LEGISLATIVE COUNCIL

Thursday 4 May 2000

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

PROSTITUTION

A petition, signed by 126 residents of South Australia concerning prostitution, and praying that this Council will strengthen the present law and ban all prostitution related advertising to enable police to suppress the prostitution trade more effectively, was presented by the Hon. K.T. Griffin.

Petition received.

NATIVE TITLE

A petition, signed by 252 residents of South Australia concerning native title rights of indigenous South Australians, and praying that this Council does not proceed with legislation that, first, undermines or impairs the native title rights of indigenous South Australians and, secondly, makes changes to native title unless there has been a genuine consultation process with all stakeholders, especially South Australia's indigenous communities, was presented by the Hon. Sandra Kanck.

Petition received.

TXU AUSTRALIA

The Hon. R.I. LUCAS (Treasurer): I seek leave to make a ministerial statement on the subject of the lease of Optima Energy.

Leave granted.

The Hon. R.I. LUCAS: I advise the Council that earlier today the Premier announced that TXU Australia is the successful bidder for the long-term lease of Optima Energy. TXU Australia will pay a total of $315 million for the right to manage and operate Optima Energy for a lease period of 100 years. The $315 million includes an agreement to meet unfunded superannuation liabilities of $20 million that otherwise would have been left with the state government. The government will now move to financial close, with final payment being made on 6 June.

This is without question a good result for South Australia. The lease of Optima Energy is the next step towards ensuring that, by the end of the first year of the new century, South Australia has a more competitive private sector electricity industry, with taxpayers free of risk and starting to gain the benefits of reduced state debt and lower interest payments. It also brings to South Australia a major new company with a track record of growth and expansion.

TXU is one of the largest privately owned energy companies in Australia and operates both electricity and gas distribution and retail businesses in Victoria. The company also operates as an electricity retailer in New South Wales and South Australia. Its parent company is the international energy group Texas Utilities, which operates electricity and gas businesses in the USA, the UK and Australia. The group delivers energy to more than 9 million customers worldwide and ranks as the largest supplier of electricity in the UK and the fourth largest in the USA.

The government particularly welcomes the announcement by TXU that it would immediately commence a feasibility study for a new gas pipeline to South Australia from the Victorian gas fields. Whilst the successful bid was based on maximising price and minimising risk, this announcement is potentially a significant additional benefit to South Australia from TXU's presence in the state.

TXU's access to gas supply and storage through the Victorian market and the opportunity provided by Optima as a foundation customer means that TXU is well positioned to play a critical role in the development of a new pipeline to South Australia. This proposal is in line with the government's long-term strategy for the development of extra capacity and greater competition in the South Australian energy market. We have already taken steps to increase the supply of electricity to the state. This announcement now opens up the prospect of accelerating similar developments in the gas industry. Clearly a new gas pipeline would bring significant economic benefits to South Australia. It has the potential to allow major new projects to get the go-ahead, it will reduce our reliance on the Cooper Basin and it will make a real contribution to national greenhouse targets.

We are confident that we have received an excellent price for the business. It ranks at the top end of prices gained for generation businesses in both Australia and internationally at a multiple of 16 times expected cash earnings for the year 2000 and, in those terms, compares more than favourably with the $3.5 billion we received earlier this year for the distribution and retail companies.

Over the past year, opposition members and the Hon. Mr Xenophon have accused the government of taking decisions in relation to the future supply of electricity to South Australia that were based on a desire to increase the value of the state's generation assets. The government has strongly rejected that ill-informed criticism. While the Government believes that it has achieved a good price for Optima, the decision to fast track new generation capacity at Pelican Point and interconnection with New South Wales and Victoria clearly had a negative impact on the value the market placed on Torrens Island.

That was made clear by Mr Bob Shapard, the Chief Executive of TXU, when he was answering questions at this morning's media conference. He stressed that in his view the price was a fair one but also added that the extra capacity that will be available to South Australia from both Pelican Point and the interconnection projects meant that the price was lower than if the government had not encouraged a more competitive market through extra generation and interconnection.

The Hon. L.H. Davis: Or if we had sold it 12 months earlier.

The Hon. R.I. LUCAS: Exactly. Furthermore, when asked what he thought would be the effect of this additional capacity on prices, his response was that he believed they would come down. That statement clearly blows out of the water the ill-informed and mischievous comments of the Labor Party, the Democrats, Mr Xenophon and others like the New South Wales government and its paid lobbyists.

The Hon. L.H. Davis: Danny Price, where are you?

The Hon. R.I. LUCAS: Come on down. It is time that the opposition, the Hon. Mr Xenophon and others stopped playing politics with energy policy in South Australia.

Members interjecting:

The Hon. R.I. LUCAS: Hear, hear! The critical issue that the government has addressed is the need to ensure a secure and adequate supply of competitive priced electricity as the state moves towards the period of peak usage expected in the

summer of this year and 2001 and beyond. We made the proper decision that security of supply was paramount, even if there was to be a negative impact on the sale value of the generators. It was clear to the government in June 1998 that, given the drawn-out process involved in determining regulated status, the Riverlink proposal could not be built and operational by that deadline. Events since then have proved our judgment to be absolutely correct.

Under the terms of the legislation passed by parliament, all of the cash proceeds from the lease of Optima Energy, with the exception of some transaction costs, will go to reduce the state's debt.

QUESTION TIME

ELECTRICITY, PRIVATISATION

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

Leave granted.

The Hon. P. HOLLOWAY: I refer to the statement that the Treasurer has just made that Torrens Island power station, now owned by Optima, is to be leased for 100 years to the US firm TXU for $315 million. This sale brings proceeds to date from the privatisation of ETSA to just over $3.8 billion. The remaining assets for sale include ElectraNet and the other generators. Professor Richard Blandy, who was a principal economic adviser to this Liberal government, has estimated that a sale price of at least $6 billion was required simply to prevent the privatisation from damaging the state's budgetary position.

As part of the lease announcement, TXU is to undertake a feasibility study of the viability of building a gas pipeline to the station from Victoria. Power prices in South Australia are currently around twice the levels charged in Victoria and New South Wales. A recent study by the Business Council of Australia draws attention to the significant market power exercised by South Australia's generators and states (page 27):

> One of the generating companies (Optima)—

that is the company which has just been sold—

> owns nearly all of the capacity that sits on the critical part of the cost curve; that is, at the point where demand typically interacts with supply. While the government is currently selling the three generating companies individually, that will not change the fact that Optima can (if not prevented by regulation) make regular trade-offs between reducing supply and lifting the overall market price. It is estimated that 70 to 80 per cent of the time the level of demand is such that the Victorian-South Australian interconnector is constrained, which leaves Optima to set the market price.

My questions to the Treasurer are:

1. Given returns from the privatisation of the ETSA assets to date, can the Treasurer provide an unequivocal assurance that the sale process is on track to provide the government's claimed $100 million annual budget benefit on which the budget's forward estimates are based?

2. Given the government's previous assurances that there was sufficient gas to meet the needs of the expanded Pelican Point and Torrens Island power stations, why does TXU consider it necessary to conduct a feasibility study into a gas pipeline from Victoria into South Australia?

3. Given the Business Council of Australia's analysis that Optima will continue—

The Hon. L.H. Davis: You'd better put your floaties on, Paul.

The Hon. P. HOLLOWAY: I can understand why the Hon. Legh Davis would try to prevent these questions from being asked but, nevertheless, I will continue to do so. My third question is:

3. Given BCA's analysis that Optima will continue to exercise significant market power after privatisation and the fact that South Australia's power prices are about twice the level of those of Victoria and New South Wales, does the Treasurer believe that current regulations are sufficient to guarantee price reductions and prevent market manipulation?

The Hon. R.I. LUCAS (Treasurer): It is obvious that the honourable member drafted a number of his questions prior to hearing the ministerial statement in relation to TXU. I will address his second question first. The issue of a second source of gas to South Australia is so critical that I am amazed that a whingeing, whining opposition—led by Michael Rann and Kevin Foley and supported by the Hon. Mr Holloway—is now attacking the prospect of an alternative gas supply for the state of South Australia. I am just amazed. We hear whingeing and whining—

Members interjecting:

The PRESIDENT: Order! The Hon. Paul Holloway and the Hon. Legh Davis will come to order.

An honourable member interjecting:

The PRESIDENT: Order, the Hon. Ron Roberts!

The Hon. R.I. LUCAS: It is so disappointing to hear from an opposition just whingeing, whining and carping criticism. It is not even prepared to acknowledge what could be possible. The government, for example, has just welcomed the feasibility study. Nothing has been said beyond the fact that Texas Utilities is dead serious about this and that it will start a feasibility study straight away. But here we have, even at this stage, an opposition—led by Michael Rann and Kevin Foley—already whingeing and whining about this proposal and trying—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: Now he is saying that he welcomes it. In his question the honourable member attacked the proposal, and now he is welcoming it. He does not know what he is doing at the moment.

Members interjecting:

The Hon. R.I. LUCAS: You do not even know what you are doing half the time, let alone me understanding it.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: The Hon. Mr Holloway clearly does not understand that there are two critical questions in relation to gas supply: one is an issue of supply which the Hon. Mr Holloway and the Hon. Mr Elliott by way of interjection are supporting; and the other issue for businesses is that of competition and price—an issue of the price of the gas or the fuel source for their particular business. There is nothing in what the government has said which is proof of anything that the Hon. Mr Holloway or the Hon. Mr Elliott by interjection is suggesting.

Issues of supply are important, but issues of price for businesses are even more critical, or as critical, in terms of running a business. Even if there was no issue in relation to supply—if that was the set of circumstances that applied for business—they would still want to have at least two competitors for their fuel source so there could be competition in terms of the gas industry not only for the supply of the electricity industry but also for industrial development in the

state. If the shadow minister for finance does not have the wit or wisdom to understand the importance of that in terms of supply and price, then there is something wrong with the shadow minister for finance, and I would suggest—

The Hon. P. Holloway interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: And what have you done about it?

The Hon. P. Holloway interjecting:

The PRESIDENT: Order! The Hon. Mr Holloway would do better not to interject.

The Hon. R.I. LUCAS: The Hon. Mr Holloway said, 'We talked about it for years and years.' That is the difference between a Labor government and a Liberal government: a Labor government talked about it for 11 years yet did nothing whereas in six years, in a reform of both the electricity industry and the gas industry, this government is creating the framework in which major private sector providers and investors are indicating that they are now prepared to have a good, hard look at a pipeline such as this.

The Hon. L.H. Davis interjecting:

The Hon. R.I. LUCAS: They have opposed Pelican Point: they have opposed everything that moves within this state. In relation to the honourable member's second question, he needs to understand that it is not only security and supply—that is important—but it is also price. You cannot try to run a business and have only one supplier who controls the price to the business. You must have some understanding of running a business, which clearly the Hon. Mr Holloway does not have. But, even if you are the Hon. Mr Holloway, you should understand that, if you have two suppliers, if you have two competitive sources of supply, then that has to be a more competitive gas market and a more competitive electricity business as well.

In relation to Mr Dick Blandy, while in many areas I have agreed with Mr Blandy, the issue of his approach on ETSA and privatisation is one where we have a very significant disagreement. The government has placed on the record written documentation from Dick Blandy where his view just two or three years ago (I have not got the exact date with me) was an ETSA privatisation for $3 billion; it was something he was recommending to the government of the day. The figure of $3 billion was what Dick Blandy was recommending in terms of a privatisation of ETSA in South Australia.

We have also disagreed with Mr Blandy in terms of his strong support for Riverlink; and also his view in relation to whether we as a government, as a community, should potentially put up with blackouts this summer and next summer in the interests of getting up his particular proposal of Riverlink as well. In all those areas we strongly disagree with Dick Blandy's views. The Hon. Paul Holloway may agree with Mr Blandy's views in those areas.

An honourable member interjecting:

The Hon. R.I. LUCAS: Dick Blandy has, evidently, in latter days, put a figure of $6 billion on it. I place no more credence—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: I will come to that question, but you asked four or five of them. I place no more credence on Dick Blandy's latter day projections about what we would need to get from a privatisation of ETSA than in a number of these other areas; for example, the views he has put in relation to Riverlink and so on. With due respect to Dick Blandy, he is not someone experienced in the commercial market of valuing electricity assets: his expertise exists in other areas. He is not a commercial banker, and he is not the person from whom I would be seeking advice—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: It was not a BCA report, anyway: it was a report done by consultants of BCA—and I will come to that shortly. In relation to Dick Blandy's views on the $6 billion, they are not views that the government has placed on the public record in terms of expected proceeds. What I will say again—and I have said this on a number of occasions at previous times—is that it is the ultimate in hypocrisy for the Hon. Mr Holloway to criticise the government on sale proceeds when, through his actions and those of his colleagues, he has clearly reduced by some hundreds of millions of dollars the benefit to taxpayers in respect of the privatisation of ETSA. If we had been able to conclude this deal in 1998 when we first wanted to do so, our proceeds to the state and our repayment of debt would have been many hundreds of millions of dollars ahead of even the very good results we have been able to achieve in the years 1999 and 2000.

In terms of the ultimate budget benefit, the government's position from 1998 onwards, in terms of the difference between what we would have to pay in terms of interest costs and the projected dividend flows, is that nothing that has occurred so far moves the government away from the ballpark we have been talking about of a difference of about $100 million a year, but ultimately we will not know the final detail of that until we conclude the final four electricity sales and leases, and that will occur in August this year.

Given that the second biggest asset is ElectraNet, and that will not be concluded until August or September this year, clearly we are not in a position to be able to do those final calculations. But, on what we have achieved so far—and whilst they are not as good as we would have wished and not as good as we could have achieved if we had stopped competition in South Australia through preventing generators and interconnectors from establishing—they are still very good results and we are on track towards achieving that $100 million difference between interest costs that we would have had to pay and the dividends that we would reasonably expect to get from the electricity businesses if we had continued to operate them.

As to the honourable member's third question in relation to the Business Council, as I have said publicly, whilst it is not a report of the Business Council but some consultants for the Business Council, we are disappointed at the fact that the Business Council consultants have not updated their report in respect of recent developments in the South Australian market. It would appear to be the sort of report which was written a few weeks ago because it does not take into account a number of decisions that have been announced by key players in our market, such as National Power, which has now said that it will look at Pelican Point going from 500 megawatts to 800 megawatts.

We now have TransEnergie indicating that it will look at a second interconnector from the eastern states to South Australia. My recollection—and I will need to check the detail—is that some of the figuring of the BCA consultants was not factored into the TransEnergie Murraylink interconnector. Certainly they did not factor in the more recent discussions that are going on in relation to Southern Link, as TransEnergie is calling the new interconnector through the South-East.

So, from that viewpoint, the work of the BCA consultants is very disappointing. If I were the BCA, I would be very disappointed with the money I had invested in those consul-

tants in terms of keeping themselves up to date with the more recent developments in terms of our developing a competitive electricity industry here in South Australia. As I said in the ministerial statement, Bob Shapard from TXU has in fact confirmed the government's views in a number of these key areas; that is, that the increased competition we have introduced into the market has led already to a reduction in the value of our generators in South Australia, contrary to the views that Dick Blandy, the Hon. Mr Xenophon, the Hon. Mr Holloway and Danny Price have been putting around for the past few months.

He also put a view very strongly, although it was not raised with him as part of the BCA consultants' report, that the increased competition in his view would lead to a reduction in the prices that we see here in South Australia, and that is the sort of policy this government has been driving to try to see increased competition in South Australia.

The Hon. T. CROTHERS: As a supplementary question, does the use of natural gas in power stations reduce carbon dioxide emissions into the atmosphere, and would that, if it is so, be beneficial with respect to the damage that is being caused to the ozone layer?

The Hon. R.I. LUCAS: I bow to the greater environmental knowledge of the Hon. Mr Crothers than I have as a mere Treasurer and Minister for Industry and Trade. Mr Shapard indicated this morning that the notion of being able to expand a natural gas powered electricity industry in South Australia as opposed to coal powered clearly has significant, beneficial greenhouse impacts in terms of environmental policy along the lines suggested by the Hon. Mr Crothers. We, more so than virtually all other states, have a much greater percentage of our generation coming from natural gas. We have coal-powered generation from the Northern Power Station at Port Augusta. Synergen and Optima are both gas fired and so, too, is Pelican Point.

In terms of the prospects under greenhouse policies of the future of carbon taxes and those sorts of disincentives for coal-fired generation, states such as South Australia, which have in the past paid higher prices for their electricity because it was gas fired, may well see themselves more competitively placed with those states that have been very heavily reliant on coal-fired generation. I am sure that the honourable member is aware that at the moment a very big discussion is taking place in Queensland in relation to coal-fired expansion generation or gas-fired expansion generation.

MINISTERS' PROTOCOL

The Hon. P. HOLLOWAY: My question is directed to the Attorney-General. Is there a protocol applying to ministers who think it in the public interest that a prosecution be withdrawn and who wish to act on that thought? If not, what advice does the Attorney have for such a minister or for staff acting on behalf of a minister?

The Hon. K.T. GRIFFIN (Attorney-General): In my usual way, I shall be cautious in my response and indicate that I will take the question on notice but, if the honourable member wished to disclose to me the information upon which he relies to ask the question, perhaps an example that he wishes to rely upon, that might assist in more carefully and clearly responding to his question.

LOCAL GOVERNMENT ELECTIONS

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning, representing the Minister for Local Government, a question about the current local government elections.

Leave granted.

