occurred in 1992. Schedule 3 was amended with the effect that in the case of a worker sustaining a psychological disability at work compensation is limited to payment of wages for the time lost from work up to the limit, and the cost of the medical treatment required. There is no lump sum for any non-economic loss flowing from that injury, that is, for pain and suffering.

Many other injuries, including brain damage, if they result in permanent impairment, entitle the worker to a lump sum for non-economic loss in addition to other payments. The amendments in question were enacted through the parliamentary process and, although the Hon. Mr Roberts may not agree with them, he has no basis to complain. As he says, all members from time to time may have the experience of seeing legislative measures passed with which they do not personally agree. This is a fact of political life. In 1992 the Commonwealth Parliament enacted the Disability Discrimination Act, a measure designed to combat various forms of discrimination against persons suffering disabilities. It came into effect on 1 March 1993.

The Act makes unlawful discrimination in employment, education, accommodation, access to premises, access to goods and services, and other situations. It is, of course, the case that Commonwealth legislation will override inconsistent State legislation to the extent of the inconsistency. The enactment of the Commonwealth Act raised the possibility of some State laws, which treated persons with disabilities differently from other persons, being inconsistent and potentially invalid. To deal with this, and in recognition that there are some situations in which it is proper to treat persons with disabilities differently from persons without those disabilities, the Commonwealth Act also provided various exemptions.

The provision that is relevant in this context is section 47(2), which provides that acts done in compliance with a prescribed law of a State are not unlawful. The effect of this provision is that the Commonwealth can by regulation exempt any particular State law from the operation of the Commonwealth Act. In that case, the State law is not inconsistent with the Commonwealth law and the constitutional issue will not arise. Passage of such regulations is a matter for the Commonwealth in every case. Thus there are two ways in which State laws dealing with disability can be brought into conformity with the provisions of the Disability Discrimination Act. One is that the State Parliament passes or amends State law such that it is consistent with the Commonwealth law. This may be appropriate where the State agrees with the provisions of the Commonwealth law and prefers them to any other.

The other is that the Commonwealth grants an exemption. This is appropriate where the State does not agree with the Commonwealth provisions but wishes to retain its own legislative measures and the Commonwealth agrees that it should do so. Of course, the fact that a law is prescribed by the Commonwealth for the purposes of the Disability Discrimination Act does not fetter the power of the State Parliament to amend or repeal the law at any time. Its sovereignty is not compromised; rather, prescription ensures that a law that is passed by a State is not struck down by the High Court in a constitutional challenge but is changed only by the will of the South Australian people. This is as it should be.

Either of these processes is a public process: the first a process of the State Parliament and the second of the

Commonwealth at the request of a State Government, involving tabling of regulations. It is open to public scrutiny and its result must be considered to represent the will of the people. Again, in a democratic society none of us can complain of a decision of Parliament, even if we may personally disagree with it. The Commonwealth Act provided that acts done in compliance with State laws would not be unlawful during a three year period from the commencement of that Act. As the Hon. Mr Roberts has related, I corresponded with the Commonwealth Attorney-General upon the elapse of that period, identifying a number of legislative provisions that the Government considered should be prescribed. They were laws to which the Government was committed which, if not prescribed, might potentially be the subject of a High Court challenge on the basis of the Commonwealth Act.

That is not to say that those laws would in fact have been found to be inconsistent with the Commonwealth Act—they may or may not have been. That would be a matter for the High Court. However, they dealt with disability issues. They were laws of this Parliament expressing the wishes of the South Australian community, and this Government wished to ensure that they were not struck down by challenge against the wishes of the South Australian people.

The laws included, for example, the Motor Vehicles Act provisions which permit the Registrar to suspend or cancel the drivers' licences of persons with certain physical impairments. A person with serious visual impairment, for example, may be unable to hold a driver's licence in South Australia. Perhaps this provision conflicts with the Commonwealth Act, but it reflects what the South Australian people judge to be proper and appropriate standards of road safety.

The Government on behalf of the people wished this law to stand. Likewise, prescription was sought for the provisions of the Firearms Act, which could potentially prevent persons suffering from certain mental illnesses from possessing firearms. Again such a provision could be potentially contrary to the Commonwealth Act so as to be the subject of challenge by a person refused a firearm on the ground of illness. However, the provision represents a decision by the people of South Australia as to the standards of safety which they require in respect of firearms, and accordingly the Government applied to prescribe this, too. In fact, it applied to prescribe all statutory provisions which were identified as potentially open to High Court challenge under the Disability Discrimination Act, even where the basis of challenge might not appear particularly strong.

The application included reference to the provisions of the Workers Rehabilitation and Compensation Act mentioned by the Hon. Mr Roberts. The reason in every case for the prescription application is that this Government believes in the sovereignty of this State. It believes that the South Australian Parliament should be able to make such laws as the South Australian people require, whether or not other Governments elsewhere agree with them. Where this Parliament has passed a law which makes some express provision dealing with disability, that provision should stand to the extent that this is lawfully possible, even if the Commonwealth passes different legislation.

Within the limits of section 109 of the Constitution, the extent that the Commonwealth laws permit and provide for State laws to remain and operate, this Government believes that they should do so. If a South Australian law is to be changed, it should be changed by the South Australia people through this Parliament. The applications were made therefore to keep faith with the South Australian people by upholding, so far as possible, the laws passed by this Parliament.

The Commonwealth Attorney-General acceded to the request for prescription in respect of certain provisions and the Commonwealth Parliament, in due course, came to consider this request along with similar requests from other State Governments in the form of regulations tabled in the Parliament. Other States have also sought permission to retain some of their specific laws since they, too, have set legislative limits on such matters as who may drive a vehicle or own a gun.

A motion was moved in the Commonwealth Parliament to disallow the regulations. That motion was the subject of debate and was defeated. The Commonwealth Parliament voted not to disallow the regulations, and hence to permit the States to retain these laws notwithstanding the general provisions of the Disability Discrimination Act. It is fair to say that the vote was very close, but again the passage of laws which are unpopular with some members is a fact of political life and not a basis of complaint.

It is nonsense to suggest that there was anything covert or underhanded about the Commonwealth's decision to prescribe this law or any of the others. How could there be? The parliamentary process is absolutely open. The public of Australia could readily discover what regulations were tabled in the Commonwealth Parliament and could make such representations as they might choose to their Federal members.

The Hon. Mr Roberts seeks to make something of correspondence passing between myself and the Commonwealth Attorney-General in relation to this process. Special reliance is placed on the comment of the Commonwealth Attorney-General that the prescription of schedule 3 would likely be opposed by the disability community and possibly might be rejected by the Senate. As an alternative, the Commonwealth Attorney-General suggested that we consider how schedule 3 might be amended to comply with the Disability Discrimination Act.

The Commonwealth Attorney-General was expressing his thoughts. He was aware that there was some opposition to the South Australian people being allowed to retain this law. He warned me that the request for prescription might fail in the Senate. Accordingly, he put forward an alternative approach. However, the thoughts of the Commonwealth Attorney-General are not law and have no binding or coercive force over this Government. Its role is to enact the laws which are desired by and promote the interests of the South Australian people rather than carry out the suggestions of any particular member of another Government. As it turns out, the Commonwealth Attorney-General's concerns were not borne out. The Commonwealth Parliament voted to prescribe the law.

The question of whether or not the law would otherwise comply with the Disability Discrimination Act does not therefore arise. Had it done so, however, my own view is that it may well not be in conflict. It is a law about the extent of compensation payable for a disability of a particular type. It is not a law which treats disabled and non-disabled persons differently on the ground of that disability. It is certainly not clear that such a law would contravene the Disability Discrimination Act. However, this is a question which only the High Court could finally resolve and which does not now arise.

It appears that the Hon. Mr Roberts considers that members of the Cabinet did something wrong by not making known to the Parliament the views of the Commonwealth Attorney-General as to the chances of a prescription application succeeding and as to the possibility that the State law conflicted with the Commonwealth law, but the members of this Parliament knew or could find out the contents of the State law and of the Commonwealth law. They could form their own views or take advice as to whether the two were in conflict. They knew or could find out that the Disability Discrimination Act contemplated a prescription of State laws by regulation of the Commonwealth. They knew or could find out that regulations that had been tabled in the Commonwealth Parliament prescribed various South Australian provisions, including the ones of which the Hon. Mr Roberts complains. None of this could possibly have been secret. How then could anyone have been misled or deceived?

As to publishing the views or comments of the Commonwealth Attorney-General on the likely outcome of a vote of the Commonwealth Parliament or as to whether the two statutes were in conflict, what possible duty could there be to do this? What possible public interest could it serve? Who is to say whether the Commonwealth Attorney-General's views or suggestions about what the law of the State should be are right or wrong? This Parliament does not exist to follow the suggestions of members of the Commonwealth Parliament or to shape its deliberations to their views.

The Hon. Mr Roberts suggests that the South Australian people have in some way been deprived of a right by the prescription of this law. But how can this be? The regulation was the subject of a vote in the Senate. Those for and against the prescription of the law had their say. The determination of the Parliament is binding on both sides. What can be the basis for complaint when the effect of the prescription is simply to continue the exemption of the State law from the provisions of the Commonwealth law? There is no effect on its substance. That has remained unchanged, as the honourable member says, since 1992.