The Hon. CARMEL ZOLLO: Over the past week or so I have had two people come to me who have received two ballots for their local area, each of these people being in different local government areas, when under the Local Government (Elections) Act they are entitled to only one. Indirectly, I also know several other people in similar circumstances. The two people who contacted me are definitely entitled to only one vote. I have personally returned one to the local returning officer and have advised the other person to do so as well. Discussions with two different local government representatives indicated that they had no definitive way (not quickly anyway) of checking who had received what. In my own case, we have had to request (my household will be signing forms this evening) our ballot papers.

The Hon. Diana Laidlaw: What are you doing this evening?

The Hon. CARMEL ZOLLO: Signing forms to request our ballot papers.

The Hon. Diana Laidlaw: Because you haven't received them?

The Hon. CARMEL ZOLLO: No, not as at last night. We have taken this action because—

The Hon. Diana Laidlaw interjecting:

The Hon. CARMEL ZOLLO: I think so, and I am on the roll, too.

The Hon. T. Crothers: I haven't got mine either, now that you mention it.

The Hon. CARMEL ZOLLO: You haven't got yours either? Well, here we have another example. We have taken this action because the last ballot papers were posted on Tuesday, we were advised, and, of course, it is now Thursday. I appreciate the extent of this method of postal voting at local government elections being a first for South Australia and the complexities associated with database matching that was required between councils and the Electoral Commissioner. I am also aware that certain people in different wards or council boundaries may cast more than one vote if eligible under the act. However, I would have thought that there was plenty of time for local municipalities to ready themselves for this change in their elections.

It leads me to ask: just how many people have had the opportunity to exercise more than one vote which they were not eligible for under the act, often perhaps in confusion or ignorance, and how many might have missed out on exercising their democratic right to vote? I ask the minister:

1. What considerations were put in place to ensure that the problems I have outlined would not happen, that is, what checks and balances are now in place to ensure that these problems would not occur in relation to duplication of ballots, eligibility and so on?

2. How many cases of 'duplicate' and 'ineligible' votes have been reported to the returning officers?

3. Can the minister also advise whether computerised distribution of preferences, if necessary, will be used for the distribution of preferences such as the successful computerised system used at the previous state election for the Legislative Council?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I will immediately refer the honourable member's questions to the minister and bring back a reply. The honourable member has raised some very important issues that warrant prompt attention.

ELECTRICITY, PRIVATISATION

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

Leave granted.

The Hon. CAROLINE SCHAEFER: Given that the Reserve Bank has facilitated several rises in interest rates over the past few months, has Treasury done any figures as to what changes may have taken place in South Australia? Indeed, had we not leased ETSA and halved our debt how much extra interest would that have cost the taxpayers of this state?

The Hon. R.I. LUCAS (Treasurer): I thank the honourable member for her question. It is one where one has to make a number of general assumptions, I guess, in terms of trying to provide any sensible information to the member and to the community, but I will outline some of those assumptions. Clearly, the interest rate decisions being taken by the Reserve Bank at the moment, and over the past few months, some four or five of them, adding up to 1¼ per cent, are critically important to most of us in terms of the borrowings that we have on our homes and personal debt that we might have. Ultimately, the key issue for the state tends to be what the longer term interest rates will be in terms of three and five years. I indicate that there is not always automatically an immediate transfer of the short-term interest rates through to the long-term interest rates that we have on our debt.

If one can speak generally, the view from Treasury to me has been that, if you are going to see a general rise in interest rates of, say, 2 per cent over a period of time, ultimately, that will flow through into your level of state debt. There are a variety of other assumptions, which I will not go into. At the moment we have seen a rise of about 1¼ per cent in the past few months, and we already have the economists from the major banks and financial institutions predicting at least another couple of interest rate increases over the coming six months or so.

If we make the assumption that Treasury has put to me that, ultimately after a period of time, that will flow through to our debt, you can then do a relatively simple calculation in terms of the state's overall debt level. Had we not proceeded with the ETSA privatisation, our level of state net debt was about $7.7 billion, and Treasury has done some broad calculations to show that if we see a general 2 per cent increase in interest rates in South Australia the increased interest costs on that debt is about $154 million per year. A portion of that has a very significant impact on the budget, the non-commercial sector deficit. A portion of that would have an impact on the profitability of the commercial businesses, which would then impact in some way on the dividend flows and taxation streams back to the budget as well.

The Hon. Diana Laidlaw: And therefore on services we can provide.

The Hon. R.I. LUCAS: And therefore on services. So, through the commercial sector, there is a filter mechanism through the dividend policies that ultimately comes back to the budget. Talking in general terms, one must make a number of assumptions. If there is a 2 per cent increase generally in interest rates over time, then as that washes through our debt system, if we had $7.7 billion in debt, we would have increased interest costs of some $154 million.

Clearly, that would be a cost that the current budget could not meet, and the government of South Australia would either have to reduce significantly the sorts of services that it provides in transport, justice, education or health or would have to significantly increase taxation and revenue from the taxpayers of South Australia. That is where the intellectual vacuum that inhabits the opposition benches—and I include with generosity the Democrats, the Hon. Mr Xenophon and others here—confronts the people of South Australia in this parliament.

It is easy for them to say, 'Don't sell, don't lease, don't privatise, don't increase taxes, and don't cut costs.' But if you are left with a debt of $7.7 billion and if interest costs start going up by 1 or 2 per cent—

The Hon. T. Crothers: Which they are doing now.

The Hon. R.I. LUCAS: Exactly, and I am pleased that the Hon. Mr Crothers is part of this now! At 2 per cent we are talking of an extra interest cost of about $150 million. That is the sort of intellectual vacuum, in terms of economic policy, taxation policy and intellectual honesty, that inhabits the opposition benches here in South Australia.

Members interjecting:

The Hon. R.I. LUCAS: You would not need to do a thousand hours of research to find that a state that is exposed to debt of that size in an increased interest cost environment would face significant problems. That again highlights the importance to the state, its economic development and its own financial fundamentals (in terms of balanced budget and reducing debt) of economic development and the development of jobs in this state, that we are not left exposed to the vagaries of interest rates.

For a number of years now we have enjoyed the benefits of a very strong national economy, which has seen historically low interest rates. We have not had the interest rates of 15, 17 and 18 per cent that we saw through the 1980s. We have enjoyed historically low interest rates, and it is a fool's paradise for Mr Rann and Mr Foley, who are meant to be the intellectual powerhouses of economic policy within the opposition, in essence to be indicating that they are quite happy to sit on a debt of $7.7 billion, do nothing about it at all and see the increased costs of something up to $100 million or $150 million (depending on those assumptions that I indicated earlier) on our state services. It is important—and I am indebted to the Hon. Caroline Schaefer for her question—that all members in this chamber share that information with their constituents.

The Hon. T. CROTHERS: As a supplementary question, does the Treasurer agree with me that, had it not been for the hold-up in the sale of the first tranche—

The PRESIDENT: Order! Straight to the question.

The Hon. T. CROTHERS: —of ETSA by the Auditor-General and then later—

The PRESIDENT: Order! The question, please.

The Hon. T. CROTHERS: —by the opposition parties, the price obtained for the first sale might have been more, given that the share markets had switched away—

The PRESIDENT: Order! Would the Hon. Trevor Crothers resume his seat or ask the question.

The Hon. R.I. LUCAS: That was a most perceptive and important question and I thank the honourable member. The honourable member will be surprised to know that I agree

with his assessment. What the Hon. Mr Crothers, representing the workers of South Australia, is nailing Mr Rann, Mr Foley and the Hon. Mr Holloway about is that, if we had been able to proceed in 1998, we would have had some hundreds of millions of dollars extra in revenue, we would have had some hundreds of millions of dollars less in state debt, and we would have been able to reduce even further the interest costs to the people of South Australia.

HOUSING TRUST PROPERTY

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Transport and Urban Planning, representing the Minister for Human Services, a question regarding a Housing Trust property at 26 West Street, Brompton.

Leave granted.

The Hon. SANDRA KANCK: In September last year, my office contacted the Minister for Human Services to ascertain why the West Street property had been left vacant since April 1998. The property sits adjacent to a vacant block, known locally as the pug hole, which is owned by the Land Management Corporation. In 1997 the West Street pug hole was identified as having a range of contaminants including cyanide waste in the surface soil. A 300 millimetre clay cap was placed over the pug hole to reduce public health risks. As a result of the revelations concerning the pug hole, the then resident of 26 West Street expressed health concerns about continuing to live at the property. The trust responded by initiating an investigation into whether 26 West Street was similarly contaminated. The investigation, contacted by Maunsell Pty Ltd, concluded:

> On the basis of data available to date. . . detected concentrations of contaminants and associated human health impacts are not a constraint for continuing use of the property for residential purposes.

Despite this finding, the tenant requested relocation. That was granted in 1998 and the property has been vacant ever since.

The minister also indicated that the trust was awaiting the outcome of investigations by the Land Management Corporation into the medium and long-term health risks posed by the West Street pug hole before re-letting the property. Results were anticipated at the end of October 1999. Six months after the results were expected, the property remains vacant. Since being vacated in 1998, the turn-of-the-century two bedroom cottage has been cannibalised and vandalised. Floorboards have been ripped up and stolen, fireplaces removed, windows smashed and subsequently boarded up, and the back section of the house stripped to its timber frame. Damage amounting to tens of thousands of dollars has been inflicted on the premises. It will need considerable expenditure to again be fit for human habitation. Throughout this period, another Housing Trust property that is closer to the contaminated section of the pug hole has remained continuously tenanted. My questions are:

1. How does the minister justify tenanting 18 West Street while leaving 26 West Street untenanted?

2. Did the Housing Trust conduct soil contamination tests on the other properties it owns near the West Street pug hole? If not, why not?

3. What is the estimated cost of repairs to 26 West Street?

4. When is it anticipated the property will be re-let?

5. What were the health and environmental findings of the Land Management Corporation's investigation into the West Street pug hole?

6. What plans does the Land Management Corporation have for the West Street pug hole?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I will refer the honourable member's question to the minister and bring back a reply.

CORPORATIONS LAW

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Attorney-General a question on the subject of Corporations Law.

Leave granted.

The Hon. L.H. DAVIS: Yesterday I noticed that the High Court handed down a decision in the case of Hughes v. The Queen which related to Corporations Law. Since then the commonwealth has called for the states to refer power to the commonwealth, saying it is the best way to deal with the issue, even though the decision does not appear to have created any problem for the Corporations Law. My questions are:

1. Does the Attorney-General agree that there should be a reference of state power to the commonwealth?

2. Is that the best way to address the issues raised about the Corporations Law?

The Hon. K.T. GRIFFIN (Attorney-General): There was a lot of build up to the case of Hughes v. The Queen, and all sorts of dire predictions were being made around Australia by those who almost gave the impression of panic as the case was being considered in the High Court and, of course, the closer it seemed a decision might be made. Following the high court decision, my advice is that there is no immediate problem. Notwithstanding all the panic and the pressure being placed upon states to commit to a solution before the problem had even been identified, the decision yesterday indicates that there is no immediate problem.

It is important for me to outline briefly what the case was about. It concerned provisions of legislation of the commonwealth and Western Australia in relation to the institution and conduct of prosecutions under the national scheme called the Corporations Law. Mr Hughes was charged with various offences under the Corporations Law of Western Australia. The High Court challenge turned on the validity of section 45 of the Corporations Act 1989 of the Commonwealth and part 8 of the Corporations (Western Australia) Act 1990.

Section 45 provides that an offence against the state act is taken to be an offence against the laws of the commonwealth. It is under this provision that the commonwealth DPP exercises the power to prosecute offences arising under state corporations laws.

The High Court upheld the commonwealth Director of Public Prosecutions' power to continue the legal action in the Hughes case. For that reason there is no immediate problem with the scheme, but I should say that my officers are considering the full impact of the Hughes decision. The High Court decision does raise some issues which could impact on the regulatory and administrative action under the Corporations Law.

The commonwealth Attorney-General and the commonwealth Minister for Financial Services and Regulation put out a press release yesterday in which they called for state governments to refer power in relation to the Corporations Law and to refer that power to the commonwealth. In that press release, the two federal ministers suggest that this would overcome the problems created by the earlier High

Court decision in Re Wakim and reduce the vulnerability of the scheme to further constitutional challenges.

The decision in Re Wakim was handed down by the High Court in June 1999. That decision invalidated the cross-vesting legislation established by the commonwealth's Jurisdiction of Courts (Cross-vesting) Act 1997 in so far as it involved the conferral of state jurisdiction on federal courts. In that case, the High Court held by a majority that Chapter III of the Commonwealth Constitution does not permit state jurisdiction to be conferred on federal courts. The commonwealth reacted to the decision in Re Wakim, taking the line that the states should refer power in relation to Corporations Law to the commonwealth, and it is using this latest case to reinforce its earlier position. It is saying that this makes it even more urgent that the states act in referring power.

While certain issues need to be worked through in relation to Corporations Law, it is important for us to recognise that we are not in a state of crisis given that the High Court has just supported the validity of the corporations scheme. South Australia's position is that we are not convinced that a referral of power is the only option. We have been arguing that all options should be given full consideration, remembering that it is not just the Corporations Law which is affected but a variety of other state, territory and federal schemes which seek to follow a similar sort of direction legislatively as the Corporations Law. Cross vesting applies in relation to those schemes as much as it does to the Corporations Law. So, merely focusing only on the Corporations Law is, in my view and in the view of my advisers, a very narrow view and not one which fully addresses all the issues.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: We actually did that. We had a National Companies and Securities Scheme which preceded the Corporations Law and that scheme, when I was Attorney-General between 1979 and 1982, worked particularly well. The difficulty was that the then Labor commonwealth government refused to put in money unless it had control. I think it contributed about half the cost, which was about $7 million, as I recollect. The states and territories were willing to put in money to give additional resources to the NCSC but the commonwealth refused. Mr Tony Hartnell was calling for the commonwealth to take over the Corporations Law. Of course, it tried but it was found to be constitutionally invalid in so far as it purported to authorise the commonwealth to incorporate corporations.

We got into a bit of a mess, and in this state we were in opposition at the time the Corporations Law was being enacted. The Liberal opposition at that stage did not believe it was in the interests of corporations in South Australia or the state that we embark upon the Corporations Law but, finally, the business community in this state said, 'You have to go with it.' I think a lot of them now regret that decision, because they do not have the level of access to ministers in relation to modification or operation of the scheme as they had when it was operating under the National Companies and Securities Scheme.

The Hon. T. Crothers interjecting:

The PRESIDENT: Order, the Hon. Mr Crothers! This is not a debate: it is an answer to a question. Will the Attorney-General return to answering the question.

The Hon. K.T. GRIFFIN: In respect of the referral of power, I have indicated, and the government has indicated, an unwillingness to agree to a broad reference of power over corporations to the commonwealth. One of the reasons for this position is the potential for that power to be used to avoid state regulation and control. If you look at the commonwealth Industrial Relations Act, you see that contracts and agreements made by corporations can override state laws. There is a lot more in this than superficially some of the media and the commonwealth government suggest.

The state is concerned about the operation and the terms of the Corporations Law. If it was not obvious before, it is now clear that some parts of it are so complex as to be incapable of consistent interpretation. That is not a problem of what underpins this: it is a problem of the drafting. The commonwealth draftspersons have been instrumental in developing the Corporations Law, and that is where the responsibility ultimately has to rest.

I have indicated also that we tend to favour a constitutional amendment for the reason that this does not deal only with the Corporations Law, and a constitutional amendment can allow this to be dealt with on a day by day basis in a way that avoids the sorts of challenges which are being made. Any other problem with the Corporations Law which may be identified in due course can be resolved when it arises.

So, to put it quite bluntly, the commonwealth has overestimated the urgency and underestimated the complexity of the task that needs to be done. As a result of the publicity being given to this, the *Financial Review* is taking a very critical view about the position of South Australia and Western Australia. The Labor states of Queensland, New South Wales, Victoria and Tasmania say that they are prepared to refer power, mainly, of course, because the Labor platform ultimately is directed towards more power for the commonwealth than for the states.

There are just two other matters. From the perspective of companies, I would suggest that companies do not give a damn about what underpins the Corporations Law. They are concerned about the day-to-day operation of the substantive law. So, the hype about the way in which the states should react is, in my view, just that: we will deal with the problems as they arise. Under any scheme you will find people twisting and turning if they think they can obtain potential benefit out of challenging some ingredient of the law, whether it is the Corporations Law as it is presently constituted or otherwise.

The only other point I want to make is that I do not believe it is appropriate for the chairman of the Australian Securities and Investment Commission, Mr Cameron, to be out there promoting a view that the states should be referring power. It is beyond his authority as chairman of the Australian Securities and Investment Commission to be out there taking a political and constitutional position which affects the interests of the states, the territories and the commonwealth. It is inappropriate in my view for him to be taking that course.

The Hon. P. Holloway interjecting:

The Hon. K.T. GRIFFIN: Well, the rights of the consumer are not involved in this. I am afraid that the Hon. Paul Holloway does not understand anything about the Corporations Law. He is parroting a Labor perspective. The consumers are well looked after by the Corporations Law. In fact, one of the problems of the Australian Securities and Investment Commission and the way it operates—and it has been raised by ministers around Australia—is that it does not pay enough attention to the small corporation and to the consumers who are affected by the failure of small corporations.

It is all very well to be concerned about Alan Bond, but what about those building work contracting corporations and

others which affect more individual, small level consumers than ever was the case in respect of the Alan Bond debacle? They have to go after the big fish, but they also have to have a focus on the small fish, because it is with the small fish that the biggest damage is done to the consumers that the Hon. Mr Holloway is talking about.