The honourable member is really complaining only that he has not been successful in his efforts to change a legislative measure with which he disagrees. This is no doubt an experience of all members from time to time during their parliamentary careers, but no remedy is to be had by way of motions to condemn other members. I refute the suggestion made by him of any wrongdoing by myself or other members of the Cabinet in this matter. I urge honourable members not to support this motion which, I think, reflects adversely upon the honourable member who has moved it for not understanding the significance of either what he is proposing to do or, more particularly, of the legislation of which he complains.

The Hon. R.R. ROBERTS: I thank the Attorney-General for at least mounting a defence. The Attorney-General has not addressed the issues about which I complain. My complaint is that the Cabinet was conducting negotiations about the implications of the Disability Discrimination Act for some years. My first correspondence goes back as far as 1995. We all know that the Bill was discussed in this Council. I sponsored the Bill on three occasions and it was debated in this Council on three occasions. Constituents like Kevin Reid have written on a number of occasions seeking advice about what was happening with the prescriptions of our WorkCover legislation in respect of schedule 3 of the Disability Discrimination Act.

All efforts were thwarted. He wrote to the South Australian Attorney-General with a freedom of information request and he got either part of it or none of it. The fact is that these matters were being discussed and the Government knew of the implications regarding the Disability Discrimination Act on every occasion that this matter was discussed. My argument is not about the fact that we were successful in getting the alterations that I sought through this Council but the fact that we were frustrated in the other House.

My accusation is of a knowing lack of responsibility, and a neglect of the interests of the people of South Australia, because we are talking about brain injured workers who have suffered injuries as a course of their work. By omitting to give information during the course of the debate and by omitting to make that information available to constituents seeking it is, in my view, derelict and it is an act which does the Government no credit. The people of South Australia have an expectation that their elected Government will protect their interests.

Those who are vulnerable have a greater expectation. We, as a Government or as a Parliament, have an obligation to all those injured workers, or those constituents, to provide whatever relief we can in an open and honest way. I wrote to the Attorney-General seeking freedom of information documents. A response I received on 27 November said that these letters would not be made available. The Government had held these letters from 18 December 1995 to 3 November 1998—the entire period in which this Bill was discussed in this Chamber on three occasions. On two occasions it was handled by the Attorney-General and he said nothing.

He never said, 'This schedule is part of an application by us for a prescription by the Federal Government to make it an exempt law.' He did not suggest to the committee that negotiations were occurring because it was an assertion. We finally got this information following one request to the Federal Government. The Attorney-General advised me, through his officer, that it was not available because it would cause bad relations between the State governments. An examination of the information shows clearly what was happening. This Government knew that there were Federal implications.

Every time constituents such as Kevin Reid and other people asked for that information it was denied to them. It was denied to me, as a member of the Parliament, at the death knock when it was almost before the Senate. In one of the last pieces of correspondence that I received, the State Attorney-General suggested that we ought to consider amending schedule 3 so that it complies with the Disability Discrimination Act. That was a month before it passed this Council. On that occasion the Attorney-General did not handle the Bill: he handballed it to the Hon. Angus Redford. That honourable member knew that the Attorney-General had suggested to him that he use the very method that I have proposed to give relief to those injured workers. The Attorney-General suggested to the honourable member that he use the same method and he said nothing.

The reason I have included, specifically, the Hon. Dean Brown and the Hon. Dr Armitage in these matters is that they were part of the Cabinet. They were aware of all this information. They were the Ministers who handled this legislation in another place on two occasions. They used the same arguments used by the Attorney-General in this place and never did they say, 'These matters are being discussed with the Federal Attorney-General'. They never made the information available.

They deceived, in a sense, by omitting to 'fess up' to the information they received. They knew that these permanently injured workers (injuries measurable for life) had a very strong claim under that Disability Discrimination Act and they said nothing. I do not want to stand here all night and argue this case again but the evidence is very clear from the package of correspondence received from the Federal Attorney-General. If members had read and followed that correspondence through they would understand. I went into extensive explanation (and some would say that it was probably too extensive) of the circumstances surrounding this matter in my last contribution, and I did that because I was relying on others to understand this issue. The issue is—

The Hon. K.T. Griffin: You're right: you don't understand it.

The Hon. R.R. ROBERTS: I understand it and I understand what deceit is. The Attorney-General knows that he had this information. His officers sent me a letter which said that I could not have the information because it would cause bad relations between the State and Federal Governments. The Attorney-General knows that that was not true because, a week later, when I wrote to the Federal Attorney-General he provided the information with no complaint whatsoever.

The sequence of events shows clearly that the Attorney-General and the whole of the Cabinet knew for three or four years that these injured workers were being disadvantaged. My point is that those injured workers have a right to expect the Government to provide them with relief. A Government which knowingly does not provide that relief and which secretly has information that it is not prepared to present in the course of the argument to a Parliament trying to seek proper relief for those workers is derelict and deceitful.

I ask members of this Council to provide some indication to injured workers that this Parliament does not support that kind of action which deprives them of their rights over a period. Legislative change has actually tried retrospectively to make a bad law legitimate: that is what has occurred. It took the Attorney-General and the Cabinet five years to prove themselves right, when they have deprived those workers of their rights for years, and many of them are in a very sensitive state. We in this Council have a duty to indicate to those injured workers that this Parliament at least is prepared to condemn those who would do those sorts of things to them.

The Council divided on the motion:

AYES (11)

Cameron, T. G.	Crothers, T.
Elliott, M. J.	Gilfillan, I.
Holloway, P.	Kanck, S. M.
Roberts, R. R. (teller)	Roberts, T. G.
Weatherill, G.	Xenophon, N.
Zollo, C.	

NOES (8)

Davis, L. H.	Dawkins, J. S. L.
Griffin, K. T. (teller)	Laidlaw, D. V.
Lawson, R. D.	Lucas, R. I.
Schaefer, C. V.	Stefani, J. F.

PAIR(S)

Pickles, C. A.	Redford, A. J.

Majority of 3 for the Ayes.

Motion thus carried.

EDUCATION ACT REGULATIONS

Adjourned debate on motion of Hon. M.J. Elliott:

That the regulations under the Education Act 1972 concerning materials and service charges, made on 25 March 1999 and laid on the table of this Council on 25 March 1999, be disallowed.

(Continued from 7 July. Page 1585.)

The Hon. R.I. LUCAS (Treasurer): The Government opposes this motion. It really is a re-run of earlier debates, but we have a new balance of power in the Legislative Council now, so I guess the new balance of reason in the Legislative Council can apply their minds at this very late hour to this particular provision. The Government has for a long period now tried to support parents in schools in South Australia to collect fees and materials and services charges that are charged to parents with respect to their contribution to schooling.

As I said when I was Minister for Education and Children's Services, the strongest argument for the support of this particular policy came from school councils in the northern suburbs, such as Pooraka, Parafield Gardens and areas around Salisbury. They were the strongest supporters of this policy of being able to collect from school communities the materials and services charge. They would indicate to me as Minister that they wanted a Government to at last stand up for school councils and parents and allow them to collect the fees and charges from those parents—

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: No, from those parents who could afford them. There is a School Card which is available to poorer families, and as the Hon. Mr Roberts will know, almost 50 per cent—I am not sure of the most recent figures, but somewhere between 40 and 50 per cent—of parents in South Australian schools receive a free School Card. They do not have to pay this materials and services charge. So, we are talking about the top 50 to 60 per cent of families, the ones who can afford to pay.

The parents at Salisbury, Pooraka and Parafield Gardens told me that what annoys them is the fact that those parents who can afford to go and take an interstate holiday or those parents who can afford to upgrade their car will come along to the school, snub their nose at the parents on the school council, and refuse to pay the materials and services charge. They ask those parents why, when they can afford to take an interstate holiday or to upgrade their car, should they be allowed to snub their noses at the other hardworking parents of those families? And it is not just snubbing their noses; it is raising the cost for those other families who do pay the materials and services charge.

Those school councils at Pooraka and Parafield Gardens in the north, and Hackham and Christies in the south, have to lock in the bad debts from those families who can afford to pay but who refuse to pay. They have to budget for the bad debts and then raise the fees for all those other families—working-class South Australians—who struggle to pay their fees, charges and bills for a whole variety of areas but who, because of the pride that they have in their families and in their children and in their schools, will do without to meet the payments of the materials and services charge. They have to pay a higher charge because these people who can afford to pay snub their noses and increase the costs for the remaining families who pay the materials and services charge in the school.

As Minister for Education, it surprised me that the great strength of this policy came from those areas to the north and south of the CBD. As I said, the Hackhams, the Christies Beaches, the Noarlungas and the Moanas in the south, were the areas where the issue was raised with me, and in the north

it was those areas around the Parafield Gardens and Salisbury areas.

This is a policy that the Government has endorsed because it was supported by the Parents Association of South Australia, the South Australian Association of State School Organisations, the body which represents all the parents on school councils—the peak parent body in South Australia.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: It is not the peak parent body.

The Hon. M.J. Elliott: It just represents those in the fund-raisers.

The Hon. R.I. LUCAS: No, the Hon. Mr Elliott is not aware of the breadth of the representation of SAASSO as opposed to—

The Hon. M.J. Elliott: SAASSO has always been a right-wing organisation.

The Hon. R.I. LUCAS: The Hon. Mr Elliott says that SAASSO has always been a right-wing organisation and tries to dismiss its—

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: Mr Wilson has not been there for, I would imagine, six or seven years. The Hon. Mr Elliott lives in the past with his knowledge of education. Mr Wilson is no longer there and has not been there for a long time. And I think it does the Hon. Mr Elliott no credit—

The Hon. M.J. Elliott: I live in the future. My kids are in schools right now.

The Hon. R.I. LUCAS: So is my son.

The PRESIDENT: Order!

The Hon. R.I. LUCAS: So, the Hon. Mr Elliott, you show me yours and I will show you mine. If the Hon. Mr Elliott wants to enter into that—

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: —it does not really influence—

The Hon. M.J. Elliott interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: —the debate.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Elliott does not understand, and that is his problem. His knowledge of education—

The Hon. M.J. Elliott: I've been on public school councils—

The Hon. R.I. LUCAS: If he still thinks that Mr Wilson is guiding SAASSO as a State school organisation, the Hon. Mr Elliott is years and years out of date.

The Hon. M.J. Elliott: You know that I didn't say that.

The PRESIDENT: Order! The Hon. Mr Elliott will have a chance to speak.

The Hon. R.I. LUCAS: The Hon. Mr Elliott dismisses—

The Hon. M.J. Elliott interjecting:

The PRESIDENT: Order! I call for order from the Hon. Mr Elliott.

The Hon. R.I. LUCAS: The Hon. Mr Elliott tried to dismiss the views of SAASSO as always being a right-wing organisation. That is an unfair criticism of the peak parent body in South Australia. It has for a number of years criticised Governments of all persuasions, Labor and Liberal, for not providing enough funding. Under my term as Minister for Education, it attacked the Government for the cutbacks in teachers and the cutbacks in the number of school service officers within our Government schools in South Australia. It has at least been even-handed in attacking Governments of both persuasions when there have been funding cutbacks.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: I certainly understand that position. It attacked the Labor Government when it cut 800 teachers out under the leadership of Greg Crafter back in the late 1980s. So, I think it is unfair to dismiss the views of SAASSO as being a right-wing organisation, as the Hon. Mr Elliott seeks to depict it, and in some way therefore seek to dismiss its views. It might not happen to agree with the Hon. Mr Elliott and his views on education on this issue, but it represents all the school council organisations in South Australia, and it has a much broader representation than school parent clubs.

I acknowledge the views of the school parent club organisation; on a number of issues it has different views from the other parent body in South Australia. Interestingly, the principals' associations, representing the leading educators in South Australia, supported the Government's position. When I was Minister for Education, all four principals' associations sat down with me as Minister and said that they supported the policy. I said to the principals and parents that this was a controversial issue. I understood what the individual parents were saying to me, but they had to come back to me with a joint view of the principals' associations and the parents saying they supported this and were prepared to support it publicly. If they were prepared to do so, this Government was prepared to look at it (as we did) and then support the policy position they put.

This constant position in this place infuriates me, where on three or four occasions now, every time this provision is moved or implemented by the Government, a combination of the Labor Party and the Australian Democrats reject it. Every time that happens, what they are doing is neglecting working class South Australians—those who cannot get the free School Card. The 40 or 50 per cent of parents in the poorer sections have to pay higher materials and services charges because this group of parents, who can afford to pay, thumb their noses at the schools, the parents, the teachers and other children at the school and say, 'Blow you; you can pay higher materials and services charges in your schools; you can go without and pay an even higher level of service charge for the delivery of services within your school, because you can't force us to pay.' All this Government is trying to do is to give the power to the school councils (which they want) to adopt a reasonable form of collection of the materials and services charge from the parents who can afford to pay but who are refusing to pay.

I have sat down with principals of schools in the northern suburbs on one of our select committees when the Hon. Carolyn Pickles and others asked what was done with someone who cannot pay. The principal said, 'We implement this policy with sensitivity.' I can recall a family at Salisbury High School to whom the principal said, 'I will accept $2 a week over the 40 weeks of the school year' and that family paid $2 a week over that school year. So, instalment provisions have been accepted by sensitive school councils and school principals for a period of time and have been supported and endorsed by the Government over the past 18 months or so.

On previous occasions I have spoken for much longer but, given that it is now midnight and that we have been through this debate before on a number of occasions, I do not intend to repeat all my views, other than—

An honourable member interjecting:

The Hon. R.I. LUCAS: I will be happy to have my previous speeches included in *Hansard* without my reading them. I wanted to make that one point—and I do so quite

passionately—that this is a most unfair, inequitable and un-South Australian proposition that the Hon. Mr Elliott and the Australian Labor Party have supported in the past and obviously, as of this evening, will continue to support.

The Hon. T. CROTHERS: I am sorry to have to speak, but I have often described the Hon. Rob Lucas as the best orator in both Houses of this Parliament, and he is, but in this occasion he has failed my appraisal. I address the question that the Hon. Mr Lucas came back to time and again, namely, one set of well-off attendee's parents not paying their service charges and the others of the working poor paying theirs. Of course that is not the real question. The question is whether any charges should be paid for education at all. The concept of user pays in this State was first, to my knowledge and remembrance, introduced under the Government of the Hon. David Tonkin. It was further perpetuated by the Bannon and Arnold Governments and by this current Government, but we should not be lulled into a false sense of security by listening to the wrong question being asked.

I will now briefly traverse the history of free education in the English speaking world. Free education was first introduced into the United Kingdom by the Parliament in 1870 and, what is more, schooling was free and school attendance was compulsory. We must ask why it was introduced after so many years of the Parliament's being quite happy to see the bulk of its population unlearned and illiterate? Why was that so? I will tell members why it is so. It was so because the 1870s saw the second wave of the industrial revolution. If the industrial revolution was earlier started in England with John Louden McAdam, Arkwright and Cartwright in the late 1700s, certainly the second wave of newer and more complex methods of production of machinery commenced taking place at the end of the American Civil War in the late 1860s. War fuels technological advancements.

Such was the case of that war fought between the States of America. Britain, as the leading industrial power at the time, adopted many of those methodologies. The captains of industry realised that they could no longer have an illiterate work force to operate the more technically advanced machinery that was then being introduced into the industrial process, so they endeavoured, helped along by some of the real true blue left of central Liberals of that day, to make people's lot better by both rendering them fit for employment and by ensuring that they could read and write.

It is not by accident that Adolf Hitler in the Kristallnacht and associated events burnt the books. If we needed education back then (and remember it was totally free and attendance compulsory), by the living heavens, given the pace of technological advancement today, if this nation is to retain its place amongst nations, we certainly need education today and, moreover, we will maximise the advantages of an education system in this nation and this State by ensuring that access is free to all who wish to undertake it or have the capacity to pursue it, not only at primary level but also at secondary and tertiary levels. Let us not be gulled by the question the Leader of the Government in this House poses. That is not the question. The question is whether the user pays concept, as I understand was first introduced by the Tonkin Government, carried on subsequently by the Bannon and Arnold Labor Governments and, it would appear, the Olsen Government now, should be allowed to continue unchallenged. I say not. There are some things in this society, if it is to have any beneficial impact on its citizenry, that ought to be free; one is health care when needed and the other is education, which is a requirement.

I was not going to speak at all, because I thought the Hon. Mr Elliott's contribution was fair, equitable and fairly widely embracing of the concept. The question is: should there be any charge whatsoever for education? I say 'No.' I say that we do the future of this State and this nation a disservice by so doing. I say that we look with myopic vision in respect of the user-pays system being introduced not only in the primary and secondary levels of education but also in tertiary levels.

I am absolutely thrilled to see the Hon. Mr Elliott introduce this private member's Bill, and I would hope that, if it is carried here tonight, the former Minister for Education and the present Minister for Education will know that this is a *cri de coeur* from the new thinking members of this House—one of whom is on his feet and currently engaged in delivering a small oration. I would hope that they would understand the message that is contained in this *cri de coeur* for fairness, equity and, above all else, the very necessary unfettered and free access to education at all levels.

The Hon. M.J. ELLIOTT: I will make this contribution brief, because it has been noted that we have covered this ground on a number of occasions before. I think that the only new development in relation to this debate has been the development of the Partnerships 21 process. It has been acknowledged that there are many very positive aspects about Partnerships 21 but, as schools pick up increasing responsibility for the management of their own funds, and as one links that to compulsory fees, one does not have to be a genius to work out that the combination of the two is, indeed, what many people have been concerned about for a long time.

The Hon. T. Crothers interjecting:

The Hon. M.J. ELLIOTT: Particularly, might I identify—because I do not want to pick just the State Government—that Federal Governments have had a propensity to cut moneys going in certain directions. Education, particularly public education, has suffered pressures and the general State coffers have suffered pressures from Federal Governments. One can see that, as a result of a combination of a complete devolution of responsibility for budgeting and compulsory fees, schools in middle class and wealthier areas will start putting on pressure to raise fees and, of course, finding that those fees are not being collected as people refuse to pay more than the maximum, they will come back to the Government, as indeed some of them are now, and say, 'This compulsory level will have to be lifted.'