GUN CONTROL

The Hon. IAN GILFILLAN: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Police, a question about gun control.

Leave granted.

The Hon. IAN GILFILLAN: Last week, as all members would know, was the fourth anniversary of Australia's worst massacre this century, the Port Arthur tragedy. Last Friday in the United States, another mass shooting occurred when a lawyer drove around Pittsburgh and killed five people. They were black, Asian and Jewish, so apparently he singled them out because of their race.

On Monday this week in Brisbane, three police officers were shot when they attended what they thought was a routine domestic disturbance in suburban Chermside. Constable Sharnelle Cole was shot 12 times in the face, neck and body, but she may yet survive her injuries. The gunman remains at large. Naturally, we all deplore these events and struggle to find ways to get guns out of the hands of criminals and to reduce the opportunities for firearms to fall into criminal hands, and to find ways of assisting people who may be or may become unbalanced enough to use firearms in this way.

At page 27 of that eminent daily the *Advertiser* of 22 January this year it was reported that South Australia Police were preparing to establish an internet site to help recover stolen firearms. The story said that within weeks a web site would be established detailing the make and serial number of guns stolen in South Australia. The web site would be 'continually updated'. That was more than three months ago, and the internet address cited in the article shows no sign of being updated.

The web page is entitled 'Firearm News', and it can be viewed at 'www.sapolice.sa.gov.au/firearms.htm'. In fact, it looks as if it has not been updated for several years. It announces that two amnesties are in place. One is an amnesty on 'air soft guns' and the other is an amnesty on the possession of 'body armour'. Both amnesties (in place now, according to the web page) will remain in place until 28 February 1999! That is the current, up-to-date news on this web site. So, the firearms page is obviously 14 months out of date.

The state government runs a hotline for people who are buying cars second-hand. The hotline allows a potential purchaser to check whether a car has been stolen or whether it has been registered as security for a finance company; however, it appears that, despite the promises made on 22 January, the government does not offer any similar facility on its police firearms web page or even on any phone hotline.

The technology cannot be too difficult, because the Sporting Shooters Association offers potential firearms purchasers a chance to enter a registration number on its web site to see whether the number matches any reported as stolen. I am informed by the association that this technology costs it $1 500 but, despite its best efforts, the Sporting Shooters Association does not have access to the latest data which SAPOL obtains. It believes that there are 7 000 entries on the SAPOL database of lost or stolen firearms. There is obviously a public need for a police hotline or web site to be set up. My questions are:

1. Why have the promises of 22 January not been kept? When will they be kept?

2. If the police cannot afford a $1 500 database, why is there no police phone hotline available for the same purpose?

3. Why can buyers of cars check whether a car is stolen but buyers of guns cannot make a similar check?

The Hon. K.T. GRIFFIN (Attorney-General): I will refer the questions to my colleague in another place and bring back a reply. The honourable member has been quite colourful in his introduction, particularly in relation to the tragedies—

The Hon. Ian Gilfillan: Was there anything inaccurate in it?

The Hon. K.T. GRIFFIN: I am not saying that. The honourable member has been quite colourful in using certain tragedies to bolster his arguments. The reference to the tragedies, if omitted, would not have adversely affected the thrust of the question. The two do not necessarily depend one on the other, either. I will refer the questions and bring back an answer.

SHOP TRADING HOURS

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Workplace Relations a question about shop trading hours.

Leave granted.

The Hon. J.S.L. DAWKINS: Recently, Mr Graeme Samuel, President of the National Competition Council, issued a statement which could be interpreted as being critical of states that have not deregulated their shopping hours. He said:

> While some states such as Victoria, ACT and NT have very few restrictions, Queensland, Western Australia, Tasmania and South Australia remain highly regulated, resulting in a range of anomalies both between and sometimes within states. For example, in South Australia antiques can be sold outside general trading hours, other collectables such as stamps and coins cannot.

It has been claimed that national competition payments to this state may be in jeopardy if we do not deregulate. I am aware that in recent months the Berri-Barmera council has applied for the abolition of the shopping district in its area. I am also aware of reported opposition to this move by some residents and traders in Loxton. My questions are:

1. Can the minister report when a decision will be announced on the Berri-Barmera council application?

2. What relevance does competition policy have in relation to applications of this kind?

The Hon. R.D. LAWSON (Minister for Workplace Relations): I thank the honourable member for his question and note his reference to shop trading hours in the Riverland, an area in which he takes a continuing interest. It is true that the Berri-Barmera council has applied to the government for the deproclamation of the shop trading district in that area, but the area includes only one part of the Riverland and there is a good deal of opposition not only from Loxton, as the honourable member mentions, but also from Renmark. It has been suggested to the government that there should be a whole-of-Riverland approach to shop trading hours.

However, the legislation does divide the state into shopping districts, and if a council—as Berri-Barmera has elected to do, and I might say unanimously—elects to apply

for deproclamation it is a matter which the government must consider under the terms of the legislation. I did see the reported comments of the Chair of the National Competition Council, which has been urging states to deregulate trading hours. Of course, the National Competition Council does not seem to appreciate that shop trading hours, certainly in South Australia, are not a matter simply for the government but are a matter for the parliament and are laid down in legislation.

We have recently amended our shop trading hours legislation in consequence of discussion with all sectors and it has been no easy task to negotiate an appropriate compromise. Mr Samuel does have the good grace to conclude his release with the following:

> Ultimately the decision for governments is, after taking all matters into account, what arrangements are in the best interests of the community overall.

That is a truism, and in the particular case of the Riverland, to which the honourable member refers, local councils, which represent local communities, after taking into account local factors, including in this case a survey of residents, traders and employees in retail industry, have reached a certain conclusion. Mr Samuel says:

> The Victorian experience has been that employment has grown across the state in retail as a consequence of and following deregulation.

Whether or not that will happen in particular localities is something that local councils and local communities will have to decide. I hope to be in a position to make an announcement within the next couple of weeks in relation to the application made by the Berri-Barmera council, and that will be made after taking into account the considerable volume of correspondence and representations I have received from various persons throughout the Riverland.

SA WATER

The Hon. T. CROTHERS: I seek leave to make a precied statement prior to asking the Attorney-General some questions about insurance law.

Leave granted.

The Hon. T. CROTHERS: A recent occurrence in this state has opened up a question of interpretation concerning some aspects of personal insurance. The event in question occurred shortly after SA Water had suffered a burst water main within the parameters of Adelaide. Parked on the road opposite the main a young university student had an uninsured car, a car he says he needs to get to his casual job. As a consequence of the main bursting his car was so badly damaged it was written off as being beyond repair. SA Water has since refused to compensate him, on the basis of deus volunt, which in simple terms means God willing, or something happening which, in insurance terms, means an act of God; in other words, something occurring which is an act of nature, such as flooding, a heavy hail storm, or fire or damage caused by a lightning strike, all well recognised acts of where deus volunt applies.

As previously stated, SA Water has refused to compensate him on the basis of deus volunt applied to the burst water main. In the light of my not having any direct communication with the almighty, I direct the following questions to the Attorney-General. By the way, I might say that another insurance company, elsewhere, has also used this DV tactic, and that the student here cannot afford to take SA Water to court. My questions, therefore, are:

1. Does the Attorney agree with me that it takes a great stretch of the imagination to describe a burst water main as an act of God?

2. Does the Attorney agree with me that, if this matter goes unchallenged, the same technique used by SA Water in invoking deus volunt could be used by other insurance companies against hundreds if not thousands of other South Australians? I ask this because, if my memory serves me aright, this has indeed already happened elsewhere.

3. Given that part of the role of government is to protect its citizens from unscrupulous predators, will the Attorney consider making moneys available to this young university student so that he will be able to mount a court challenge to SA Water and, if not, why not?

4. If the Attorney will not or cannot react positively to the content of question 3, will he write to this young man telling him what options are available to him under state law at no cost? For example, the state Ombudsman might be such an avenue. Again, if not, why not?

The Hon. K.T. GRIFFIN (Attorney-General): I am not prepared to debate the merits of the case.

The Hon. T. Crothers: It is not sub judice.

The Hon. K.T. GRIFFIN: But it may be at some stage. The honourable member knows that I am somewhat cautious about these examples, and I am not in the business of giving gratuitous legal advice on factual situations where all that I know about the matter is what I have read in the media report. There may well be more to it than has been so far reported. I saw the reference to this being regarded as an act of God, and I can think immediately of a similar situation.

If there was an earthquake in the vicinity of a water pipe and the water pipe burst as a result, or if there was a landslide that caused the pipe to rupture, that is quite obviously an act of God. There are many different circumstances in which one could envisage an act of God defence being raised. I will refer the question to my colleague in another place with respect to the factual situation.

In so far as the issue of question 3 is concerned, as to whether I would make some funds available, no, I will not, because there are already opportunities for people to obtain legal advice either through the Legal Services Commission or, more particularly, if not funded, then to take advantage of the telephone advisory service or even to attend before a brief—

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: An advisory service is available through the Legal Services Commission where you can get some free advice up front either on the telephone or in person; but it really is a matter for him to do that. Even the Law Society has, I think, the first 15 minutes free. Contact with the Legal Services Commission or with the Law Society are two avenues that are open. Another is community legal centres where, again, some assistance may be available. So, there are opportunities for the young man to obtain advice.

There are avenues for potential redress, but I am not prepared to comment in respect of the particular factual situation, because I am not aware of all the facts. Even if I were, if litigation were in contemplation I would refrain from public comment on the issue. What I would recommend is that the honourable member suggest to the young student any of those options that are available, at least to get some initial advice.

STATUTES AMENDMENT AND REPEAL (ATTORNEY-GENERAL'S PORTFOLIO) BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a bill for an act to amend the Associations Incorporation Act 1985, the Correctional Services Act 1982, the Crimes at Sea Act 1998, the Criminal Injuries Compensation Act 1978, the Criminal Law Consolidation Act 1935, the Criminal Law (Forensic Procedures) Act 1998, the Criminal Law (Sentencing) Act 1988, the Election of Senators Act 1903, the Environment, Resources and Development Court Act 1993, the Evidence Act 1929, the Expiation of Offences Act 1996, the Magistrates Court Act 1991, the Wills Act 1936 and the Young Offenders Act 1993; and to repeal the Australia Acts (Request) Act 1999. 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 will make a number of minor uncontroversial amendments to legislation within the Attorney-General's Portfolio.

Associations Incorporation Act

The Bill will amend section 41(2) of the *Associations Incorporation Act* to also refer to the new Chapter 5A of the Corporations Law.

Section 41 of the Act applies the winding up provisions of the Corporations Law to incorporated associations as if an association were a company and as if the provisions were incorporated into the Act.

In 1998, the Commonwealth enacted the *Company Law Review Act*, which rewrote the provisions of the Corporations Law dealing with the formation of companies, company meetings, share capital, financial statements and audit, annual returns, deregistering and reinstating defunct companies and company names. These amendments became effective on 1 July 1998.

The rewriting of these provisions involved significant restructuring of the Corporations Law. Division 8 of Part 5.6 (as currently referenced as applying to associations) has been substituted by Chapter 5A.

Although the Corporations Law that is applied is taken to be that which is in force from time to time, Chapter 5A also contains a provision for which there is no antecedent in Division 8 of Part 5.6, dealing with claims against insurers of deregistered companies.

The Bill will amend the *Associations Incorporation Act* to refer to Chapter 5A in the applied provisions.

Correctional Services Act, Criminal Law Consolidation Act, Criminal Law (Sentencing) Act and Young Offenders Act

There is currently a problem where a person serving time for an offence committed as a juvenile is charged with an offence committed as an adult. While ordinarily a sentence imposed on an adult may be made cumulative upon the existing sentence, this is currently unable to be applied to an adult who commits an offence or offences while serving a sentence for an offence or offences committed as a juvenile. This applies even in cases of escape from custody, where the sentence is normally required to be made cumulative upon the existing sentence.

The Bill will therefore amend a number of Acts to ensure that an equal system applies to all offenders convicted as adults and that sentences for escapes are cumulative on any existing sentence, whether of imprisonment or detention.

There has also been a question raised over the capacity of officers of the Department for Correctional Services or the Department of Family and Youth Services to bring action for the enforcement of community service orders. The Bill will amend the *Criminal Law (Sentencing) Act* to make it clear that such officers may bring action for the enforcement of community service orders.

The Bill will make a further amendment to the *Criminal Law (Sentencing) Act*. Under amendments previously made to the Act to establish the new fines enforcement scheme, new section 70G refers to the seizure or sale of property to satisfy a fine debt. However, the *Criminal Law (Sentencing) Act* does not currently enable the conversion of property into money. This is in contrast to the *Enforcement of Judgments Act* which permits such conversion. The *Criminal Law (Sentencing) Act* will be amended to enable the conversion of property into money.

Crimes At Sea Act

The Bill will make a number of amendments to the *Crimes At Sea Act* to bring it into line with the National Scheme. The Act implements a co-operative scheme established by agreement between the Commonwealth and the States and Territories. It was based on model legislation prepared by the Parliamentary Counsels' Committee. South Australia was one of the first States to enact its *Crimes At Sea Act*. Since the Act was enacted, a number of minor changes have been made to the scheme. These include the withdrawal of Norfolk Island from the scheme, the insertion of transitional provisions and the insertion of a provision which makes it clear that the Act does not apply to acts or omissions to which *the Crimes (Aviation) Act 1991 (Cth)* applies. The Bill will amend the *Crimes At Sea Act* to reflect those changes.

Additionally, it is necessary to amend the Act to prevent the Act commencing before other States' legislation is in place. The Act was passed in 1998 and assented to on 10 September 1998, but has not yet come into operation.

While some States have enacted equivalent legislation, and the Commonwealth has enacted its complementary legislation, Queensland and the Northern Territory have not yet introduced legislation into Parliament to implement the scheme. It is therefore unlikely that all States will have their legislation in place by the time South Australia's legislation is due to come into operation by virtue of section 7(5) of the *Acts Interpretation Act 1915*. Under section 7(5) of the *Acts Interpretation Act 1915* an Act which comes into operation on a day to be fixed by proclamation will automatically come into operation two years after it receives royal assent, unless proclaimed earlier. This would result in the South Australian Act coming into operation on September 10, 2000. It is unlikely that the other States will be ready for the scheme to commence on that date. It would be inappropriate for the South Australian legislation to commence operation on that date, in isolation from other States. The Bill will therefore amend the commencement provision to ensure that the Act will not automatically commence.

Criminal Injuries Compensation Act and Environment, Resources and Development Court Act

The Bill will also amend the *Criminal Injuries Compensation Act* and the *Environment, Resources and Development Court Act* to deal with an issue arising from the operation of the New Tax System, to come into operation on 1st July 2000, which imposes the Goods and Services Tax (GST).

Under the New Tax System, supplies of goods and services will be taxable. The supplier is liable to pay the tax, and is entitled to adjust the price of the goods or services to the consumer accordingly. It is the consumer, not the supplier, who is intended to ultimately bear the tax under this system.

This presents no difficulty where the price of the goods or services is fixed by the market, but a difficulty does arise where a maximum fee chargeable for the service is fixed by law. In that case, if the supplier is not entitled to charge more than the set maximum, then he or she must bear the tax instead of being able to on-charge it. This is not the intention of the New Tax System. Accordingly, it is necessary to amend such legislation to make it clear that in addition to the maximum permitted fee, the supplier is also able to charge the proper amount representing the GST.

In the present case, the *Criminal Injuries Compensation Act* and *the Environment, Resources and Development Court Act* both contain provisions activating fee limits fixed by Regulation, in one case, or by the Rules of Court, in the other, which legal practitioners can charge to clients for work done in those jurisdictions. For the above reasons, it is necessary to amend those provisions to permit on-charging of GST.

There has been consultation with the Law Society and the ERD Court on these measures, which are supported.

Criminal Law (Forensic Procedures) Act

Currently, some sections of the *Criminal Law (Forensic Procedures) Act* relating to the taking of samples and the entering of information onto a database do not allow for the situation where an offender is not convicted of the offence with which they were charged, but is convicted of another offence by way of alternative verdict. As a result, no data can be kept on offenders in this situation. However, section 16(1)(g) of the *Criminal Law (Forensic Procedures) Act* provides that before a person who is under suspicion consents to a forensic procedure, a police officer must explain to the person, *inter alia*, that if information is obtained from carrying out a forensic procedure and the person is subsequently convicted of the suspected

offence (or another offence by way of alternative verdict) or declared liable to supervision, the information may be stored on a database, and therefore accessible by authorities of South Australia, the Commonwealth and other States and Territories. It is clear that when the Act was enacted, it was intended that data could be kept where an offender was convicted of another offence by way of alternative verdict. There is no reason for a different standard to apply.

The Bill will therefore amend the *Criminal Law (Forensic Procedures) Act* to provide that these sections also apply where the offender is convicted of another offence by way of alternative verdict.

Election of Senators Act

The Australian Constitution provides that the States and the Commonwealth can both make laws in relation to the election of Senators for a particular State. South Australia has done so through the *Election of Senators Act*, and the Commonwealth has enacted provisions relating to the election of Senators for all States in the *Commonwealth Electoral Act*.

The Commonwealth amended the *Commonwealth Electoral Act* in 1998. Of particular relevance to South Australia was an amendment to the time period within which nominations must be made, which reduced both the minimum and the maximum periods by one day. There is thus an inconsistency between the Commonwealth and State provisions relating to the issuing of writs for Federal elections. The Bill will amend the *Election of Senators Act* to make that Act consistent with the Commonwealth Act.