I might add that the compulsory level has been already been lifted in the short time it has been in existence. That will steadily create what will be a very effective division within the public system between the have and the have not schools, with the Government at one point perhaps saying, 'We will concentrate on the poor schools.' In fact, as the wealthier public schools start increasing their fees, they will say, 'Blow them; we are doing all right, Jack' and the whole political equation in terms of funding for public schools will change. I see two sets of schools suffering: those in poorer areas and those in country areas. Those in country areas, in particular, will suffer, because they will struggle to staff their schools and certainly will not be in a financial position to offer extra incentives of the sort that would induce people away from not only private schools but also wealthier public schools.

My eye is not so much on the present, and I acknowledge the difficulties that some schools have in relation to fees and I understand why some schools and some principals are

saying that they would like compulsion. I understand their frustration but the root of the frustration is simply that schools are not being funded adequately. That is the real root problem. Because their funding is inadequate, they are unable to provide what they need to provide. I see a combination of events occurring now which can be argued for individually and coherently and which without due care will undermine a system which has served this State well for a long time.

During my teacher training, one of the topics that I studied was the history of public education in South Australia. One needs to have a real appreciation of the history of public education and the important role that it has played to appreciate what it is that might be put at risk, but that will not occur overnight. I do not believe that the introduction of compulsory fees will cause anything to happen overnight. These sorts of problems usually change very slowly, almost imperceptibly, and then suddenly we realise that we have problems. Unfortunately, sometimes that realisation comes all too late.

I have said in correspondence to people who have lobbied me not to insist on disallowing the regulation that this is not a cut and dried issue. I have always acknowledged that there are arguments on both sides of the case and I certainly understand the pressures in the present. Too often members of Parliament focus on the present and do not have sufficient eye on the future to avoid problems that would otherwise not arise. It is my eye on the future rather than my eye on the present which tips the balance in favour of opposing compulsory school fees. I urge other members of the Council to adopt that same position.

The Council divided on the motion:

AYES (10)

Crothers, T.	Elliott, M.J.(teller)
Gilfillan, I.	Holloway, P.
Kanck, S.M.	Roberts, R. R.
Roberts, T. G.	Weatherill, G.
Xenophon, N.	Zollo, C.

NOES (8)

Davis, L. H.	Dawkins, J. S. L.
Griffin, K. T.	Laidlaw, D. V.
Lucas, R. I. (teller)	Redford, A. J.
Schaefer, C. V.	Stefani, J. F.

PAIR(S)

Pickles, C.A.	Lawson, R.D.

Majority of 2 for the Ayes.

Motion thus carried.

SUMMARY OFFENCES (SEARCHES) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Summary Offences Act 1953. Read a first time.

The Hon. K.T. GRIFFIN: 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.

At common law the police are permitted to search a person following arrest. The degree of intrusion must be reasonable and in pursuit of a valid objective such as safety. In South Australia, the common law applies in conjunction with section 81 of the *Summary Offences Act*.

The legislation provides that the search may be conducted (this states the common law), that it may be conducted by a member of the police force or a medical practitioner acting on the request of a police officer, and that anything found on the person may be taken. The common law operates to fill the gaps in the legislation; that is, it indicates that the search must be reasonable, and provides an indication as to the grounds justifying the conduct of a search.

The common law does not, however, make detailed provisions for the method of a search, nor does it deal with matters ancillary to a search. This lack of guidance is a characteristic of the common law system, but that is of little comfort to both police and those subject to a search, particularly searches which, although legally proper, may be embarrassing or humiliating. Moreover, it is inevitable that conflicts will arise between the searchers and those searched about the propriety of what occurred at that time. The object of this Bill is, therefore, not to state or alter the grounds upon which a search may be conducted, but rather to supplement the common law by making detailed provisions for how the powers conferred by law may be carried out. I stress that the object of the Bill is to provide protection for both the police and those searched. It is in the interests of both parties, and the criminal justice system generally, that any disputes be quickly and authoritatively determined.

The amendments contained in this Bill can be encapsulated under three headings:

1. General Principles to observe in search and seizure
2. Intrusive Search Procedures
3. Intimate Search Procedures

I will explain all three elements of this Bill in turn.

General Principles To Observe In Search And Seizure.

It is obvious that a police procedure, such as a body search or forensic procedure, must be carried out humanely and with care so as to avoid, as far as practicable, offending genuinely held cultural values and religious beliefs. Also, the procedure should be carried out in a way that avoids the infliction of unnecessary physical harm, humiliation, or embarrassment on the particular person. Possibly not as obvious as the previous general principles, but still important, a procedure should be carried out in the presence of no more people than necessary, and, in most circumstances, only by a person of the same sex as the detainee.

These principles were included in section 10 of the *Criminal Law (Forensic Procedures) Act*, which was debated in Parliament last year. While it is acknowledged that police do observe these general principles in conducting procedures under section 81, this Bill provides Parliament with an opportunity to make it clear that it believes that these principles are important.

Intrusive Procedures

By necessity, both section 81 and the common law authorise the conduct of an intrusive search. Of course, the common law dictates that the intrusive search should be reasonable and in pursuit of a valid objective. Again, there is no suggestion that the police have been inappropriately exercising the power to conduct an intrusive search.

The *Summary Offences Act* gives some scope for a medical practitioner to conduct a search of a person. The Act provides that the medical practitioner may search a person in lawful custody at the request of a member of the police force in charge of a police station. However, the legislation does not provide that only a medical practitioner or other suitably qualified person can conduct an intrusive search. This restriction currently appears in the Police standing orders. The standing orders provide that only a medical practitioner may conduct an internal examination (being an anal or vaginal search, according to the standing orders).

The Government believes that it would be appropriate to specify in the legislation who may appropriately conduct an internal search. The Government believes that the restriction on who may conduct an intrusive search is so fundamental that the restriction should be expressly stated in the legislation.

Based on the precedent provided by the forensic procedures legislation, it is clear that only a medical practitioner or a registered nurse should be eligible to conduct an intrusive search. The Bill will insert a provision in section 81 of the Act to make this clear.

Intimate Procedures

In accordance with section 81 of the Act and the common law, the Police, when it is reasonable to do so, will be authorised to carry out an intimate search. In accordance with the general principles to be observed when conducting a body search, the intimate search will be carried out only in the presence of the persons necessary for the purpose of the search. While an intimate intrusive search (intrusive search of the rectum or vagina) will have an independent third party present during the search, only the person being searched and the police officers conducting the search will be present during a strip search.

The lack of a third party being present has been identified as a potential problem in relation to strip searches. If a complaint is subsequently made in relation to a strip search there will, almost always, be two non-independent and diametrically opposed accounts of the event; one account by the police and one account by the accused. This makes investigation, and ultimate resolution of a complaint difficult. The investigation of the complaint is made significantly more problematic if the detainee was intoxicated or drug affected at the time. The Government believes that this is not an appropriate situation given that the best safeguard against impropriety or allegation of impropriety is by independent review and conclusive determination of complaints.

The increasing availability of affordable technology provides an opportunity to overcome this problem. Video recording a strip search has benefits in that it ensures that undue humiliation or embarrassment is not caused to the detainee through the presence of an increased number of people to view the search. Yet, it also provides an independent record of the search if a complaint is subsequently made. Unless a complaint is subsequently made, the video recording does not need to be replayed, and provided that all recordings are kept under tight security, there should be no question of an undue infringement of a person's privacy.

To date, the Police have been able to video record strip searches when the consent of the detainee is given. There can be no question about the legality of a video recording where the detainee consents. However, it is not always possible to obtain the detainee's consent; not only on the grounds that the person refuses to give his or her consent, but that the detainee does not have the capacity to give consent at the time because he or she is under the influence of alcohol or drugs.

It is important to resolve one way or another allegations of misconduct by police where a person is in custody. Video recording is the only real hope of achieving that when an independent third party is not present. I note that, when commenting on current police use of video recording, the Police Complaints Authority advised that from his point of view, the significant benefit of video recording strip searches is that it is very much easier to resolve, one way or another, complaints alleging misconduct in the course of a strip search.

It is unlikely that, without Parliament's sanction, the police would be able to video record a strip search without first obtaining the consent of the detainee. As a result, only in limited cases will independent evidence be available to assist the Police Complaints Authority in resolving a complaint about the conduct of the search, or a court in trying to determine the admissibility of evidence. This leaves us with the undesirable situation that, if a complaint is subsequently made, an allegation of impropriety against the police may remain unresolved due to the lack of independent evidence.