Evidence Act

The *Evidence Act* currently allows certain diplomatic and consular staff to take affidavits overseas. However, this is limited to Ambassadors, officers of the Australian Department of Foreign Affairs and Trade and persons appointed as honorary consuls.

Thousands of documents are processed at overseas posts for Australian citizens and foreign nationals each year. This workload is increasing at a time when the number of diplomatic and consular staff sent to overseas posts from Australia is declining. The Commonwealth Minister for Foreign Affairs has proposed that in future much of this work be done by locally engaged staff at overseas posts.

There are approximately 100 staff at overseas posts who would be authorised to carry out this work. These staff are only employed following stringent security and criminal record checks. In many cases they have been employed by posts for a significant length of time and have substantial experience in procedures for taking of evidence, service of process and witnessing documents.

The *Consular Fees Act 1955 (Cth)* provides for the collection of fees for the performance of consular acts by authorised staff employed by the Commonwealth or the Australian Trade Commission. The Bill will amend the *Evidence Act* to enable such staff to take affidavits.

Expiation of Offences Act

Section 14 of the *Expiation of Offences Act* creates difficulties where enforcement orders are revoked more than six months after the commission of an offence. The Act provides that a notice cannot be given more than six months after the offence was alleged to have been committed. However, the Act provides that when an enforcement order is revoked because the applicant failed to receive a particular notice, then the applicant will be taken to have been given that notice on the day the enforcement order was revoked. Often, this will be more than six months after the commission of the offence; hence the notice will often be out of time.

The Bill will amend the *Expiation of Offences Act* to provide that where an enforcement order has been revoked, the time limits for issuing expiation notices and complaints subsequent to the order setting aside the enforcement proceedings should commence from the date that the order is made.

The Bill also incorporates the amendments contained in the *Expiation of Offences (Withdrawal of Notices) Amendment Bill 1999* introduced into the lower House by the Honourable Graham Gunn last year. Those provisions require the withdrawal of expiation notices by the issuing authority if the notices were received out of time or were never received by the alleged offender.

Magistrates Court Act

There are a number of minor issues relating to minor civil actions in the Magistrates Court and the review of such actions by the District Court.

A minor civil action is an action to recover an amount of $5000 or less, or a neighbourhood dispute, or one of a number of defined statutory proceedings. The hallmark of a minor claim is that it involves a small sum and accordingly the parties generally represent themselves, while the court conducts the hearing in a simplified, inquisitorial manner. The parties are not bound by the pleadings, nor the court by the rules of evidence. The court has a power to call witnesses as it sees fit. The case must be decided according to equity, good conscience and the substantial merits of the case, without regard to technicalities and forms.

Parties to minor civil actions generally may not be represented by legal practitioners at the hearing, although there are some exceptions to this rule. The object of this rule is to avoid a situation where the costs of the case outweigh the sum in dispute between the parties. Until recently, it was considered that this rule did not apply to the use of legal practitioners on interlocutory applications. However, this thinking has now been overturned by a District Court decision which found that the same rules regarding representation apply to interlocutory applications. The Bill will make it clear that legal representation is permitted on interlocutory applications.

The other side to this issue is representation on reviews of minor civil actions. Currently, the court takes the approach of permitting such representation. This is undesirable. It is contrary to the intention that the parties to minor civil actions should generally handle the case themselves without recourse to lawyers, so as to minimise the costs involved in disputes over small sums. The Bill will make it clear that the same rules apply to representation on review as apply at first instance.

The Act currently requires the District Court, when hearing a review, to make a final determination rather than remit the matter back to the Magistrates Court. However, there are some circumstances where the merits of the case have never been considered by the Magistrates Court. In those situations, it is inappropriate for the District Court to be required to make a final determination, which would involve a complete hearing of the case. The Bill will amend the Act to provide that the District Court may remit the case back to the Magistrates Court if the review deals with a default or summary judgement and the court determines that the judgement should be set aside.

Currently, an appeal lies in any action from the judgement of a single judge to the Full Supreme Court. It was never intended that this should apply to the review of a minor civil action. The Bill will therefore ensure that there is no appeal from a review of a minor civil action unless the District Court reserves a question of law for the consideration of the Court.

Wills Act

In 1998, section 12(2) of the *Wills Act* was amended with the intention of addressing a concern prompted by an argument advanced in the case of *In the Estate of McCartney deceased*. Essentially, the Government's intention was to make it clear that an applicant seeking admission of a document to probate under section 12 must prove that the deceased intended the document to constitute his or her will, as well as proving that the document expressed the deceased's testamentary intentions. At the same time, section 12(3) of the *Wills Act* was amended. The amendment to section 12(3) was a drafting measure aimed at clarifying the wording of the section. However, in revising the wording, a broader concept of revoking a valid will by words or conduct was introduced.

Unfortunately, despite the best efforts of the Government and the members of this Parliament, the 1998 amendment to section 12(2) of the *Wills Act* does not achieve the original intention of Parliament. In addition, in spite of wide ranging consultation at the time in relation to the amendments, there has been recent criticism of the introduction of the broader concept of revocation of a will by words or conduct in section 12(3). It is clear from the Parliamentary debates that the potential impact of the broader concept was not fully appreciated at the time that the 1998 amendments were passed.

The Bill will ensure that the intentions behind the 1998 Act are finally achieved, and will remove the concept of revoking a will by words or conduct.

Repeal of the Australia Acts (Request) Act 1999

The *Australia Acts (Request) Act* was passed in order to provide an alternative to the method proposed by the Commonwealth to alter State Constitutional arrangements (the validity of that method having been questioned) and in order to enable the State to control amendments to is own constitutional arrangements in the even that the "republic referendum" returned a "Yes" vote. As that Commonwealth constitutional alteration was not approved by the referendum held on 6 November 1999, the South Australian Act will not come into operation.

The Solicitor-General has been consulted and considers that there is no particular advantage in leaving the Act on the statute books. The South Australian Act could be effective with regard to any future

proposal to amend the constitution to establish a republic only if the South Australia and all other States introduced Bills either to amend their *Australia Acts (Request) Act 1999* (if it has not been repealed in the meantime) or to enact another similar *Australia Acts (Request) Act*.

It is understood that the Queensland Government intends to repeal its *Australia Acts (Request) Act*. Western Australia does not intend to repeal the equivalent Act. All other States remain undecided.

The Bill will repeal the *Australia Acts (Request) Act* to remove an unnecessary Act from the Statute Book.

I commend this bill to honourable members.

Explanation of Clauses

PART 1: PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Interpretation

This clause provides that a reference in the Bill to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

PART 2: AMENDMENT OF ASSOCIATIONS INCORPORATION ACT 1985

Clause 4: Amendment of s. 41—Winding up of incorporated association

This amendment upgrades the references to the provisions of the Corporations Law that are to apply in relation to the winding up of an incorporated association.

PART 3: AMENDMENT OF CORRECTIONAL SERVICES ACT 1982

Clause 5: Amendment of heading

It is proposed to amend the heading to Division 4 of Part 5 of the principal Act by striking out the words 'Escaping or' leaving the heading as 'Prisoners at Large'. The amended heading more accurately indicates the contents of the Division.

Clause 6: Amendment of s. 50—Effect of prisoner being at large

This amendment proposes to strike out section 50(1) which provides that any term of imprisonment to which a prisoner is sentenced for the offence of escaping, attempting to escape or otherwise being unlawfully at large will be cumulative on any other term of imprisonment to be served by the prisoner. This is a sentencing issue and would be better dealt with in the same provision that creates the offence of escape or removal from lawful custody (*see section 254 of the Criminal Law Consolidation Act 1935 and clause below*).

PART 4: AMENDMENT OF CRIMES AT SEA ACT 1998

Clause 7: Amendment of s. 2—Commencement

The principal Act is intended to give effect to a cooperative scheme for dealing with crimes at sea and, in due course, each of the States and the Commonwealth will enact consistent legislation to that end. South Australia was the first jurisdiction to enact the legislation, Victoria passed their Act in 1999 and the Commonwealth currently has a Bill before Parliament.

In this State, the principal Act was assented to on 10 September 1998 but has not yet been proclaimed to be in operation. Section 7(5) of the *Acts Interpretation Act 1915* provides that a provision of an Act that is to be brought into operation by proclamation will be taken to have come into operation on the second anniversary of the date on which the provision was assented to unless it has come into operation on an earlier date.

The law giving effect to a cooperative scheme should become operative in each of the jurisdictions party to the scheme simultaneously. The proposed amendment provides that section 7(5) of the *Acts Interpretation Act 1915* does not apply in relation to the commencement of the principal Act or any provision of the principal Act.

Clause 8: Insertion of new section

6A: Application of Act

New section 6A provides the principal Act and the co-operative scheme do not apply to an act or omission to which section 15 of the *Crimes (Aviation) Act 1991* (Cwth) as in force from time to time applies.

This amendment is required for consistency with the legislation of other parties to the scheme.

Clause 9: Amendment of s. 8—Repeal and transitional provision

This amendment is required for consistency with Victoria and the Commonwealth's legislation.

Clause 10: Amendment of Schedule—The Cooperative Scheme

The amendments to the Schedule are required to reflect the withdrawal of Norfolk Island from the cooperative scheme. They remove references to Norfolk Island.

PART 5: AMENDMENT OF CRIMINAL INJURIES COMPENSATION ACT 1978

Clause 11: Amendment of s. 10—Legal costs

Clause 11 amends section 10 of the principal Act to ensure that the GST payable in respect of legal costs can be recovered by the legal practitioner who is liable for the tax.

PART 6: AMENDMENT OF CRIMINAL LAW CONSOLIDATION ACT 1935

Clause 12: Amendment of s. 254—Escape or removal from lawful custody

Section 254 creates the offence of escaping, attempting to escape or remaining unlawfully at large from lawful custody.

The first amendment to section 254 is to remedy an obsolete reference.

The insertion of new subsection (2a) provides that a term of imprisonment to which a person is sentenced for the offence of escaping, attempting to escape or remaining unlawfully at large is cumulative on any other term of imprisonment or detention in a training centre that the person is liable to serve (*see comments made about clause above*).

PART 7: AMENDMENT OF CRIMINAL LAW (FORENSIC PROCEDURES) ACT 1998

Section 16(1)*(g)* of the principal Act provides that, before a person who is under suspicion consents to a forensic procedure, a police officer must explain to the person that, if information is obtained from carrying out a forensic procedure and the person is subsequently convicted of the suspected offence, or another offence by way of an alternative verdict, the information may be stored on a database.

Clause 13: Amendment of s. 29—Application of this Division

Clause 14: Amendment of s. 30—Order authorising taking of blood samples and fingerprints

Clause 15: Amendment of s. 49—Databases

These proposed amendments would have the effect that sections 29, 30 and 49 would apply not only where the offender is convicted of the suspected offence but also where the offender is convicted of another offence by way of an alternative verdict—an approach consistent with that taken in section 16 of the principal Act.

PART 8: AMENDMENT OF CRIMINAL LAW (SENTENCING) ACT 1988

Clause 16: Amendment of s. 3—Interpretation

This clause proposes to insert definitions of conditional release (meaning conditional release from a training centre) and sale into the principal Act. The sale of property includes conversion of the property into money by any appropriate means.

Clause 17: Amendment of s. 31—Cumulative sentences

The proposed amendment provides that a sentence of imprisonment imposed (for an adult offence) on an offender who is serving a period of detention in a training centre or is on conditional release can be made cumulative on that detention. The current wording of section 31 of the principal Act has been held not to make provision for cumulative sentences in relation to adult persons serving periods of detention in training centres but only to persons serving periods of imprisonment.

Clause 18: Amendment of s. 32—Duty of court to fix or extend non-parole periods

The proposed amendment means that an adult person who commits an offence while on conditional release from detention in a training centre would be treated in a similar way by a court as a person committing an offence while on parole from imprisonment in relation to non-parole periods under this section. These amendments are consistent with those proposed in clause .

Clause 19: Amendment of s. 47—Special provisions relating to community service

The proposed amendments to section 47 are of a statute law revision nature.

Clause 20: Amendment of s. 56—Enforcement must be taken under this Part

The proposed amendment provides for community corrections officers to have standing to bring actions for the enforcement of a bond, community service order or other order of a non-pecuniary nature.

PART 9: AMENDMENT OF ELECTION OF SENATORS ACT 1903

Clause 21: Amendment of s. 2—Power to fix dates in relation to election

The Commonwealth has recently amended its electoral legislation to make a change in respect of the closing date for nominations for elections. The proposed amendment will ensure that South Australia is consistent with the Commonwealth.

PART 10: AMENDMENT OF ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT ACT 1993

Clause 22: Amendment of s. 44—Legal costs

This clause amends section 44 of the principal Act to ensure that the GST payable in respect of legal costs can be recovered by the legal practitioner who is liable for the tax.

PART 11: AMENDMENT OF EVIDENCE ACT 1929

Clause 23: Amendment of s. 66—Taking of affidavits out of the State

The amendment proposes to insert an additional paragraph into section 66 of the principal Act to allow an employee of the Commonwealth or Australian Trade Commission authorised under section 3 of the *Consular Fees Act 1955* (Cwth) to take an affidavit or oath in the place out of the State where that employee is.

PART 12: AMENDMENT OF EXPIATION OF OFFENCES ACT 1996

Clause 24: Amendment of s. 14—Enforcement orders are not subject to appeal but may be reviewed

Current section 14 of the principal Act (which provides for the setting aside of enforcement orders) creates difficulties where enforcement orders are revoked more than 6 months after the commission of an offence. The principal Act provides that a notice cannot be given more than 6 months after the offence was alleged to have been committed. However, it also provides that when an enforcement order is revoked because the applicant failed to receive a particular notice, the applicant will be taken to have been given that notice on the day the enforcement order was revoked. Often this will be more than 6 months after the commission of the offence and hence the notice will be out of time.

Section 14 is amended to include an extra ground for revocation of an enforcement order, i.e., the ground that the alleged offender sent the issuing authority a notice electing to be prosecuted, or naming some other person as the driver (in the case of certain motor vehicle offences), but the issuing authority did not receive it. New subsection (5) provides that if an enforcement order is revoked, all subsequent penalty enforcement orders that may have been made will also be taken to have been revoked. New subsection (5a) provides that, if an enforcement order is revoked on a ground set out in subsection (3)*(b), (c)* or new *(ca)*, then the alleged offender is deemed to have been given a fresh expiation notice on the day of revocation, provided that it is still within the period of 12 months from the commission of the offence. This means that the time for commencing a prosecution for the offence will start to run again.

Clause 25: Amendment of s. 16—Withdrawal of expiation notices

This clause encompasses the provisions of the Hon. Graham Gunn's Bill and provides for a number of subsections to be inserted after current section 16(5). New subsection (6) provides that the issuing authority must withdraw an expiation notice if it becomes apparent that the alleged offender did not receive the notice until after the expiation period, or that the alleged offender has never received the notice, as a result of error on the part of the authority or failure of the postal system.

An expiation notice cannot be withdrawn under new subsection (6) if the alleged offender has paid the expiation fee or any instalment or other amount due under the notice.

New subsection (8) provides that if an expiation notice is withdrawn under new subsection (6)—

- the issuing authority must, if a certificate has been sent to the Court under section 13 for enforcement of the notice, inform the Court of the withdrawal of the notice; and
- any enforcement order made under the principal Act in respect of the notice and all subsequent orders made under Division 3 of Part 9 of the *Criminal Law (Sentencing) Act 1988* will be taken to have been revoked; and
- the issuing authority may, if the period of 1 year from the date of commission of the alleged offence, or offences, to which the notice related has not expired, give a fresh expiation notice to the alleged offender; and
- the issuing authority cannot prosecute the alleged offender for an alleged offence to which the withdrawn notice related unless the alleged offender has been given a fresh expiation notice and allowed the opportunity to expiate the offence; and
- the time within which a prosecution can be commenced for an alleged offence to which the fresh expiation notice relates will be taken to run from the day on which the alleged offender is given that notice, despite the fact that the time for commencement of the prosecution may have already otherwise expired.

PART 13: AMENDMENT OF MAGISTRATES COURT ACT 1991

Clause 26: Amendment of s. 38—Minor civil actions

Section 38 of the principal Act sets out the principles that are applicable to the trial of a minor civil action.

The first proposed amendment to this section provides the Magistrates Court with the discretion to permit representation of a party by a legal practitioner at the hearing of an interlocutory application.

Proposed new subsections (6) to (9) make it clear that, on the review of a minor civil action by a single Judge of the District Court, the same rules as to representation of a party to the action by a legal practitioner apply as at first instance. The Judge may, in determining the review affirm the judgment or rescind the judgment and substitute a judgment that the Judge considers appropriate.

The Judge may remit the matter to the Magistrates Court for hearing or further hearing if the review arises from a default, or summary, judgment. A decision of the District Court on a review is final and not subject to appeal (although a question of law in a review may be referred to the Supreme Court for determination).

PART 14: AMENDMENT OF WILLS ACT 1936

Clause 27: Amendment of s. 12—Validity of will

This clause amends section 12 of the principal Act to make it clear that an 'informal will' must express testamentary intentions of a deceased person and must also be intended by the deceased person to be his or her will before it can be admitted to probate. New subsection (3) ensures that the informal revocation of a will must be by means of a written document and not by spoken words or conduct.

Clause 28: Amendment of s. 22—In what cases wills may be revoked

This clause makes a consequential change.

PART 15: AMENDMENT OF YOUNG OFFENDERS ACT 1993

Clause 29: Amendment of s. 63B—Application of Correctional Services Act 1982 to youth with non-parole period

The proposed amendment provides that Part 6 Division 3 (release on parole) of the *Correctional Services Act 1982* applies to and in relation to a youth serving a non-parole period in a training centre as if the youth were a prisoner in a prison. This amendment is consequential on the amendments to the *Criminal Law (Sentencing) Act* contained in this Bill.

PART 16: REPEAL OF AUSTRALIA ACTS (REQUEST) ACT 1999

Clause 30: Repeal of Australia Acts (Request) Act 1999

The principal Act must be repealed as it cannot come into force because of the return of a 'no' vote by the Australian people in the referendum on the establishment of a republic.

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

BUILDING WORK CONTRACTORS (GST) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a bill for an act to amend the Building Work Contractors Act 1995. 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.

Although the GST is a tax to be paid by suppliers of goods and services, the GST is intended to be cost-neutral to business. The GST legislation is structured to allow parties to a contract to negotiate the effect of the GST on the contract price. In more formal contracts, this is done by means of a GST recovery clause.

Contracts for domestic building work are constrained by the effects of section 29 of the *Building Work Contractors Act 1995* and the limited areas for price review prescribed by that Act. Until recently, the effect of the Act was that builders could not pass on the effect of the GST to proprietors even if a recovery clause was included in the contract.

An amendment to section 29 of the *Building Work Contractors Act 1995* allowing for a GST recovery clause in domestic building work contracts came into operation on 2 December 1999. However, that amendment had no operation on contracts already in existence at that date where there was a GST recovery clause in the contract.

It has become evident that a number of domestic building work contracts signed before 2 December 1999 include GST recovery clauses. For a variety of reasons, a number of these contracts, intended at the time of execution to be completed by 30 June 2000, are now unlikely to be completed by that date, with the result that part of the supply under those contracts will attract some GST liability. Those reasons include increased demand for building services due to the Sydney Olympic Games as well as demand brought forward because of anticipated rises in interest rates and the introduction of the GST. These factors have given rise to a lack of trades services and delays in the approval process.

GST will be payable on work and materials not permanently incorporated or affixed to a building site before midnight on 30 June 2000.

Since the introduction of the amendment on 2 December 1999, the Housing Industry Association (HIA) and the Master Builders Association (MBA) have jointly approached the Minister for Consumer Affairs seeking further amendments to section 29 of the *Building Work Contractors Act 1995* to validate GST recovery clauses included in domestic building work contracts signed before 2 December 1999.

In the case of a contract signed before 2 December 2000 where it included a GST recovery clause, proprietors had already authorised building contractors to pass on the GST component, albeit invalidly, through their signing of the contract.

The Crown Solicitor has advised that, while it may be possible to pass on the effects of the GST by striking a recovery clause again, problems with adequacy of consideration would be encountered. It would be unlikely that any further consideration would be forthcoming from the builder to match that of the proprietor.

Estimates from both the HIA and the MBA suggest that there could be as many as 1 800 contracts signed before 2 December 1999 which would require GST clauses to be struck again in order to have the tax rest on those ultimately intended to pay it. Such an exercise would be complicated and unwieldy.

Without further amendment to the Act, it is unlikely that GST recovery clauses included in contracts struck before 2 December 1999 will be enforceable. The GST is a tax which is intended to be paid by the consumers for goods and services at the time of supply for their use or consumption. The impact of the tax, without amending the Act, will be to impose liability for the tax on persons other than those intended to bear it.

The Bill does not allow the GST component to be passed on if the contract does not expressly include a recovery clause, whether it was signed before or after 2 December 1999; neither does the Bill imply a GST recovery clause into a domestic building work contract in order to enforce its payment. The Bill applies only to domestic building work contracts for $5 000 or more where there are already GST recovery clauses in the contracts.

The Bill will also clarify where proprietors stand in relation to the GST on domestic building work contracts in that GST recovery clauses must be included in order for the contract price to be varied on that basis. Proprietors with an existing contract without a GST recovery clause should realise that they need not be pressured into signing a new contract to allow the builder to recover the GST from them; in that situation they are entitled to hold the builder to the original agreement under which the latter will have to pay the tax.

I commend this bill to honourable members.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Amendment of s. 29—Price and domestic building work contracts

Section 29 prevents the fixing of a price for a domestic building work contract that rises with increases in building costs unless the contract fixes a completion date for the work or fixes a price based on actual costs plus a margin allowed under the regulations. As a result of amendments made by the *Building Work Contractors (GST) Amendment Act 1999*, the section allows a domestic building work contract to include a GST clause that entitles the builder to recover GST paid or payable by the builder on the supply of goods or services under the contract (except in the case of a fixed price contract made on or after 1 July 2000). The clause amends this provision (subsection (8a)) so that it applies to contracts made before the commencement of the provision as well as those made on or after that commencement. Subsection (8b) requires a contract with a GST clause to include a statement as to adjustment of the price to cover GST. The clause amends this requirement so that it applies only to contracts made on or after the commencement of subsection (8b). Subsection (8c) which makes it clear that a domestic building work contract may include both a cost-plus clause and a GST clause is amended so that it applies to contracts made before the commencement of the subsection as well as contracts made on or after that commencement.

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

SUPPLY BILL

Second reading.

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

That this bill be now read a second time.

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

Leave granted.

This year the government will introduce the 2000-2001 Budget on 25 May 2000.

A Supply Bill will be necessary for the first few months of the 2000-2001 financial year until the Budget has passed through the parliamentary stages and received assent.

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

Due to the early conclusion of the parliamentary budget session in July, it is anticipated that assent will not be received until parliament resumes in October.

The amount being sought under this Bill is $1 900 million, which is an increase of $1 300 million on last year's bill. This increase is to cover the extended supply period until the end of October and the potential impacts of the GST.

Clause 1 is formal.

Clause 2 provides relevant definitions.

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

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

STATUTES AMENDMENT (BHP INDENTURES) BILL

Adjourned debate on second reading.

(Continued from 2 May. Page 989.)

The Hon. R.I. LUCAS (Treasurer): I thank members for their indications of support for the second reading, namely, the Hon. Mr Holloway, the Hon. Mr Gilfillan, who spoke on behalf of the Australian Democrats, and my colleague the Hon. Legh Davis, who has followed this issue with interest. The Hon. Mr Gilfillan in particular raised a series of questions that will probably be best pursued during committee, but there are a number that I can respond to broadly in my second reading reply. However, we can explore them most productively in the committee stage.

The first thing to say is that, with the great benefit of hindsight, parliaments and parliamentary parties would probably not enter into indenture agreements of the type and nature that we in this state and other governments in other states entered into many decades ago. However, it is easy for us with the knowledge we have—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: That is right. It is easy for us in the year 2000, with our increased concern and knowledge of environmental issues, to look back and be critical of those

governments, members of parliament and communities who endorsed indenture agreements of this type. However, as the Hon. Mr Holloway indicated, the simple reality is that in some cases development would never have occurred if those agreements had not been entered into. All members in both houses of parliament, to their credit, have acknowledged that, as this indenture has been debated over recent weeks, Whyalla is a city community in a region built substantially on the back of BHP and its developments there. It is highly likely that it would never have developed in that area or it would have been a much smaller city development in a regional area if this sort of indenture agreement had not been entered into with BHP so many years ago.

As I said, I make no criticism of other members, because I do not think that they criticised the people who made the decisions in the past, but it is easy for us in the year 2000 to look back and say, 'Why didn't they do this? Why did they allow those practices to occur?' We therefore deal with the reality, as all members have acknowledged, that a significant regional community in South Australia, many jobs and many families are dependent on the health of BHP in the Whyalla community. The government has been driven by that objective to try, to the extent that is possible in the commercial environment that exists today, to ensure the strong and viable continued presence of BHP in Whyalla. Members in this chamber who have spoken on the bill have similarly adopted a realistic approach to the legislation, and they are prepared to do what they can to support the continued operation of BHP in Whyalla.

Without going through all the detail in my second reading reply, because I can do that during committee, I point out that the government believes that there have been some significant negotiations over the past weeks and months in relation to this issue. On the environmental issue, a significant step forward has been taken from the indenture arrangements of the past, and members will probably hear in the committee stage that it might not be to the level preferred by individual members of this and the other chamber. However, they would all at least acknowledge that, in environmental terms, the government has been able to negotiate with BHP a significant step forward in terms of the continued operations of the company at Whyalla.

A series of other issues were raised by the Whyalla council, both directly with me or the Premier and via the Hon. Mr Gilfillan, which he raised during his second reading speech. In a number of these areas, the government is still preparing a response for the city council. I am happy to give a general indication in today's debate, as the government already has, to the requests contained in what the Hon. Mr Gilfillan suggested sounded like a Christmas list. That is fair enough, because it was an ambit claim from the council, representing the Whyalla community, to ratchet out of taxpayers further incentives for the Whyalla community over and above those that have already been negotiated.

The government will not be in a position, for example, to provide hundreds of thousands of dollars to make up what the Whyalla council believes it is entitled to receive in rate revenue. A significant sum in additional rate income is about to come through to the Whyalla council and community as a result of the new commitment from BHP, which it negotiated with the council, and the state government will not be in a position, in essence, to respond to the Whyalla council and give it the hundreds of thousands of dollars—millions over time—that it would like to receive in rate income.

It must be remembered that in Whyalla and other areas, if there are industrial developments of quality and merit, as the government, through the Department of Industry and Trade, is considering in a number of regional areas at the moment, the government will give sympathetic consideration to them, within the overall parameters of the taxpayers of the state being able to afford them through the various industry incentive schemes offered by the government. It will not surprise the Council to know that the government's response as to whether it would put aside $1 million a year for local development—

The Hon. Ian Gilfillan: Royalties.

The Hon. R.I. LUCAS: The Hon. Mr Gilfillan reminds me that the council has requested that $1 million in royalties be set aside for development in the Whyalla community. That is not the way the government intends to operate in relation to this proposal, and I point out again that, if there are industrial developments of quality and merit (and the Hon. Mr Gilfillan raised a series of possibilities, some of which are being discussed with various government departments and agencies) and, if they are viable within the constraints facing the government, the government will give them genuine and sympathetic consideration. The Hon. Mr Gilfillan said in his speech:

> Its final point is that the Premier be asked to place the royalties paid on the iron ore mine—roughly $3 million a year. . . into a fund to be used for economic diversification of the region, with matching funds being sought from both the state and federal government, recognising that the resource is finite and has been mined for 100 years.

The government will not respond favourably to such issues with an open chequebook for the Whyalla community. With that, as I said, and a number of the other issues the Hon. Mr Gilfillan has raised, I think we can best tackle them as we go through each clause of the bill. I am happy, to the degree that I can, to respond to the honourable member's questions in committee.

Bill read a second time.

In committee.

Clause 1.

The Hon. IAN GILFILLAN: One of the frustrating things about discussing this issue is that the bill itself does not deal with a lot of the quite essential and critical issues and therefore it would be difficult to attribute some of the observations and suggestions which I have made and to which the Treasurer refers to particular clauses per se. As the Treasurer indicated that the committee stage would be the forum in which we could address some of the matters that other members and I have raised, I therefore seek the liberty to raise some of those issues now and then consider how we deal with them in the committee stage.

First, can the Treasurer indicate the legislative status of the agreement between the government and BHP and where that document resides, assuming it is a firmly 'dotted i's and crossed t's' document? I can understand that what is included in the bill is included in the bill but, when one refers to earlier public statements by the Premier and general statements of understanding, it appears to me that there has been a much wider scope of agreement between the government and BHP in some detail other than that included in the bill. I may be wrong but my question is: if other agreement has been reached, is it in a documented form and in some other form than this bill?

In the same vein, I have a question on the agreement on environmental issues. I have a copy of the letter dated 22

March, addressed to Mr David Goodwin, Manager, Government Relations and Issues Management, BHP Group Centre, and signed by Rob Thomas, Executive Director, Environment Protection Agency. I ask the Treasurer to comment again on what legal or legislative status this document and its contents have. The document is from the Department of Environment and Heritage, and Aboriginal Affairs, Environment Protection Agency. It is dated 22 March, is addressed to David Goodwin, and it has a subheading 'BHP Whyalla operations agreement on environmental issues'.

The Hon. R.I. LUCAS: I am advised, in relation to the first question as to whether there is some separate agreement between the government and BHP, that what we see in terms of the indenture in essence replicates the government's position in discussions with BHP. I am not aware of any other agreement. If the honourable member is aware of a particular issue, then I would invite him to provide me with some detail of that and I will have some urgent inquiries undertaken.

I am advised that we are not aware of anything other than what we have before us and what we are debating today. We have located the letter, but there is also a covering note dated 29 March, which I will read onto the record. There is a letter from Max Harvey, Deputy Director of the EPA, to Peter Lockett, Department of the Premier and Cabinet, who has been handling the government's negotiations on this. The letter states:

> I can advise that this morning the Environment Protection Authority endorsed the attached letter to Mr David Goodwin—

and that is the letter dated 22 March to which the Hon. Mr Gilfillan has referred—

> in relation to the discussions that have been held recently between BHP and the EPA and the consequent authorisations. A copy of the letter is attached. As agreed, the letter will be referred to in the authorisation and exemptions held under the act. A copy of the draft licence will be forwarded shortly.

This is a formal acknowledgment, together with the letter to which the Hon. Mr Gilfillan referred, of the EPA's agreements in relation to the continued operation of BHP in the areas covered in that two or three page letter.

The Hon. IAN GILFILLAN: Does that imply that it is a gentleman's agreement to which it can be referred or is it binding in law? I cannot see how it can be incorporated as part of the legislation. It appears to me to be totally detached from that.

The Hon. R.I. LUCAS: I am advised that, the way in which these things operate, under the environment protection legislation the licence, which will incorporate these authorisations and exemptions, will be binding in law. That is how these authorisations, exemptions and various licences are approved for the continued operation of businesses. The Environment Protection Authority has the legal authority under the environment protection legislation to approve these licences with the authorisations and exemptions, and it will, therefore, be a legally binding document.

The Hon. IAN GILFILLAN: I think it does make quite clear that, in the government's view, the wording in this correspondence is legally binding. It is a bit more complicated than I have been able to unravel. Earlier in my second reading contribution, I indicated that I have concerns about certain clauses to which I referred the Treasurer. I am not sure that this will be profitable—and I am not being disparaging, but I do not believe that the Treasurer is totally familiar with the ramifications of this agreement—but I raised the issues in my second reading contribution. For example, clause 1(1) of the same letter appears to be an exemption of responsibility for either BHP or a future owner from problems which have been caused by previous practices. The consequences of that could be that a new owner or new proprietor may expose the work force to some hazard—in fact, the hazard may have a health effect—but, if I understand clause 1(1) correctly, there will be no legal obligation or liability.

The Hon. R.I. LUCAS: It is true to say that I have not been involved in the detailed negotiations in relation to the provisions of the indenture and the agreement, but that is true of most legislation that comes before the Council, so the honourable member will have to deal with me and my advisory team in that capacity. There should not be any surprise for the Hon. Mr Gilfillan. It is not, 'shock, horror, something new'. That is, indeed, what I was talking about during the second reading stage. There is a whole variety of things which previous governments and parliaments authorised under indentures and which basically allowed companies, in terms of the environmental practice that we might now support, to do certain things that had a deleterious effect on the environment but they were not liable. That is what the indenture sought to do, did do and in law successfully accomplished. If it was covered by the indenture, then they were not held liable for some of those environmental practices.

Clearly, the honourable member has done a lot of work in this area in recent times, but it is not a surprisingly new thing. That is what I highlighted in the second reading stage. In the year 2000 we can look back and ask, 'Why on earth did they agree to a company being able to engage in a practice which might have a deleterious effect on the environment under that particular indenture, and with immunity?' That was the way in which the indentures were structured. The companies were entitled to do so. This provision is an accurate description, I am told, of past arrangements under the indenture. If someone had been allowed for 30 or 40 years under the law to engage in certain practices, to now say, as I suspect the honourable member is saying, that in some way we should retrospectively make them liable for their actions over the 30 to 40 years—

The Hon. Ian Gilfillan interjecting:

The Hon. R.I. LUCAS: No; the honourable member indicated that if there had been some impact on workers or the environment—

The Hon. Ian Gilfillan: If you had listened more closely, you would know that I am projecting what could happen in the future.

The Hon. R.I. LUCAS: We are not talking about the future.

The Hon. Ian Gilfillan: I am talking about the future, because this bill, and the whole debate, is about the future, not the past.

The Hon. R.I. LUCAS: The honourable member raised a question about clause 1(1), which provides:

> Section 7 of the 1957 Indenture Act will be repealed and BHP will continue to remain non-liable for past environmental practices in accordance with the terms of that section of the indenture.

That is not talking about future environmental practices. Clause 1(1) talks about past environmental practices.

The Hon. Ian Gilfillan: I do not think you listened very closely.

The Hon. R.I. LUCAS: The honourable member was critical of my not applying myself to the detail of this issue: with due respect, I respond in kind. The honourable member referred me to clause 1(1) and, indeed, his second reading contribution raised a similar issue, that is, he had some

concerns about this provision which provided that they would remain non-liable for past environmental practices.

If we can separate past environmental practices from future environmental practices we are on a much happier Football Park to have a discussion but, in relation to past environmental practices, what they were allowed to do under the 1958 indenture they cannot now retrospectively be held liable for. If the honourable member is happy with that situation, we can talk about the future rather than clause 1(1) which he highlighted and which refers to past environmental practices.

The Hon. IAN GILFILLAN: There is no point in having a lengthy and tedious discussion on this, because the document is not before the parliament to amend. It is for me to make what I consider to be constructive but critical comments. Past environmental practices could leave an ongoing toxic contamination.