To resolve this shortcoming, the Government proposes to amend section 81 to require the police to video record all intimate searches. The video recording procedures in the Bill are largely based on the provisions relating to the recording of interviews with suspects in section 74D of the Act. In general terms, the Bill, in so far as it deals with the video recording of intimate searches, adopts the following policies;

1. Intimate searches must be video recorded where reasonably practicable, unless it is an intimate intrusive search and the detainee objects to the recording.
2. The police must explain why the search is being recorded and the detainee's right to object to the recording.
3. If the search is not video recorded in accordance with the legislation, there is a procedure whereby a written record of the search is made at the time of the search and a video recording is made of that record being read to the detainee.
4. The detainee is given rights to watch the recording and obtain a copy of the recording, and the police have obligations to inform the detainee of these rights and facilitate the detainee's exercise of these rights.
5. The Bill allows the Governor to make extensive regulations about the storage, control, movement and destruction of the video recordings and other documentation aimed at ensuring that the power to record the intimate searches is not abused by inappropriate handling of the obtained material.

Given that the reason for the amendment is to ensure that independent evidence of the search is available, generally there will be no grounds for refusing the video recording. There will, however, be one exception to this general principle. When an intimate intrusive search is conducted on the detainee, according to the Bill, a medical practitioner or registered nurse must be present; or in other words, an independent third party will be present. As such, the justification for recording the search is not as strong as in relation to strip searches because the Police Complaints Authority will have access to independent evidence. Therefore, the Bill provides that the detainee may object to the video recording of the portion of a search involving an intimate intrusive search conducted by a medical practitioner or a registered nurse, and, if he or she objects, the search will not be recorded.

In providing that all intimate searches must be video recorded, the opportunity has arisen to also recognise a number of other rights that should be available to a detainee where possible. The authority of the police to search a person taken into lawful custody is just that, a power to search. There is currently no requirement that the police take steps to secure the attendance of a solicitor or adult relative or friend before conducting an intimate search of a minor. Nor is there a requirement that the police secure the attendance of a interpreter for a person not reasonably fluent in English before conducting an intimate search. The Bill will require the police to take action to obtain the presence of a suitable person before conducting an intimate search on a minor or a person not fluent in the English language, unless it is not reasonably practicable to do so in view of the urgency of the search.

Ultimately, the police power to search a person taken into lawful custody is a fundamental element of the arrest, or otherwise detention, of a person. This has been recognised in the common law and has been strongly supported by the Royal Commission into Aboriginal Deaths in Custody. However, it is important that this power be exercised properly, especially in relation to intimate searches, which is one of the most extreme exercises of police powers.

The Government does not believe that are problems in relation to the exercise of the police powers to body search, and therefore, it does not intend to alter the substantive search power. Yet, the Government does believe that it is an appropriate time to finetune police procedures relating to body searches. The Government believes that this Bill will make it clear what Parliament expects in the conduct of body searches, and will establish a mechanism for safeguarding against impropriety through ensuring that evidence is available to hold the police accountable for impropriety where necessary.

Explanation of Clauses

Clause 1 : Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 81

Clause 3 amends section 81 of the principal Act. The current search provisions are restructured and extended with the effect of providing legislative parameters to the conduct of intimate and intrusive searches.

New subsection (1) sets out the general power to search a person and to take anything found as a result of that search.

New subsection (2) sets out who is to carry out a search, namely, a police officer, or a medical practitioner or registered nurse acting on the request of a police officer. However, in the case of an intrusive search (i.e. a search of any orifice), only such a doctor or nurse may carry out that search. Paragraph *(b)* provides that the person carrying out the search may use such force as is reasonably necessary for the purpose and may use the assistance of another person. Paragraph *(c)* allows a detainee to have a doctor or nurse of their own choice present during an intrusive search.

New subsection (3) sets out further requirements that must be complied with where an intimate search is carried out.

Paragraph *(a)* provides that a solicitor or adult relative or friend must be present if an intimate search is to be carried out on a minor. Paragraphs *(b)* and *(c)* provide for the entitlement to an interpreter before and during an intimate search of a person whose native language is not English and who is not reasonably fluent in English. However, an intimate search of a minor or non English speaking person may proceed in the absence of persons to whom the detainee would otherwise be entitled, if the search has to be conducted urgently. Paragraph *(d)* provides that an intimate search must be carried out by a person of the same sex as the detainee (unless it is not practicable or the detainee requests otherwise). Paragraph *(e)* provides that, unless it is not practicable to do so, an intimate search must be recorded on videotape. However, the detainee may veto the video-recording of an intrusive search of the rectum or vagina. Paragraph *(f)* sets out the matters to be explained to the detainee before an intimate search is carried out. Paragraph *(g)* sets out the steps to be followed by a police officer if an intimate search, or that part of an intimate search consisting of an intimate intrusive search,

is not to be recorded on videotape. The effect of this paragraph is to ensure that some record is kept of the search, and that the detainee has the opportunity to verify, or note errors in, the written record.

New subsection (3a) sets out the matters a police officer must take into consideration when deciding whether it is reasonably practicable to make a videotape recording under this section.

New subsections (3b), (3c) and (3d) provide for the detainee's rights of access to a videotape recording made under this section.

New subsection (3e) provides that the Governor's regulation-making power extends to the storage, control, movement and destruction of videotape recordings and other documentation made of intimate searches under this section.

New subsection (4g) introduces legislative guidelines as to the general conduct of all procedures (including searches) carried out under this section. (Section 81 also provides for the fingerprinting, photographing, etc., of detainees).

New subsection (6) defines the terms 'intimate intrusive search', 'intimate search', 'intrusive search', 'medical practitioner' and 'registered nurse'.

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

LIQUOR LICENSING (REGULATED PREMISES) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Liquor Licensing Act 1997. Read a first time.

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

That this Bill be now read a second time.

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

Leave granted.

The object of this Bill is to make several amendments in relation to the consumption of liquor on regulated premises. Section 129 of the *Liquor Licensing Act 1997* makes it an offence for a person to consume liquor on regulated premises that are unlicensed.

The *Liquor Licensing Act 1997* extended the definition of 'regulated premises' contained in the repealed 1985 Act to include a public conveyance, which was defined to mean an aeroplane, vessel, bus, train, tram or other vehicle used for public transport or 'available for hire by members of the public'.

The inclusion of public conveyances was to provide control over liquor consumption on public transport, such as 'booze buses'. However, the definition has inadvertently also caught self-drive or rental vehicles, including rental hire cars, houseboats and self-drive mini-buses. These conveyances were never meant to be caught by the legislation and the solution is to exclude all such conveyances from the definition of 'public conveyance' in the Act.

The definition of 'regulated premises' in the 1997 Act was also widened to cover the consumption of liquor at events such as football matches and large functions generally in public places where liquor is consumed and an entrance fee is involved.

Advice is that informal private events held at places such as Belair Recreation Park (to which admission is now gained by the payment of an entrance fee) are also likely to be caught by the current definition of 'regulated premises', which was never intended.

The Bill makes it clear that it is paid admission to the event itself that is the key rather than admission to the public place in which the event is held. The amendment also allows premises, places or conveyances to be declared by regulation not to be regulated premises.

Section 41 of the Act provides for the grant of limited licences authorising the sale or supply of liquor for a special occasion or special occasions. There are occasions when liquor is not sold or supplied at an organised event but is brought in and consumed by persons attending the event and so it is necessary to broaden section 41 to allow a limited licence to be granted authorising the consumption of liquor on regulated premises.

I commend this Bill to honourable members.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Amendment of s. 4—Interpretation

This clause amends the definition of 'public conveyance' to exclude conveyances that are available for self-drive hire from the ambit of the definition. The definition of 'regulated premises' is amended to provide that a public place will only fall within the scope of the definition while it is being used for the purposes of an organised event admission to which involves payment of money, whether directly or indirectly. The same definition is also amended to exclude any premises, place or conveyance that the regulations exclude from the scope of the definition.

Clause 3: Amendment of s. 41—Limited licence

This clause provides that a limited licence may also be granted to allow for the consumption of liquor in circumstances when it would otherwise be unlawful (e.g., on regulated premises).

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

DISTRICT COURT (ADMINISTRATIVE APPEALS) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the District Court Act 1991 and to make related amendments to other Acts. Read a first time.

The Hon. K.T. GRIFFIN: 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 aims to simplify and clarify the procedural law relating to administrative appeals.

At present, there are many statutes which create appeals against administrative decisions to the District Court in its Administrative and Disciplinary Division. The appeals cover a wide range of decisions made by government which affect the lives of ordinary people. Examples include appeals against the refusal of a licence to engage in a particular occupation (such as a licence to be a second-hand vehicle dealer, travel agent, or land agent), against decisions under the *Freedom of Information Act* about the release of information by government agencies, decisions of the Guardianship Board about the care of incapacitated persons, or decisions by councils requiring rectification of premises or control of health hazards.

The purpose of these appeals is to permit a person, who is affected by a decision of government about his or her affairs, to have the decision reviewed by the Court. The Government does not propose any change to this fundamental purpose, nor to the substance of the appeal intended, but seeks to amend the legislation creating such appeals to make the nature of the appeal as clear as possible to the users of the process and to the Court.

Because these appeals have been created statute by statute over several decades, the wording which defines the nature and scope of the appeal in each case can vary considerably from one Act to another, even though the substance of the Court's inquiry is intended to be the same. The variations in wording create a problem. To determine the nature of the appeal created by a statute, the Court must engage in an exercise of statutory interpretation. If different words are used, even though the differences are only slight, the Court must determine whether there is a reason for the difference such that a different meaning should be assigned. This can add to the complexity and difficulty of these appeals, and hence to the cost in time and money, without adding any real benefit to the parties.