An honourable member: Maralinga.

The Hon. IAN GILFILLAN: 'Maralinga' was the interjection. There is the effect on workers in the future from the contamination that had occurred previously when BHP was behaving legally. I am not suggesting for a moment that BHP in its current form or from previous practice can be prosecuted but I interpret this as exempting the future owners from having any real obligation to clean up contamination, even if it is dangerous or toxic. It is virtually an excuse for them to be concerned about it. That is what I consider to be the concern for the future.

I wish to make further comment. I do repeat this, because I do not think it is a profitable area to go through in all detail. The Premier in his first public statement said:

> Unlike BHP, the new steel company will no longer have an unfettered right to discharge effluent into the sea or discharge smoke, dust or gas into the atmosphere under section 7 of the indenture.

In its verbatim form, that is true. It is not exactly the same unfettered form. However, in respect of clause 19(1), the letter states:

> Subject to compliance with this condition, the licensee may discharge waste water from the premises into the waters adjacent to the premises.

Maybe there are conditions, but they are not spelled out in this. The point I make—and I am prepared to rest on this—is that I regard this as a substantially inadequate document for a meaningful environmental protection agreement with an ongoing steel producer in Whyalla. I understand the pressures; we have gone through all that. But I am not prepared to take on face value what this letter guarantees was promised with these words:

> It brings the new steel business under the control of the Environment Protection Authority and it provides a significant financial boost to the Whyalla council.

True, it does bring the business under the control of the Environment Protection Authority. But with the agreement—and it is fairly loose and not particularly restrictive—a copy of which I have in my hand, control under the Environment Protection Authority is not a great source of comfort to the population of Whyalla in that they will have an effective and thorough environmental revamp for the new steel process.

The Hon. R.I. LUCAS: Again, along with the Hon. Mr Gilfillan, I do not intend to unnecessarily extend this discussion. Let me just say that the words that the Hon. Mr Gilfillan has quoted from the Premier—that it has been placed under the authority of the Environment Protection Authority—are accurate. That is what the Premier said and that is what has been done, and I think that we would all acknowledge that.

As I said in the second reading debate, we can all argue that this is a significant step forward in terms of environmental practice for the steel works, for Whyalla and for BHP. But as I said in the second reading debate, I acknowledge that for some in this parliament and in the community it might not go as many steps down the path to change environmental practice as they might wish, and I acknowledge that.

One has to maintain a fine balance, and we discussed that in the chamber in relation to the continued operation of electricity generators during the electricity debate, where we have generators that are 20, 30 or 40 years old. We have new generation generators which can meet some of the new environmental standards required of generators, but some of the ageing plant that we have in South Australia is not able to meet the standards that the new generators offer.

It is only sensible, as this parliament agreed in that case, to manage that process through the Environment Protection Authority, that is, the operation of those generators—in this case the steel works at Whyalla—to try to ensure that the steel works continue to operate. Given BHP's decision, there is no point, in our judgment, for parliament to adopt a position which may well require the owners of the steel works at Whyalla to make such a significant further capital investment such that they decide that it is better for them to close down this plant and build a new year 2000 steel works somewhere else in Australia. That is, in the government's view and, we suspect, given the views of others in this chamber, in the parliament's ultimate view, too big a risk to take for the future health and well-being of the Whyalla community.

However, there has been a significant step forward and it is now under the authority of the Environment Protection Authority. With the powers that it has, we will look to the authority to work with the steel works in a sensible and reasonable way to hopefully continue to improve environmental practice but also, from the government's viewpoint—I am not saying that this necessarily is within the terms of reference of the EPA; I would have to check that—we hope to at least see continued operation of a viable industry in Whyalla which employs many hundreds and probably indirectly many thousands of Whyalla residents.

The Hon. IAN GILFILLAN: To conclude the time I want to spend on this, I will put into *Hansard* some particular questions which the Treasurer may choose to deal with at some other time. I will not necessarily look for an answer now. Has the state government done an environmental and occupational health survey at the BHP site at Whyalla, and what liability is the state of South Australia accepting in this indenture bill? Is there an estimate of the cost of remediation of the site should the liability be passed onto the taxpayers of South Australia? Will the State Government and BHP, or its future owners, indemnify and keep indemnified, in respect of any environmental and occupational health and safety liabilities which presently exist on the site, liabilities which a new business may be exposed to should they wish to set up business on any land currently under the existing indenture act?

Will the company directors of a new business which sets up on any BHP indenture land be liable for prosecution under the occupational health and safety act for allowing workers to be exposed to known foreseen risks on the site, for example, workers employed by the new owners being exposed to known and foreseen risks on the site, such as

gases from the coke plant drifting onto their work site? These are foreseen risks which are allowed under the earlier 1937 act.

I wish to raise one other matter concerning a document given to me by BHP titled 'The Review Process of Port Access Requests.' I read it into *Hansard* in my second reading contribution. What is the status of this document? I have a couple of questions to ask the Treasurer but, first, I will pause and let him respond.

The Hon. R.I. LUCAS: I am advised that the statement from BHP has no legal effect. It is a statement of intent and process from BHP in terms of access. In terms of legal issues, I am advised that third parties have legal rights under Part IIIA of the Trade Practices Act to pursue the issue of access rights.

The Hon. IAN GILFILLAN: I thank the Treasurer. That may well answer the questions that I was going to ask about second party access. Perhaps the Treasurer will expand on his answer. Could this virtual monopoly control of an acknowledged privately-owned port be in conflict with Part III of the Trade Practices Act which applies to access regime and national competition policy? Points which may be relevant are whether a monopoly exists, whether there is a bottleneck, and is the project which would seek access of national significance? Is the Treasurer in a position to respond along those lines off the cuff?

The Hon. R.I. LUCAS: I can give an initial response to the honourable member's question. If the member wants to pursue it further, I will have to take a more considered view of it. If those three provisions that the honourable member talked about are met, my advice is that the ACCC would be in a position to impose an access regime. I cannot recall the three provisions that the honourable member read out; they are part of the *Hansard* record. If those three provisions apply, our understanding at this stage is that the ACCC would then be able to impose an access regime.

The Hon. IAN GILFILLAN: Does the Treasurer agree that other party access to the port could be a quite critical issue for diversity and the development of Whyalla?

The Hon. R.I. LUCAS: To be fair, the answer to the honourable member's question is possibly 'Yes'; but, equally, from BHP's viewpoint, future development and viability is important, too. I can understand from its viewpoint that it would not want some access regime or development there which in some way impeded not only current operations but its future growth as a company as well. That is the sort of difficult question that will need to be resolved in the future. At the very least, we have seen genuine endeavours from BHP in terms of at least listing how it would approach applications for access. It is something that had not existed before, so it is at least a step forward, and, together with the provisions under the trade practices legislation, at least it allows some opportunity for third parties to consider or continue discussions in terms of access to those facilities in relation to other developments.

The Hon. IAN GILFILLAN: I thank the Treasurer for his answer. It may be in everyone's interest, if he does have further information, to add to it on deliberation. I would certainly appreciate that; it could be made public. I turn now to some of the requests that the council had made in communication with the government. To refresh honourable members' memories, there was the suggestion, often urged by me, that the government move sections of departments to rural-regional areas. The suggestion was that a section of the mines and energy department or another government department be moved to Whyalla.

The Treasurer did refer to some of the other aspects in his second reading explanation. The Treasurer may know more about this than I do—it is not difficult—but apparently there is a fund of $654 000 which was collected from Marand Whyalla for the purchase of WHYTEC equipment. If the Treasurer is not familiar with this I do not expect him to be able to answer me, but the council believes—because the equipment was purchased on behalf of the city by the Steel Region Assistance Plan, which is federal money—that the money from the sale of that equipment has been held by the state government. Quite rightly, the council believes that in due process that amount of money should go back to the council.

The second issue is the question of royalties. It is anomalous, because yesterday we were debating the reduction of royalties for mining companies that processed on site from the recognised 3 per cent to 2.5 per cent. In this case the reduction in take would go to a community, and I would regard that as being far more justified than the concession necessarily going to a mining company. The Treasurer may like to comment on that.

The third point relates to the $150 000. Again, it may seem to be a rather minor matter, but the city does feel quite hard done by in that, because of a minor default in the timing, the project had been started before the grant process had been completed. It was denied the grant, although originally it had been granted: it had had approval. The city feels that that is a reasonable request and that, if the government is looking at ways and means to give the city a lift, this is no more than asking for money to which it had previously been adjudged to be entitled.

There is the issue of kickstarting the villa flats, the Housing Trust properties, on vacant land in Whyalla. Finally, there is the issue of rates. I believe that in his earlier statement the Treasurer gave that the thumbs down, and I accept that that is his considered judgment in that case. It could always be revisited. I ask for all these issues to be considered in the context that Whyalla, the major regional city of South Australia, has had a bruising in previous years economically and in the context of the ubiquitous haemorrhaging of regional South Australia towards metropolitan Adelaide in population, investment and so on. If the government is sincere in giving this city a shot in the arm, I believe these requests from the council are modest in their quantity and are justified so far as the terms and details of the requests are concerned.

The Hon. R.I. LUCAS: I will respond in general to a number of issues that the honourable member raised. I am in the process of having a detailed reply constructed to the Whyalla council in relation to some of those issues. The honourable member did obliquely refer to the fact that they might have something of an ambit Christmas wish list, although he qualified that in his second reading contribution, but I sensed that there appeared to be a list of requests from the Whyalla community for perhaps a set of circumstances different from the ones we are talking about. If we were confronting a situation where the Whyalla steelworks were closing down and there was to be, therefore, a very significant impact immediately on the Whyalla community, I could understand, perhaps in part, some of the references that I have seen in documentation: when Newcastle had its steelworks closed, these sorts of commonwealth incentives were provided to the Newcastle community.

I am happy to receive further correspondence from the council and from others, but it appears that we are talking about a different set of circumstances. We are talking about genuine endeavours from everybody, including BHP, to continue a strong and viable steelworks in the Whyalla community. We are not talking about having it closed down and headed out of town: we are talking about an ongoing—we hope anyway—strong and viable company which will continue to employ Whyalla families for many years to come. Nothing can ever be guaranteed forever and a day in this world, and the Whyalla residents would be the first to acknowledge that. The Hon. Mr Gilfillan, when quoting some of the correspondence and when talking about employment for the future, also acknowledged some of the realism he has had on this issue.

I can understand a set of circumstances where, if the whole business has been closed down, what would the government be able to do? I have no criticism of the community, through the council, taking the opportunity this time (albeit we are looking at, hopefully, a strong and viable business continuing in Whyalla) to say, 'We would like these additional benefits, incentives and advantages to be funded by the taxpayers of South Australia for the Whyalla community.' As I indicated, in a number of areas they will have to be treated by government departments and agencies on merit in their own way.

In relation to industry and trade, as I said earlier—and I repeat—if there is industrial development of merit and quality that measures up against the other proposals, I am sure the department and government within the strictures of what money is available will view it sympathetically in terms of an economic development opportunity in Whyalla or the Whyalla region.

Indeed, one or two of the ones that the Hon. Mr Gilfillan has already mentioned in his second reading contribution I understand are already in discussions with various government departments and agencies, and have been for some time, in terms of what it is that the government might be able to do to assist. But in the context of actually diverting $3 million a year of royalty funds to the Whyalla area or making up rate revenues, in fact there has been a relatively successful and generous negotiation, as I understand it, between BHP and Whyalla. I am told that the amount over the next 20 years is about four times greater than the amount over the past 20 years, that it is factoring up to about $500 000 or $550 000 in terms of rate revenue. So I understand that there has been a successful negotiation between BHP and the council in terms of rate revenue.

Sure, the local council might wish to have more and for that to come from the taxpayers of South Australia, but we are not in a position just to be providing that money for ever and a day to Whyalla in terms of subsidising the rate income that it thinks it should be entitled to in that area. But, as I said, we will sympathetically and genuinely look at it in all the departments and agencies I am sure. The honourable member referred to the Housing Trust. I am sure the Minister for Housing will seriously look at any issues that are put to him, as will the other ministers if they come within their portfolios in terms of budget requests for further funding in those areas. But in the big ones, in terms of the $3 million in royalty, subsidising of rate income, I would indicate today that indeed they are not areas where the government intends to say, 'Okay, we are going to hand over the $3 million or the hundreds of thousands of dollars in rate subsidy to the local council.'

In terms of the specific issue of Marand, I am not aware of all of the detail of that. I am advised that there has been some considerable history in relation to this issue. Before I speak with any authority on it I would like to be properly briefed and I will correspond with the council on that issue as I have been requested.

The Hon. IAN GILFILLAN: I would remind the Treasurer that he went to some pains to chastise me for supposedly referring in retrospective terms to environmental sins of the BHP past. In later discussions it was shown that he had misunderstood my comments, so we had that clarified. But if the same logic applies it is quite pointless to say that the council will get more from BHP or its successor than it has in previous years. The fact was that BHP was given charitable treatment for many years, and that is no argument for keeping the rates on a less than equitable basis. So I want to emphasise that point, that it has been an unfair impost on the City of Whyalla. Sure, it was great that BHP was there. I will not go back over that aspect; we have all agreed on that. But two sins do not make a right.

If BHP had been underpaying in the past there is no reason why there should be a continuing regime of underpayment. The only reason that there is a continuing regime of underpayment is that everyone is desperate that the new entity will be viable and keep going. They argue that if they were to be paying the fair and equitable rate right now it could put the enterprise in jeopardy. That is a decision that is an advantage to the state government, not just the council. It is to the state government's advantage to keep the steelworks there. It gets its $3 million a year, for a start, and is hanging on to every cent of it. I think that, in a sense of justice, that could be revisited. The argument that this is so much more than we got before is so much waffle. But what is good news is that the Treasurer, and I take him as a man of his word, gives the impression that the other requests made by the council are receiving serious attention from the government. I look forward to hearing as soon as the decisions are made the good news that should flow to Whyalla from those deliberations.

There is one final point I must deal with which relates to the matter I raised in the latter part of my second reading speech, namely, the area that is to be transferred from BHP to some other entity on the western side of the Port Augusta Highway. I eventually got an answer from Mr Terry Evans, Chief Commercial Counsel of the Crown Solicitor's office, after it had been passed through the various protocol channels. I just repeat quickly, because the chamber does not necessarily need to take a lot of time on this, that there is a road reserve on the eastern side of the land which was to be returned to conservation park, and it is sensible, logical and agreed by BHP that that land will not remain as a road reserve, that in fact it be embraced in a conservation park. I am assured that that cannot be and does not need to be specifically identified in this bill, because it is the global area of land which the bill determines will be transferred from BHP to the council, or to other entities, and if agreement cannot be reached with any other entity then that land, by default, will return to the state. The state is not particularly keen on having an unused road reserve on the eastern side of the conservation area.

I do not intend to read the letter into *Hansard*, because it is a little longer than I think is needed to explain the issue, but it is available and I am sure the Attorney-General's office or the Treasurer's office would make a copy available to any interested member. But quite clearly it is the Whyalla residents who would be the most interested in it, including the

member for Giles, who has been listening very intently to the debate. I am assured by the letter that there is no hindrance in the area that has been asked for by the council and agreed to by BHP of road reserve on the eastern side of the area designated A being embraced by the whole of A; in other words, it becomes part of the conservation park. So I would like to assure the committee that I no longer have any concerns about it, and I hope that lays to rest any concerns that the council and Whyalla have about it.

The Hon. R.I. LUCAS: I thank the Hon. Mr Gilfillan for his willingness to enter into productive discussions with Mr Terry Evans and other government officers on this aspect of the bill, and others. Indeed, Mr Evans's letter is an accurate description of the position. The Hon. Mr Gilfillan has put on the record his views as a result of receiving the letter. I do not intend to extend the debate other than thanking the Hon. Mr Gilfillan for what were productive discussions with Mr Evans.

The Hon. IAN GILFILLAN: I do not know whether the Treasurer is waiting for a response, but there seemed to be a deathly hush which I think I will fill by saying that the current leader of the debate appears to be more gracious than his predecessor who was not very generous in those sorts of remarks. I do not know whether that means there is a general improvement in the tone of this place.

Clause passed.

Remaining clauses (2 to 23) passed.

Bill read a third time and passed.

STATUTES AMENDMENT (EXTENSION OF NATIVE TITLE SUNSET CLAUSES) BILL

Adjourned debate on second reading.

(Continued from 12 April. Page 917.)

The Hon. T.G. ROBERTS: The opposition will cooperate in fast tracking this bill through the upper house to get it into another place to enable the proclamation to take place within the time frames that are acceptable to the government and the orderly process of legislating in relation to this bill. I cooperated to the point of, not bypassing the Caucus but, because the bill was not given to me until Tuesday, I contacted each Caucus member separately and asked them to indicate any opposition that they may have.

We do not do that very often, but we felt that this is not a complicated bill and the request made by the Attorney-General to facilitate the process was accepted as a principle by the opposition. The original bill synchronised both the state and commonwealth acts and extended them to 17 June 2000, by an amendment contained in the bill. That period is now about to expire, hence we have the sunset clause extension in front of us.

The request is for parliament to accept an extension of the act for another three years to take it from 2000 to 2003. In relation to part 9B of the Mining Act, the right to negotiate in respect of mining activities in the native title lands is the origin of the application of this section of the bill. Although I have had people in my office from time to time who have had difficulties with the Mining Act in relation to opal mining, much of it is not to do with the right to negotiate but with the inability of some miners to recognise the appropriate people representing the ownership and custodianship of that particular area of land and to link the appropriate custodians to the geography.