The reality is that it is the same appeal which is intended. What is intended is a review of the administrative decision, with a discretion to receive new evidence and a broad power to decide differently. The small differences of wording tend to obscure this. It is this problem which the Bill addresses.

The solution which is proposed by the Bill is to add provisions to the *District Court Act* which will apply generally to all such appeals. These provisions make clear the nature of the appeal which is intended, and the powers of the Court in dealing with it. They will apply to all appeals to the District Court in its Administrative and Disciplinary Division, regardless of which statute gives rise to the particular appeal. Only special and different features of a particular appeal need to be set out in the Act creating the appeal. In this way, there is no need for complex exercises of statutory interpretation and

for the development of a body of case law about each particular appeal.

For this reason, the Bill amends the *District Court Act* and also amends each particular Act creating an administrative appeal to the Administrative and Disciplinary Division of the Court. In each case, where a matter is dealt with in the general provision in the *District Court Act*, reference to that matter is deleted from the particular Act.

The appeal to be provided in the *District Court Act*, as amended by this Bill, does not fall exactly into any of the three categories of appeal in the strict sense, appeal *de novo* or rehearing. In many of the Acts creating these appeals, it is called a 'fresh hearing' or, sometimes, a 'review'. The Bill uses the term 'fresh hearing', but what really matters is not the terminology but the substance of the Court's powers.

The Court is not limited to consideration of whether the original decision was correct, at the time when it was made, on the evidence then available. The Court may receive new evidence and may substitute its own decision in place of the original decision.

However, the Court must give due weight to the original decision and must not depart from it unless satisfied that there are cogent reasons to do so. This is to ensure that parties present their evidence or submissions fully and properly to the original decision-maker, and do not simply rely on the right of appeal to sort things out. It is also to ensure that the expertise of the original decision-maker and the policy framework in which the original decision was made is not devalued. The Court will not proceed as if the original decision had never been made. The original decision will be the starting point, but the Court is free to depart from it if proper reasons exist.

In those cases where the original decision was made following a hearing where evidence was presented (as distinct from an administrative decision made without any hearing) the evidence received by the original tribunal can be relied on by the Court, and its reasons must be considered. The Court does not start all over again as if that hearing had never taken place. Further evidence may, however, be tendered.

There are, of course, some matters which will necessarily and properly vary from one Act to another. Examples are the persons entitled to appeal, the time limit for appeal, and the time within which written reasons for decision must be supplied. These are dealt with by the particular Act creating the appeal. However, in some cases, the new *District Court Act* provisions will provide a general rule, to which the statute creating a particular appeal may provide an exception. For example, the Bill provides that, normally, the original decision does not cease to operate because an appeal is lodged but continues to have effect pending the appeal. However, there will be some particular cases where it is desirable that the decision be stayed on the lodgement of an appeal, and the particular Act in that case provides accordingly.

The Bill is of a technical nature. It does not seek to change or cut down the right to appeal against certain administrative decisions. Its aim is to remove minor differences in wording in the statutes creating these appeals, which have arisen for historical reasons, but which, if not corrected, could perhaps cause technical difficulty for litigants and waste time and resources both for parties and the Court.

I commend this Bill to the House.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 20—The Court, how constituted

This clause proposes to strike out subsection (3) which provides that if an Act conferring a statutory jurisdiction on the District Court in its Administrative and Disciplinary Division (the ADD) provides that the ADD is to be constituted of a Magistrate, the ADD will, in exercising that jurisdiction, be constituted of a Magistrate. This provision is not required.

Further amendments proposed to this section of the principal Act will ensure that even when the ADD is otherwise required to sit with assessors, it is not required to sit with assessors for the purposes of dealing with preliminary, interlocutory or procedural matters, or for a part of proceedings relating only to questions of law.

Clause 4: Insertion of Division heading in Part 6

The heading 'DIVISION 1—GENERAL' is to be inserted immediately after the heading to Part 6 of the principal Act.

Clause 5: Insertion of new Division

The following new Division is to be inserted in Part 6 of the principal Act after section 42:

DIVISION 2—ADMINISTRATIVE APPEALS

42A. Application of Division and interpretation

New section 42A provides that this new Division applies in relation to the appellate jurisdiction conferred on the ADD by the provisions of some other Act (the special Act).

The following additional terms are defined for the purposes of this new Division:

- decision;
- original decision-maker.

42B. Extension of time to appeal

New section 42B provides that the ADD may, if satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that an appeal be instituted within the period fixed by the special Act.

42C. Stay of operation of decision appealed against

New section 42C provides that subject to the special Act and new section 42C, the making of an appeal against a decision does not affect the operation of the decision or prevent the taking of action to implement the decision.

However, the ADD (on application) or the original decision-maker (on application or at its own initiative) may make an order staying or varying the operation or implementation of the whole or a part of a decision appealed against pending the determination of the appeal, if the special Act does not provide that the decision must not be stayed or varied pending the determination of an appeal and the ADD, or the original decision-maker, is satisfied that it is just and reasonable in the circumstances to make the order.

Such an order is subject to any conditions specified in the order and may be varied or revoked by the Court or the original decision-maker (as the case may be) by further order.

42D. Conduct of appeal

New section 42D provides that an appeal is to be conducted by way of a fresh hearing and for that purpose the ADD may receive evidence (including evidence given by affidavit if the ADD so decides).

If the decision appealed against was made following the receipt of evidence in a hearing, the ADD may, as it thinks fit, rely on a record of the evidence.

In an appeal, the ADD is not bound by the rules of evidence and must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

The ADD must, in an appeal, give due weight to the decision being appealed against and the reasons for it and not depart from the decision except for cogent reasons.

42E. Decision on appeal

The ADD may, in an appeal, do one or more of the following:

- affirm the decision appealed against;
- rescind the decision and substitute a decision that the ADD considers appropriate;
- remit the subject matter of the appeal to the original decision-maker for reconsideration in accordance with any directions or recommendations of the ADD;
- make any ancillary or consequential order that the ADD considers appropriate.

However, each party to the proceedings is to bear his or her own costs unless the ADD considers that some other order should be made to do justice between the parties.

The provisions of new section 42E relating to costs in an appeal apply subject to the provisions of the special Act.

Clause 6: Repeal of s. 52

Section 52 of the principal Act is rendered obsolete by new Division 2 of Part 6.

SCHEDULE: Related Amendments

The Schedule provides for related amendments to a number of Acts that confer jurisdiction on the ADD (*ie* special Acts as defined in new Part 6 Division 2 of the principal Act) that are consequential on the proposed amendments to the principal Act.

The proposed amendments to the principal Act provide for the following general principles in relation to appeals to be heard by the ADD:

- the period within which an appeal must be instituted may be extended by the ADD;
- the staying of the operation of a decision appealed against;
- the conduct of an appeal;
- the powers of the ADD in an appeal, including the making of orders as to costs.

It is proposed to amend each of the special Acts to remove any of the provisions now to be inserted by the amendments into the principal Act. However, if the special Act contains a provision

dealing with the staying of the operation of a decision being appealed against, or costs of the parties in an appeal, different from the general provision inserted into the principal Act, those provisions are to be retained in the special Act. New sections 42C and 42E contemplate that the special Act may provide otherwise in relation to those particular matters, in which case, the provisions of the special Act will prevail.

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

LISTENING DEVICES (MISCELLANEOUS) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General): I have to report that the managers for the two Houses conferred together but that no agreement was reached.

TRANSPORT SAFETY COMMITTEE

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

That the interim report of the committee be noted.

Considering that it is now almost 12.25, I will be exceptionally brief. This interim report by the Transport Safety Committee has been brought to the Parliament at this time because we have not completed our first report on driver training and testing as we hoped to have done by this time.

The Hon. T.G. Roberts: Shame!

The Hon. DIANA LAIDLAW: The subject is so much bigger and more interesting than I think any of us had anticipated. What is apparent is that, because of the Australian Road Rules passing this Parliament in the past few weeks and the fact that those rules are to be introduced from 1 December, which will require the updating of the Road Traffic Code booklet, we believe that we should be making some comments at this time on the draft form of that booklet.

The booklet is the publication that is used by learner drivers in terms of progressing further to become fully skilled. We have two systems of gaining a licence in this State—a log book licence with competency assessment and a test. This booklet relates to the competency based testing and the proposed booklet is much better than it has ever been in the past, in terms of explaining what is required of a learner driver in gaining those competencies but also for parents and friends who may be working with that learner driver between their next competency assessment or on the way to doing their test, and we believe that that is an important initiative.

However, when receiving evidence on the driver training and testing, Professor Jack McLean from the Road Accident Research Unit highlighted a number of deficiencies that had come to his attention after perusing the booklet. The committee spent more time looking at the booklet aided by Professor McLean's comments and we as a committee have now written to the Executive Director of Transport SA asking that the booklet be amended as highlighted in the six ways outlined in our interim report. In particular, the important one relates to speed and what we assess by the wording of the messages; that is, an encouragement for younger people to believe that they could travel legally nine kilometres above the noted speed limit when in fact the speed limit noted on the road system is the maximum speed limit permitted at that time.

That was just one of six issues that we have raised. It has been a particularly interesting committee to chair. I thank members on the committee for their assistance to date, Chris Schwarz and our research officer, Trevor Bailey. If there was more time, I would speak at greater length but I do not think anyone would wish me to do that at this hour.

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

INDEPENDENT INDUSTRY REGULATOR BILL

The House of Assembly agreed to the amendments made by the Legislative Council without amendment.

LOCAL GOVERNMENT BILL

The House of Assembly agreed to amendments Nos 1 to 45, 48 to 64, 68 to 72, 74, 77 to 82, 84 to 113, 144 to 151 and 154 to 171 without any amendment; agreed to amendment Nos 65, 73, 75 and 153 with the amendments indicated in the following schedule; disagreed to amendments Nos 114 to 143 and 152 and made alternative amendments as indicated in the following schedule in lieu thereof; disagreed to amendments Nos 46, 47, 66, 67, 76 and 83 as indicated in the following schedule and made consequential amendments as indicated in the following schedule:

Legislative Council's Amendment

No. 65. Page 67, lines 34 and 35 (clause 83)—Leave out subclause (9) and insert new subclause as follows:

(9) The fact that a notice of a meeting has not been given to a member of a council in accordance with this section does not, of itself, invalidate the holding of the meeting or a resolution or decision passed or made at the meeting but the District Court may, on the application of the Minister or a member of the council, annul a resolution or decision passed or made at the meeting and make such ancillary or consequential orders as it thinks fit if satisfied that such action is warranted in the circumstances of the particular case.

House of Assembly's amendment thereto

Leave out 'or a member of the council'.

Legislative Council's Amendment

No. 73. Page 71, lines 22 and 23 (clause 87)—Leave out subclause (14) and insert new subclause as follows:

(14) The fact that a notice of a meeting has not been given to a member of a committee in accordance with this section does not, of itself, invalidate the holding of the meeting or a resolution or decision passed or made at the meeting but the District Court may, on the application of the Minister or a member of the committee, annul a resolution or decision passed or made at the meeting and make such ancillary or consequential orders as it thinks if satisfied that such action is warranted in the circumstances of the particular case.

House of Assembly's amendment thereto

Leave out 'or a member of the committee'

Legislative Council's Amendment

No. 75. Page 73, lines 6 to 35 and page 74, lines 1 to 13 (clause 90)—Leave out subclauses (2) and (3) and insert new subclauses as follow:

(2) A council or council committee may order that the public be excluded from attendance at so much of a meeting as is necessary to receive, discuss or consider in confidence any information or matter listed in subsection (3).

(3) The following information and matters are listed for the purposes of subsection (2):

(a) a personnel matter concerning a particular member of the staff of the council;

(b) the personal hardship of any resident or ratepayer;

(c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business, or prejudice the commercial position of the council;

(d) commercial information of a confidential nature that would, if disclosed—

(i) prejudice the commercial position of the person who supplied it; or

(ii) confer a commercial advantage on a third party; or
(iii) reveal a trade secret;

(e) matters affecting the security of the council, members or employees of the council, or council property;

(f) information that would, if disclosed, prejudice the maintenance of law;

(g) matters that must be considered in confidence in order to ensure that the council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;

(h) legal advice, or advice from a person employed or engaged by the council to provide specialist professional advice;

(i) information relating to actual or possible litigation involving the council or an employee of the council;

(j) information provided by a public official or authority (not being an employee of the council, or a person engaged by the council) with a request or direction by that public official or authority that it be treated as confidential;

(k) tenders for the supply of goods, the provision of services or the carrying out of works;

(l) information relating to the health or financial position of a person, or information relevant to the safety of a person;

(m) information relating to a proposed amendment to a Development Plan under the *Development Act 1993* before a Plan Amendment Report relating to the amendment is released for public consultation under that Act;

(n) information relevant to the review of a determination of a council under the *Freedom of Information Act 1991*.

(3a) A council or council committee may also order that the public be excluded from attendance at so much of its meeting as is necessary to consider a motion to close another part of the meeting under subsection (2)[1].

[1] In this case, the consideration of the motion must not include any consideration of the information or matter to be discussed in the other part of the meeting (other than consideration of whether the information or matter falls within the ambit of subsection (3)).

(3b) In considering whether an order should be made under subsection (2), it is irrelevant that discussion of a matter in public may—

(a) cause embarrassment to the council or council committee concerned, or to members or employees of the council; or

(b) cause a loss of confidence in the council or council committee.

House of Assembly's amendment thereto

Leave out proposed subclause (3a) (and the associated note)

Legislative Council's amendment

No. 153. Page 212—After line 11 insert new clause as follows:

Vegetation clearance

300A.(1) A council may, on the application of the owner or occupier of the land (the 'relevant land'), by order under this section, require the owner or occupier of adjoining land to remove or cut back vegetation encroaching on to the relevant land.

(2) An order must specify a reasonable period within which compliance with the order is required.

(3) If the requirements of an order are not complied with within the period specified in the order—

(a) the council may itself have the work required by the order carried out and recover the cost of the work as a debt from the person to whom the order was directed; and

(b) the person to whom the order was directed is guilty of an offence.

Maximum penalty: $750.

Expiation fee: $105.

House of Assembly's amendment thereto

Leave out proposed subclauses (2) and (3) and insert:

(2) Divisions 2 and 3 of Part 2 of Chapter 12 apply with respect to—

(a) any proposal to make an order; and

(b) if an order is made, any order,

under subsection (1).

[Schedule of the alternative amendments made by the House of Assembly in lieu of the Legislative Council Amendments Nos 114 to 143 and 152 disagreed to by the House of Assembly]

Amendments Nos 114 to 131

Clause 208, page 154, lines 1 to 36—Leave out the clause.

Amendments Nos 132 to 143

Clause 209, page 154, lines 37 and 38, page 155, lines 1 to 32 and page 156, lines 1 to 20—Leave out the clause.

Amendment No. 152

Clause 267, page 192, after line 19—Insert:

(1a) However, a person other than a public official cannot lodge a complaint without the written approval of a legally qualified person appointed by the Minister after consultation with the LGA.

(1b) An apparently genuine document purporting to be an approval under subsection (1a) will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof that the approval has been given.

[Schedule of the amendments made by the Legislative Council to which the House of Assembly has disagreed]

No. 46. Page 57 (clause 62)—After line 6 insert the following:

Maximum penalty: $10 000 or imprisonment for two years.

No. 47. Page 57 (clause 62)—After line 8 insert the following:

Maximum penalty: $10 000 or imprisonment for two years.

No 66. Page 69, line 15 (clause 86)—After 'Each member' insert:

(including the presiding member)

No.67. Page 69, lines 17 to 22 (clause 86)—Leave out subclauses (6) and (7) and insert new subclause as follows:

(6) In the event of an equality of votes on a question arising for decision at a meeting of a council, the member presiding at the meeting has a second or casting vote.

No.76. Page 74, line 14 (clause 90)—After 'subsection (2)' insert:

or (3a)

No. 83. Page 80—After line 6 insert new clause as follows:

Right of reply

94A.(1) A person who has been referred to during the proceedings at a meeting of a council or council committee by name, or in another way so as to be readily identified, may make a submission in writing to the council or council committee—

(a) claiming that he or she has been adversely affected in reputation or in respect of dealings or associations with others, or injured in profession, occupation or trade or in the holding of an office, or in respect of financial credit or other status, or that his or her privacy has been unreasonably invaded; and

(b) requesting that he or she be permitted to make a response that is incorporated into the minutes of the proceedings of the council or council committee (as the case may be).

(2) Unless otherwise determined by the council or council committee, a submission under subsection (1) will be considered by the council or council committee on a confidential basis under Part 3.

(3) In considering a submission under subsection (1), the council or council committee—

(a) may appoint a member of the council or council committee to confer with the person who made the submission and then to report back to the council or council committee; and

(b) may confer with the person who made the reference to which the submission relates; but

(c) may not judge the truth of any statement made by a member of the council or council committee.

(4) Subject to subsection (5), the council or council committee may then, if it considers it appropriate and equitable to do so, resolve that a response be incorporated into the minutes of the proceedings of the council or council committee (as the case may be).

(5) A response incorporated into minutes under subsection (4)—

(a) must be succinct and strictly relevant to the question in issue; and

(b) must not contain anything offensive in character; and

(c) must not contain any matter the publication of which would have the effect of—

(i) unreasonably adversely affecting or injuring a person, or unreasonably invading a person's privacy, in the manner referred to in subsection (1)(a); or

(ii) unreasonably aggravating any situation or circumstance; and

(d) must not contain any matter the publication of which might prejudice—

(i) the investigation of an alleged criminal offence; or

(ii) the fair trial of any current or pending criminal proceedings; or

(iii) the conduct of any civil proceedings in a court or tribunal.

(6) A council or council committee may at any time cease to consider a submission under this section if of the opinion that—

(a) the submission is trivial, frivolous, vexatious or offensive in character; or

(b) the submission is not made in good faith; or

(c) there is some other good reason why not to grant a request to incorporate a response in relation to the matter into the minutes of the proceedings of the council or council committee.