That is not something that legislators can do much about in the initial stages. If people do not do their homework to identify the appropriate custodians, they can expect to end up with difficulties when it comes to negotiating final rights over access and any other negotiated outcome that would come from sitting around a table and respecting each stakeholder's rights in relation to the Mining Act. With those few words, the opposition supports the extension of the bill and will cooperate to put the bill through all stages today.

The Hon. K.T. GRIFFIN (Attorney-General): I thank the Hon. Terry Roberts for his indication of support for the bill and for agreeing to deal with it today. It is an important piece of legislation that must pass both houses by the end of May, because the sunset clause is 17 June and we must have this bill in place to extend that sunset clause well before that time. I spoke to the Hon. Sandra Kanck who, on the part of the Democrats, has responsibility for the passage of this bill. She indicated to me that she had no difficulty with the bill and did not intend to speak on it.

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

JURIES (SEPARATION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 April. Page 937.)

The Hon. IAN GILFILLAN: The Democrats support this bill. It does two minor and one relatively major things. I count as the minor things increasing penalties from $1 000 to $1 250 for offences by jurors, and changing the archaic word 'impeached' to the more modern word 'challenged'. In contrast, the major purpose of this bill is to permit juries to separate during their deliberations.

This bill sits uneasily with last year's amendments to the Criminal Law Consolidation (Juries) Amendment Act. That act was supported by both Liberal and Labor members and is now in force. It prevents the media ever publishing anything said in a jury room, no matter how long after a trial or how irrelevant such publication may be to the carriage of justice in the particular case. As I said at the time of the 1999 amendments:

> They permanently silence any juror who may have felt marginalised, intimidated or ill equipped for their task. They prevent the public from ever learning about it or discussing those sorts of experiences.

I described the 1999 amendments as an overreaction to a problem that did not exist in South Australia. I believe that the act went too far in protecting the jury and, in effect, by eliminating public discussion of any jury's work, risked jeopardising the jury system itself. Now we have a bill that goes the other way. It allows jurors to be let out from the jury room and separated while they are considering their verdict.

I was curious as to the implication of the words 'to separate', and I got an explanation to some degree, which I will put into *Hansard*. The short answer is that 'to separate' means to be allowed to go home, not to be locked up together in a jury room, or sequestered away in a motel. In more detail, I am advised that the words 'separate' or 'separation' do not have any special definition in the Juries Act. Section 55, entitled 'The court may permit a jury to separate', which the bill repeals, provides:

> In any criminal inquest, the court may, if it thinks fit, at any time before the jury considers its verdict, permit the jurors to separate.

If I rely on the Attorney's second reading explanation, including his references to the Victorian case R v. Chaouk, I understand that permitting juries to separate contains two elements: (1) permitting the 12 to leave the jury deliberation room separately so they are no longer all together as a single body; and (2) permitting them to talk to outsiders, for example, families and friends. That is what they are not permitted to do at present once they retire to consider their verdict.

On the one hand we have a permanent ban on disclosing anything said in a jury room; on the other hand we are now allowing jurors to come out of the jury room and associate with others at the very time when their verdict is due. It does not seem consistent. Nevertheless these amendments are appropriate. They treat jurors as real human beings with needs and lives quite apart from the service they render to the justice system. As the Attorney-General said, they allow a jury to be separated if, for example, a juror's child is taken ill. To the extent that these amendments seem incongruous alongside the 1999 amendments, it is a reflection on how unsympathetic to jurors the 1999 amendments were.

If anyone wants to commit the crime of tampering with a jury, they already have the opportunity during the course of a trial. Someone intent on offering a bribe or using intimidation does not need to wait until the jury retires. Therefore no extra risk of jury tampering is created by these amendments. The risk already exists and is addressed by legislation. Allowing jurors to separate does not increase the risk. The confidentiality of jurors' deliberations can be the subject of directions or conditions of separation required by the court. Jurors may, of course, speak to their family and friends about the case but, if they do, they will risk penalties for being in contempt of court. The Democrats support the second reading of the bill.

The Hon. J.F. STEFANI secured the adjournment of the debate.

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

A quorum having been formed:

CORPORATIONS (SOUTH AUSTRALIA) (MISCELLANEOUS) AMENDMENT BILL

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

That standing orders be so far suspended as to enable me to move that the order made this day for the Order of the Day, Government Business, No. 21, to be an order of the day for the next day of sitting be discharged and for this order of the day to be taken into consideration forthwith.

Motion carried.

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

That the order made this day for the Order of the Day, Government Business, No. 21, to be an order of the day for the next day of sitting be discharged and for this order of the day to be taken into consideration forthwith.

Motion carried.

Adjourned debate on second reading.

(Continued from 2 May. Page 994.)

The Hon. IAN GILFILLAN: I indicate Democrat support for the second reading of this bill. To ensure that corporations are under the same law everywhere in Australia, each state has identical legislation, which simply provides that the commonwealth Corporations Law is to apply as a law of the state, and I cite as an example the Corporations (South Australia) Act 1990, section 7(a). The vast bulk of Corporations Law is therefore enacted by the commonwealth but there are certain provisions which, for constitutional reasons, still need to be contained in each state statute. The content of these provisions needs to be agreed between state and commonwealth ministers at the Ministerial Council for Corporations. It is pertinent to note that this issue was the subject of quite a lengthy answer by the Attorney to a question regarding corporations and the possible usurpation of some area of state independence by the federal body. It would have made a beautiful ministerial statement; unfortunately it took up a pretty hefty chunk of question time.

I note that the Corporate Law Economic Reform Program Act 1999 (CLERP Act) went through the commonwealth parliament in October 1999 with the help of the Australian Democrats, who were successful in persuading the government to move several important amendments. I point out to those who are interested in this matter that they are outlined in the federal *Hansard*. They were moved and handled competently by Senator Andrew Murray from Western Australia. Therefore I have few fears about supporting what the Attorney-General assures us are merely complementary measures designed to ensure the success of the CLERP Act in South Australia as elsewhere.

From my study of the bill, I realise that it involves for the most part mere housekeeping, changing the names of the ASC to the ASIC, and so on. However, when we move into committee, I will ask the Attorney-General, if he is able to, to explain the policy reasons that have led to clause 5. Why is the commonwealth in its wisdom submitting itself to the fundraising provisions of the Corporations Law while the states are not? What are the advantages and disadvantages of the Crown being subjected to these provisions? With these observations, I indicate Democrat support for the second reading.

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their indication of support for the bill. I have had a conversation with the Hon. Mr Terry Cameron's officers and my understanding is that, so far as they were aware, he did not wish to speak on the bill. On the basis that the bill is generally supported by the government, the opposition and the Australian Democrats, it seems appropriate to proceed through all stages. The question that the Hon. Mr Gilfillan raised about clause 5 I may need to take on notice. We can deal with it in committee but, if my undertaking to provide an answer in due course is not sufficient before the bill goes through, we will have to report progress.

Bill read a second time.

In committee.

Clauses 1 to 4 passed.

Clause 5.

The Hon. IAN GILFILLAN: This clause provides:

Section 15 of the principal Act is amended by inserting after subsection (1) the following subsection:

(1a) Chapters 6, 6A, 6B, 6C and 6D of the Corporations Law of South Australia—

(a) bind the Crown in right of the Commonwealth so far as the legislative power of the parliament permits; but

(b) do not bind the Crown in right of the State of South Australia, of any other state, of the Capital Territory, of the Northern Territory or of Norfolk Island.

The question I asked in my second reading contribution was—

An honourable member interjecting:

The Hon. IAN GILFILLAN: When was it? It is hard to remember. The distinction between the binding of the Crown in right of the commonwealth as compared with the Crown in right of the state of South Australia is an interesting aspect. I wonder whether the Attorney can explain.

The Hon. K.T. GRIFFIN: I do not have all the answers on this issue at the moment but I undertake to obtain the information for the Hon. Mr Gilfillan. I was perusing the explanation of the clauses in the second reading explanation and I note that the decision to bind the commonwealth was taken by the commonwealth for its own policy reasons.

We as a state took the view that it was inappropriate to be bound by those fund raising provisions because of the constraints that may be imposed on the state and its instrumentalities in relation to fund raising and also make the state instrumentalities subject to what is effectively a commonwealth instrumentality—the Australian Securities and Investment Commission. We endeavour to avoid being subject to both scrutiny and constraints through the operation of commonwealth statutory authority.

That, I think, is the answer. The commonwealth made the decision that it was prepared to have all its fund raising and other provisions applied to its activities—the activities of its corporations—and we were not prepared to have it applied to us for the reasons I have indicated. If the answer is inaccurate or inadequate, I will undertake to ensure that it is checked and have an answer communicated to the honourable member.

Clause passed.

Remaining clauses (6 to 10) and title passed.

Bill read a third time and passed.

OCCUPATIONAL HEALTH, SAFETY AND WELFARE (PENALTIES) AMENDMENT BILL

In committee.

(Continued from 13 April. Page 951.)

Clause 6.

The Hon. R.D. LAWSON: When this matter was last considered by the committee, an amendment to clause 6, proposed by the Hon. Nick Xenophon, was under discussion. I note the honourable member has given notice that he intends to move further amendments and I do not propose that the committee deal with that matter at this time. However, before we proceed further there are a couple of pieces of information that I believe should be put on the record. I note also that the Hon. Terry Cameron is not present today. As he has indicated that he wishes to contribute to the committee consideration of the bill, after putting my matters on the record I will move that the committee report progress.

On the last occasion, a number of members were fairly trenchant in their criticism of the inspectorate and the policies adopted by it and, by inference, the policies of the government which, it was suggested, were leading to a degree of leniency on the part of the inspectorate. Indeed, the Hon. Michael Elliott provided the unkindest cut of all by suggesting that the Workplace Services Inspectorate was as bad as the EPA.

The Hon. M.J. Elliott: Trenchant criticism!

The Hon. R.D. LAWSON: Trenchant criticism from that particular member. But it is worth putting on the record the true position with regard to the inspectorate. It was suggested that the inspectorate had been wound down and, for example, that its motor vehicles had been taken away from it and the inspectorate was thereby neutered. It is worth reporting that there are presently 47 occupational health and safety inspectors—in 1994, when this government came to office, there were 35 inspectors. Over the past three years, additional funding and the generation of internal efficiencies, such as the motor vehicle fleet, have led to an additional 11 inspectors being appointed. So, that is a substantial increase in the inspectorate.

The inspectorate uses a combination of proactive and reactive strategies to help promote safety initiatives. The health and safety promotion activities of the inspectorate are very important. The inspectors are not given specific targets in terms of improvement or prohibition notices or prosecutions. There are output measures by which the inspectorate is judged and, without going through all the output classes, I can indicate that they show a high degree of activity.

For example, in relation to workplace relations, the target for the number of inquiries answered for this year was 75 000 and we have answered more than that number of inquiries. The number of occupational health and safety workplace inspections or visits to sites was targeted for 5 000 but it will be nearer 6 500 this year, I am advised. Some 840 occupational health and safety investigations will be finalised well ahead of the target. The number of workplace relations investigations finalised will be about 1 300. In the performance indicators relating to the quality of services provided, targets are being met. The standards of service are defined, laid down and published and are actually being met and exceeded, I think in all categories, except in relation to the percentage of prosecution decisions made within six months from the start of investigation, which will fall short of target this year—but I suspect that is more to do with the court process than the diligence of the inspectorate. Certainly, the number of occupational health and safety investigations resolved within six months is a target which is being specifically met.

The suggestion, which was made by a number of speakers on the last occasion that the committee met, that Government policy dictated or suggested to inspectors that they not take all necessary enforcement actions against employers, is clearly false. I think I denied that on the last occasion, but I want to confirm that inquiries of the inspectorate reveal that there have been absolutely no directions from me (as newly appointed minister) or any of my predecessors in relation to this aspect. The reality is that the inspectors have received substantial training assistance to help to ensure that they operate in a consistent and professional fashion. Our procedures manuals and a prosecution standing committee, which endorses investigations and supervises their progress, have been established. The suggestion that inspectors are not using the full range of enforcement remedies is not only wrong but also an insult to the professionalism of the executives and staff of the inspectorate.

I also reject the accusation that the reduction of vehicles available to the inspectorate had reduced its efficiency. It is true that there was a reduction of some 10 vehicles. It applied not only to the occupational health, safety and welfare staff but also to the workplace relations field staff. The reason the decision was taken was that workplace services government vehicles were averaging something under 17 000 kilometres a year, which is a totally uneconomic vehicle allocation.

The Hon. T.G. Roberts: They were not getting out very often.

The Hon. R.D. LAWSON: They had too large a number of vehicles. Reduction of the number of vehicles from a

vehicle for every inspector in the inspectorate to a pool system did enable efficiencies and savings to be made and more inspectors to be appointed.

The Hon. T.G. Roberts interjecting:

The Hon. R.D. LAWSON: There is regional policing. Only this week there was a serious accident at Coober Pedy and the people arrived on the site very rapidly. The true point is: has the field work been curtailed as a result of the number of vehicles in the fleet? There has been no curtailment and no reduction in activity, and the savings made, which have been applied back into the inspectorate and which have not diverted to other activities of government, indicates that the measure was designed not to reduce effectiveness but to more effectively use the resources available to the inspectorate. It is appropriate to put those factual matters on the record before debate on this clause continues.

Progress reported; committee to sit again.

SPORTS DRUG TESTING BILL

Adjourned debate on second reading.

(Continued from 2 May. Page 972.)

The Hon. R.R. ROBERTS: The opposition will be supporting this bill, which seeks to provide a system whereby athletes competing at the elite level in South Australia and those athletes at the academy who are being subsidised by taxpayers' money will have to be involved in testing regimes that have been put in place at a commonwealth level to ensure fairness and the reputation of Australia in sport. I think this brings the state situation into line with the federal situation. The opposition indicates that it will be supporting this legislation and proposes no amendments.

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

CHILDREN'S PROTECTION (MANDATORY REPORTING AND RECIPROCAL ARRANGEMENTS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 3 May. Page 1020.)

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I wish to thank all honourable members who have contributed to the second reading debate and for their support of the bill generally. The Hon. Sandra Kanck has indicated that she has a number of questions that she wishes to ask during the committee stage of the bill, and she has very kindly given me some notice of that fact. There are officers here to assist me through the questions so that she can get all the answers that she needs. Again, if there is not all the information at hand today, I guarantee that she will be provided with the information that she seeks.

Bill read a second time.

In committee.

Clauses 1 and 2 passed.

Clause 3.

The Hon. SANDRA KANCK: One of the principal purposes of this bill is encapsulated in clause 3, which adds pharmacists to the list of mandated notifiers. I assume that that is the case because pharmacists on occasion see customers or the children of customers who show signs of abuse. First, I will ask a general question about mandated notifiers. I assume that the title gives some form of authority or believability. If an ordinary person makes a notification to Family and Youth Services, will they be taken any less seriously than a mandated notifier? Just what is the significance of a mandated notifier?

The Hon. DIANA LAIDLAW: All notifications are treated most seriously so, even though you or I may not be mandated, any notification we would make would be treated seriously. Mandated notifiers have the advantage of being able to participate in mandated notifier training and therefore are usually more well informed about factors such as signs of abuse, what the agency needs to know when the person is making the notification, and what will happen in terms of the process of that notification. Mandated notifiers are given training and further assistance and therefore, I suspect, would be able to put their report forward with more confidence, whereas you or I, while we would be taken seriously, may not be so sure that what we were observing was abuse.

Having listened to the honourable member speak yesterday, and reading through her comments in *Hansard* again today, she did highlight that, as a teacher and one who dealt a lot with children, there are still instances where you suspect but you may have misgivings, but the mandated notifiers have the benefit of having further training in terms of those signs and what the agency would seek in terms of advancing the interests of the child.

The Hon. SANDRA KANCK: Does this clause mean that all pharmacists become mandated notifiers? If so, does that mean that all pharmacists have to now go off and do a course? If so, who meets the cost of that?

The Hon. DIANA LAIDLAW: Yes, all pharmacists will now be required to notify if they do have those suspicions. The training is not compulsory for the pharmacists as it is not compulsory for any other mandated person, but it would be a wise precaution in terms of the obligations that the parliament has placed on mandated reporters for them to undertake the training that is being made available to them.

The Hon. SANDRA KANCK: How much will it cost and who meets the cost?

The Hon. DIANA LAIDLAW: The agency pays the cost of the training.

The Hon. Sandra Kanck interjecting:

The Hon. DIANA LAIDLAW: No, Family and Youth Services pays the cost of the training.

The Hon. SANDRA KANCK: Who conducts the training and for how long does the course last?

The Hon. DIANA LAIDLAW: I am advised that people within the department have been trained as trainers and, in addition, a number of people outside the public sector have been accredited for this purpose. The train the trainer courses both for the public sector employees and for the accredited trainers from the private sector last for three days, and there is a further one day training course for the mandated notifiers. The people who do the training have a three day course, and they would then hold one day training sessions for the mandated reporters if they wished to undertake that training course.

The Hon. SANDRA KANCK: Does this mean that pharmacists who live in regional areas will be brought into the city at taxpayers' expense to do the same courses and, if so, will they be given appropriate accommodation?

The Hon. DIANA LAIDLAW: No, the accredited trainers offer those courses in country centres. They will go out to the centres so that the person undertaking the training does not have the expense of leaving their workplace as well as undertaking training in Adelaide.

The Hon. SANDRA KANCK: What specifically are the signs that a pharmacist will be taught to look for? When I was a teacher, you would notice a change in behaviour, so what specific things would they look for?