No. 114. Page 154 (clause 208)—After line 3 insert the following:

'Capital City Committee' means the Committee of that name established under the *City of Adelaide Act 1998*;

No. 115. Page 154, line 4 (clause 208)—Leave out ''land bank' means land' and insert:

'land trust' means the land (being in the nature of open space)

No. 116. Page 154, line 7 (clause 208)—Leave out '1.0 credit units for every 1.1' and insert:

1 credit unit for every 2

No. 117. Page 154, line 8 (clause 208)—Leave out 'bank' and insert:

trust

No. 118. Page 154, line 9 (clause 208)—Leave out '1.0 credit units for every 1.1' and insert:

1 credit unit for every 2

No. 119. Page 154, line 10 (clause 208)—Leave out 'land bank' and insert:

land trust (including by the return, surrender or redelineation of land so as to add land to the Adelaide Park Lands)

No. 120. Page 154 (clause 208)—After line 11 insert the following:

(2a) Before the Council, or the Crown or an agency or instrumentality of the Crown, adds land to the land trust under this section—

(a) in the case of the Council—the Council must—

(i) take reasonable steps to consult with the Crown; and

(ii) ensure that the land is suitable for public use and enjoyment as open space;

(b) in the case of the Crown or an agency or instrumentality of the Crown—the Crown or the agency or instrumentality of the Crown must—

(i) take reasonable steps to consult with the Council; and

(ii) ensure that the land is suitable for public use and enjoyment as open space.

(2b) Any dispute between the Council and the Crown as to whether subsection (2a) has been complied with in a particular case will be referred to the Capital City Committee.

No. 121. Page 154, lines 12 to 15 (clause 208)—Leave out subclause (3) and insert new subclause as follows:

(3) The Council may only grant a lease or licence over land that forms part of the Adelaide Park Lands, or take other action to remove land from the land trust, if—

(a) the Council is acting—

(i) with the concurrence of the Crown; or

(ii) in pursuance of a resolution passed by both Houses of Parliament; and

(b) the Council holds credit units equal to or exceeding the number of square metres of land to be subject to the lease or licence or to be otherwise so removed.

No. 122. Page 154, line 16 (clause 208)—Leave out 'bank' and insert:

trust

No. 123. Page 154, lines 21 and 22 (clause 208)—Leave out 'one month' and insert:

three months

No. 124. Page 154 (clause 208)—After line 22 insert the following:

(ab) to the extension or renewal of a lease or licence, or to the granting of a lease or licence in place of an existing lease or licence or a lease or licence that has expired, in a case where section 207 applies; or

(ac) to the extension or renewal of a licence, or to the granting of a licence in place of an existing licence or a licence that has expired, for a term not exceeding 12 months if the grant of the licence is authorised in an approved management plan for the Adelaide Park Lands (to the extent that land is not added to the area of the licence); or

No. 125. Page 154, line 24 (clause 208)—Leave out 'bank' and insert:

trust

No. 126. Page 154 (clause 208)—After line 26 insert the following:

3. This subsection does not in itself confer a right on the Council to remove land from the land trust.

No. 127. Page 154, lines 27 to 29 (clause 208)—Leave out subclause (4) and insert new subclause as follows:

(4) The Crown, or an agency or instrumentality of the Crown, may only take action to remove land from the land trust if—

(a) the Crown, or the agency or instrumentality, is acting—

(i) with the concurrence of the Council; or

(ii) in pursuance of a resolution passed by both Houses of Parliament; and

(b) the Crown holds credit units equal to or exceeding the number of square metres of land to be so removed.

No. 128. Page 154, line 30 (clause 208)—Leave out 'bank' and insert:

trust

No. 129. Page 154, line 33 (clause 208)—Leave out 'bank' and insert:

trust

No. 130. Page 154 (clause 208)—After line 34 insert the following:

This subsection does not in itself confer a right on the Crown, or an agency or instrumentality of the Crown, to remove land from the land trust.

No. 131. Page 154, lines 35 and 36 (clause 208)—Leave out subclause (5) and insert new subclause as follows:

(5) The Crown may (by instrument executed by the Minister) assign credit units held by the Crown to the Council and the Council may assign credit units held by the Council to the Crown.

No. 132. Page 154, line 38 (clause 209)—Leave out 'There will be a fund at the Treasury' and insert:

The Council must establish a fund

No. 133. Page 155, line 8 (clause 209)—Leave out paragraph (a) and insert new paragraphs as follow:

(a) development undertaken by the Council to maintain the Adelaide Park Lands; or

(ab) development undertaken by a public authority to increase or improve the use or enjoyment of the Adelaide Park Lands by the general public; or

No. 134. Page 155, line 13 (clause 209)—Leave out 'Treasurer' and insert:

Council

No. 135. Page 155, lines 14 to 20 (clause 209)—Leave out subclause (6) and insert new subclause as follows:

(6) The money standing to the credit of the fund may be applied by the Council for the beautification or improvement of the Adelaide Park Lands.

No. 136. Page 155, lines 22 and 23 (clause 209)—Leave out 'Capital City Committee' and insert:

Council

No. 137. Page 155, line 25 (clause 209)—Leave out 'Minister' and insert:

Council

No. 138. Page 155, line 28 (clause 209)—Leave out 'Minister' and insert:

Council

No. 139. Page 155, line 29 (clause 209)—Leave out 'Minister' and insert:

Council

No. 140. Page 155, line 30 (clause 209)—Leave out 'Minister' and insert:

Council

No. 141. Page 156 (clause 209)—After line 4 insert the following:

(10a) The Council must, on or before 30 September in each year, prepare a report relating to the application of money from the fund during the financial year ending on the preceding 30 June.

(10b) The Minister must, within six sitting days after receiving a report under subsection (10a), have copies of the report laid before both Houses of Parliament.

(10c) The Council must ensure that copies of a report under subsection (10a) are available for inspection (without charge) and purchase (on payment of a fee fixed by the Council) by the public at the principal office of the Council.

No. 142. Page 156, lines 6 and 7 (clause 209)—Leave out definition of 'Capital City Committee'.

No. 143. Page 156, lines 10 to 14 (clause 209)—Leave out paragraphs (a) and (b) and insert new paragraphs as follow:

(a) if the total anticipated development cost does not exceed $5 000—$50;

(b) if the total anticipated development cost exceeds $5 000—$50 plus $25 for each $1 000 over $5 000 (and where the total anticipated development cost is not exactly divisible into multiples of $1 000, any remainder is to be treated as if it were a further multiple of $1 000), up to a maximum amount (ie., maximum prescribed amount) of $150 000;[1]

No. 152. Page 192 (clause 267)—After line 19 insert the following:

(1a) However, a person other than a public official cannot lodge a complaint without the written approval of the Minister.

(1b) An apparently genuine document purporting to be an approval of the Minister under subsection (1a) will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof that the Minister has given the approval.

[Schedule of the consequential amendments made by the House of Assembly]

Clause 28, page 28 after line 7—Insert:

(2a) However, a submission cannot be made under subsection (2) if the Council has, within the period of two years immediately preceding the making of the submission, been newly constituted (including through an amalgamation) or otherwise subject to change through the implementation of a structural reform proposal (unless the submission is being made with a view to addressing a matter recommended by the Panel that the council has failed to implement).

New clause, page 194, after line 4—Insert:

Report on operation of Part

271A.(1) The Minister must ensure that a report on the operation of this Part for the period between the commencement of this Part and 30 June 2002 is prepared by 31 August 2002.

(2) The Minister must, within six sitting days after receiving the report under this section, have copies of the report laid before both Houses of Parliament.

ELECTRICITY (MISCELLANEOUS) AMENDMENT BILL

The House of Assembly agreed to the amendments made by the Legislative Council without amendment.

NEW TAX SYSTEM PRICE EXPLOITATION CODE (SOUTH AUSTRALIA) BILL

The House of Assembly agreed to the Bill with the amendment indicated by the following schedule, to which amendment the House of Assembly desires the concurrence of the Legislative Council:

New clause 36—Page 14, after line 24, insert new clause as follows:

Fees and other money

36. (1) All fees, taxes, penalties (including pecuniary penalties referred to in section 76 of the New Tax System Price Exploitation Code), fines and other money that, under the application law of this jurisdiction, are authorised or directed to be payable by or imposed on any person (but not including an amount ordered to be refunded by a person to another person) must be paid to the Commonwealth.

(2) This subsection imposes the fees (including fees that are taxes) that the regulations in the New Tax System Price Exploitation Code of this jurisdiction prescribe.

ASER (RESTRUCTURE) (MISCELLANEOUS) AMENDMENT BILL

The House of Assembly agreed to the Bill without any amendment.

EMERGENCY SERVICES FUNDING (MISCELLANEOUS) AMENDMENT BILL

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

TRANSPORT SAFETY COMMITTEE

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

That the members of this Council appointed to the joint committee have power to act on the joint committee during the recess.

Motion carried.

ADJOURNMENT

At 12.34 a.m. the Council adjourned until Thursday 5 August at 10 a.m.