The Hon. DIANA LAIDLAW: I am advised that the full mandated notifier training will equip pharmacists with knowledge of the indicators of abuse in children. Examples may include disclosure by the care giver, physical signs of abuse, and so on. An example provided by the Pharmacy Board when seeking inclusion as mandated reporter in the act was the purchase of medication and other materials to hide the signs and symptoms of abuse.

The Hon. Sandra Kanck: Make-up?

The Hon. DIANA LAIDLAW: Thick make-up.

The Hon. CARMEL ZOLLO: It is not necessarily just the pharmacist who may be asked for medications for cover up, and so on. Often people would tend to avoid the pharmacist and go to the sales assistant. Would the minister comment on that?

The Hon. DIANA LAIDLAW: I suspect that, if the Pharmacy Board has been agitating for this matter for some time (some may well wonder, as did the Hon. Sandra Kanck, why it would be agitating for the additional responsibility), the pharmacists at their various places of work clearly feel that they have a responsibility to the community, and that they see signs of abuse by people who, because of that very abuse, may not present at a hospital. I suspect that is happening here, so those pharmacists who wish to undertake the training and are sufficiently concerned would also alert other people who work within those premises. The pharmacist could be called from behind the counter or from where they are working to take an interest in the person presenting if there is some concern by other pharmacy workers.

Other pharmacists may believe that this is an enormous responsibility and would not wish to involve others within their work environment. It will depend largely on the individual workplace and the pharmacists' attitudes in terms of their new responsibilities.

The Hon. T.G. ROBERTS: Having spoken to a pharmacist as recently as this morning—

Members interjecting:

The Hon. T.G. ROBERTS: Over breakfast.

The Hon. J.S.L. Dawkins: You didn't go to the aquarium, did you?

The Hon. T.G. ROBERTS: No. The format that frustrates pharmacists is that they see people whom they suspect of abusing the children often coming to fill prescriptions sometimes with the children with them and sometimes not. Generally, if the children are with the abuser the questioning process by some pharmacists to start with to try to get the abuser to open up is superficial. It is as much a problem for them as it is for the children. In some cases that works, and what generally happens then is that the pharmacist will ring the treating GP and ask whether the GP believes that the case is of abuse. If the GP says, 'Yes, and I have reported it' the pharmacist generally is satisfied and more relaxed with that. But, if the GP does not indicate that they have mandated the reporting of that, the pharmacist feels uncomfortable in letting the abused child go with the abuser, because in a lot of cases they return and sometimes the abuse levels increase.

There is a frustration with pharmacists but there is also the problem of training and the prospects of confrontation with the abuser if prescribed medication or prescribed medicine is being delivered, so there is a two-edged sword. This is why governments and probably the representatives of pharmacists have been slow in getting their names onto the lists for people to be mandated, because I do not think there is any uniform view amongst pharmacists on how to proceed on this one.

The other argument being put against mandating is that if the doctors are mandated some of the abusers avoid the doctors and go straight to pharmacists for non-prescribed medicines, balms, creams, etc. wherein the mandated treater does not get to make an observation of or mandate the abuse. That may be okay if it is a one-off circumstance, but if it is continual abuse all of us are neglecting our responsibilities in not mandating pharmacists.

It is a very difficult situation, but because of the circumstances in which we find ourselves now, where the pharmacists want to be mandated, the appropriate training needs to include that sort of conflict resolution which comes with personal confrontation and personal presentation. The abusers must be encouraged to expose their children to the pharmacists and to their doctors. The legislation that has general agreement ought also to recognise that a lot of pharmacists are women and that there are occasions where the pharmacist is presented with threats and physical intimidation. I suspect that the training would have to include those sorts of regimes.

In relation to the point about pharmacists' assistants being exposed to those same sorts of programs, the pharmacist in turn would have to train the pharmacy assistants at least to preliminarily recognise some of the more obvious signs of abuse and then perhaps refer them to the pharmacist before the individual leaves the shop or the premises.

There needs to be a training regime whereby pharmacists do feel comfortable in confronting the circumstance as they find it, so that we do not discourage reporting and we do not discourage children from being present in pharmacies to obtain some form of treatment. At least then there is encouragement for treatment, both of the abuser and of the child.

The Hon. DIANA LAIDLAW: The honourable member raises some relevant points. The Hon. Sandra Kanck also alluded to them yesterday in her seconding reading contribution. It has reminded me that, when I was shadow minister for community services some years ago, I read considerable studies from Victoria at the time where a lot of material was presented against mandatory reporting for just the reasons outlined by the honourable member. For example, I remember cases where women who thought that, if they reported to a doctor or to a pharmacist who was required to report and that if the report was lodged, their whole family would be torn apart: they might lose the person whom they loved—the husband or the de facto. It is a real struggle for them.

They do not want to see their child hurt but they feel that the consequences of protection for the child may see their lifestyle destroyed. It is a lifestyle of a child compared to their lifestyle and a family lifestyle, and it is a vexed issue. My adviser has told me that since this debate some years ago in Victoria the Victorian parliament has made it mandatory for a number of categories of health professionals and others to report. The death of a two year old child in Victoria led to changes in the practice. Nevertheless, I believe that the issues we have all talked about in this place, the sensitivities, mean that we are dealing with a very vexed issue that relates to both physical abuse as well as emotional trauma for the whole family, including the child.

My view would remain that the interests of the child are paramount. One would hope that adults could reason through these things: children are more vulnerable and are not able to. The paramount interests of the child is stated in the act, as I recall, and I would always support that. I think that all

members of parliament do support that, but it is an interesting and vexed issue to work through. I am also advised and I readily accept that early detection can link families with services that will support parents appropriately to care for and protect their children. If we can get the message through that we want to work with families to address this problem and that it will not always lead to the separation of families then, I think, perhaps we may encourage more people to readily acknowledge that there has been abuse of their children rather than hide the fact, to the detriment of the child and the family in the long term.

The Hon. SANDRA KANCK: In relation to the issue raised by the Hon. Carmel Zollo and the Hon. Terry Roberts in relation to training of pharmacy assistants, in another life I was a pharmacy assistant. The pharmacist with whom I worked was a fairly cavalier sort of person and I recall an instance, not related to child abuse, when teenagers started to come into the shop to buy a particular proprietary brand product which teenagers were using to trip on.

When I became aware of it I reported it to him, and his response was, 'Well, if we don't sell it someone else will and I might as well make the profit.' So, some pharmacists are not as scrupulous as others. I am reasonably comforted by one of the first answers the minister gave me, that any one of us as an individual can make a report. So, if you were an assistant to a pharmacist who was not sympathetic to this (despite the next clause that we will be dealing with), that individual pharmacy assistant would be able to make that report.

The next question I would like to ask about clause 3 is that we are adding a new part 3 to section 6 of the parent act, which part provides that it is immaterial for the purposes of this act that any conduct referred to in subsection (2) took place wholly or partly outside this state. If an action took place, or the perception is that an action might have taken place, outside the state, presumably some sort of investigation would be going on in the original state. Would this create any confusion, or do the latter parts of this bill which provide the reciprocal arrangements stop that confusion from occurring?

The Hon. DIANA LAIDLAW: I am advised that the provisions of this bill allow for the transfer of child protection proceedings between jurisdictions. It is unlikely that courts in separate states would be hearing the same matter at the same time. If the abuse had taken place in one state and welfare authorities in that state had commenced taking action but these matters were not finalised and the parents removed the child to another jurisdiction, the court proceedings could be transferred to the state where the child was subsequently located. This is a change to current processes and significantly enhances the community's protection of children.

Clause passed.

Clause 4.

The Hon. SANDRA KANCK: The current act provides that proceedings against a mandated notifier for not notifying their concerns must be commenced within two years of the date of the alleged offence. Clause 4 of this bill will remove that. That sounds to me as if it is open ended, so I would like to know whether any time limit at all will be attached to this. I would also like to know why this is occurring. Has something prompted this change?

The Hon. DIANA LAIDLAW: When the Children's Protection Act was formulated in 1993 the Summary Offences Act imposed a much shorter time limit for the commencement of proceedings for an offence. It was considered at the time that a two-year time limit was more appropriate for the protection of children. Therefore, the Summary Offences Act has since been amended to provide for a two-year time frame within which action can be taken against offences. This makes the clause in the Children's Protection Act redundant. The Summary Offences Act two-year time limit will govern proceedings for an offence against section 11 of the Children's Protection Act, so in effect the removal of this clause makes no substantive difference, and the two-year time limit will prevail. I am sorry that was not made clearer in the second reading explanation. I am glad the honourable member has asked the question so that we can clear it up.

Clause passed.

Clauses 5 and 6 passed.

Clause 7.

The Hon. SANDRA KANCK: This clause provides that in any proceedings under this act the court is not bound by the rules of evidence but may inform itself as it thinks fit. This sounds as if it might be a positive, and as if we may be moving to a more inquisitorial style of obtaining information and getting truth rather than winners and losers, which is one of the defects of our court system at the present time. It might also be a positive in terms of the fact that, with legal aid as it currently is, many parents are trying to conduct their own cases. I would like some confirmation from the minister about the impact of the court's not being bound by the rules of evidence.

The Hon. DIANA LAIDLAW: I am advised that the addition of this clause has a neutral effect. It simply makes more explicit the intent of the current legislation and current practice. The style of civil proceedings before the court is more inquisitorial than that in a criminal court, and intentionally so. The current Children's Protection Act 1993 provides that in any proceedings under the act the Youth Court is not bound by the rules of evidence but may inform itself in any way it thinks fit. It is a civil court, and civil proceedings are less restricted than are criminal proceedings, which must follow the prescribed rules of evidence.

The Youth Court informs itself about the circumstances of the child and family through a range of measures, for instance, reports from appropriately qualified professionals who have interviewed and conducted assessments of the child and family circumstances, and through the calling of a range of witnesses to provide verbal evidence to the court. The wording in subclause (b), 'the court must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms', makes more explicit the intent of subclause (a) in the original act. It also ensures that the court gathers all the information it needs to make an informed judgment concerning the safety and well-being of the child.

Clause passed.

Clauses 8 and 9 passed.

Clause 10.

The Hon. SANDRA KANCK: Clause 10 inserts new section 47A, which provides:

> In any proceedings under this act, the court may, on the application of—

and we have (a), (b) and (c)—

> hear submissions the applicant wishes to make in respect of the child, despite the fact that the applicant is not a party to the proceedings.

I am a little unclear as to what this means, so I ask the minister to provide some examples of people who might be applicants but who would not be party to the proceedings.

The Hon. DIANA LAIDLAW: This clause inserts a new section to replace current section 41, which has the same wording. The intent of the clause is to provide that in any proceedings under the principal act the court may, on the application of a member of the child's family (and this includes the extended family), a person who has at any time had the care of the child (for example, a foster parent) or a parent who has counselled, advised or aided the child (for example, a person who has counselled the child in relation to the abuse), hear submissions that the applicant wishes to make in respect of the child. This is so despite the fact that that person is not a party to the proceedings.

The Hon. SANDRA KANCK: Does this mean that proceedings could occur without the knowledge of the natural parents of the child?

The Hon. DIANA LAIDLAW: It is not intended that that be the case. In most circumstances it is likely that the natural parents will be a party to the proceedings, particularly when it is the transfer of a child protection proceeding that is being considered. The transfer of a finalised child protection order, that is, when a child is already under the guardianship of the minister, may possibly proceed without the knowledge of the natural parents if the natural parents cannot be located after extensive inquiry to ascertain their whereabouts.

It is the intention under the current act and the provisions of this bill that natural parents be involved in the processes of determining the child's best interests. So, in the case of a child who is already under the guardianship of a minister, an extensive inquiry would be conducted to find the natural parents. However, if that proved to be unsuccessful, as the honourable member has acknowledged, the hearing could proceed without the knowledge of the natural parents. However, that is not the intention but the exception.

Clause passed.

Clause 11.

The Hon. CARMEL ZOLLO: I would like to make a general comment which I omitted to make when the committee was considering clause 1. In my second reading contribution I referred to the working group that the government committed itself to establishing in relation to investigating a range of issues relevant to the implementation of a prison based child sex offender treatment program. Has that occurred? I am happy for the minister to respond to that later.

The Hon. DIANA LAIDLAW: I will have to do that. I am sorry that this matter was not addressed in summing up the second reading debate. On behalf of the Attorney-General, I make a commitment that the honourable member will get her reply next week.

Clause passed.

Clause 12 and title passed.

Bill read a third time and passed.

MOTOR VEHICLES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 29 March. Page 709.)

The Hon. SANDRA KANCK: Because of the sunset clause that I was responsible for having inserted into the Motor Vehicles Inspection Amendment Bill 1996, I am partly responsible for this bill being with us today.

The Hon. Diana Laidlaw: You are solely responsible.

The Hon. SANDRA KANCK: I am solely responsible! I will also have to apportion some blame to Mike Elliott because we do these things together! I am pleased to hear from the minister that the concerns that I had then about the potential for corruption were unnecessary and, as a consequence, I am now reasonably comfortable with allowing the amendments in the bill that we have before us. I have checked back over the debate that occurred at that time, and the minister had her own amendment providing for a code of conduct for inspectors. I would be interested to hear from the minister about how effective that code has been. I am also responsible for another part of this bill, and that is because I was a member of the joint transport safety committee which made the recommendation to allow learner drivers to travel at speeds of up to 100 km/h with an appropriate instructor and car. I am pleased to be supporting that aspect of it. It sounds as though I am being very accountable at present. I indicate that the Democrats support the second reading.

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

SOUTH AUSTRALIAN FORESTRY CORPORATION BILL

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

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

That this bill be now read a second time.

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

Leave granted.

This Bill establishes the South Australian Forestry Corporation as a public corporation to undertake the functions currently performed by the business unit of the Department for Administrative and Information Services known as ForestrySA. It also makes consequential amendments to the *Forestry Act 1950* and the *Local Government (Forestry Reserves) Act 1944*.

In a Ministerial Statement on 5 August 1999 the Minister described how the increasing availability of plantation grown log supply within Australia and Australia's move from being a net importer of timber to a net exporter are leading to increased competitive pressures on ForestrySA.

ForestrySA has a commendable track record. However, it is now desirable for the unit to have greater commercial flexibility so that it will be in the best position to respond to these competitive pressures. This flexibility will be balanced by the more formal monitoring and accountability framework which is provided by the provisions of the *Public Corporations Act 1993*.

This Bill establishes the South Australian Forestry Corporation as a public corporation with a Board of management reporting directly to the Minister for Government Enterprises. The new Corporation will continue to trade under the name and existing logo of ForestrySA.

Section 7 of the Bill sets out the functions of the new Corporation. The functions are to manage the State's plantation forests for commercial production, to encourage and to facilitate regionally based economic activities in forestry and other industries, and to conduct research related to the growing of wood for commercial purposes.

In addition, the Charter of the Corporation which is required under the *Public Corporations Act* will delegate the important non-commercial functions currently undertaken by ForestrySA to the Corporation. These activities include recreational access to forest reserves, management of native forests for conservation purposes, farm forestry initiatives and the provision of technical policy support and advice to Government, industry and the community.

Section 8 of the Bill grants the Corporation wide powers in order to meet its objectives. As with other public corporations, these powers will be balanced by the formal monitoring and accountability framework provided by the provisions of the *Public Corporations Act*. The Corporation will be required to operate within strategic directions and business plans agreed with the Minister.

Clause 4 of Schedule 1 of the Bill allows for the transfer of specified employees of the Department of Administrative and

Information Services to the new Corporation. All existing employees of ForestrySA will transfer to the new Corporation on the commencement date and retain the remuneration and employment conditions that would have applied, both now and for its duration, under the present Award and Enterprise Bargaining Agreement. Future Enterprise Bargaining Agreements will be made with the Corporation.

A number of consequential amendments to the *Forestry Act 1950* are required to transfer existing powers and responsibilities of the Minister to the Corporation. The opportunity has been taken to update penalties under the Act and to delete a number of obsolete provisions. The current prohibition against the sale of a forest reserve or part of a forest reserve without prior revocation will remain.

Consequential amendments are also required to the *Local Government (Forestry Reserves) Act 1944*. Currently under this Act the Conservator of Forests who is defined under the *Forestry Act 1950* as '*the Chief Executive Officer of the administrative unit responsible for the administration of this (Forestry) Act*', has certain powers. Since it will not be appropriate for the Chief Executive to hold this role post corporatisation, these powers will be transferred to the Minister responsible for the administration of the *Local Government (Forestry Reserves) Act 1944*.

Subject to the Parliamentary process, the Government intends that this legislation will be proclaimed to take effect from 1 July 2000. This would allow the benefit of commencing the Corporation's operations at the commencement of a financial year and also allow sufficient time for the significant preparation involved in establishing the Corporation.

Corporatisation of ForestrySA was supported by the Economic and Finance Committee in its report on State Owned Plantation Forests, released in February 1999. It is also consistent with the Government's commitment to the implementation of competitive neutrality policy associated with the National Competition Policy Agreement.

ForestrySA is an important business in South Australia, particularly in the regional economies of the South-East, Mount Lofty Ranges and the Mid-North of the State. I look forward to ForestrySA's continuing success as a Government business enterprise, and I believe that the greater commercial flexibility that follows from corporatisation will allow ForestrySA to compete even more effectively on the world stage.

I commend the bill to honourable members.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Object

This clause sets out the object of the measure.

Clause 4: Interpretation

This clause defines certain terms used in the measure.

PART 2

CORPORATION

Clause 5: Establishment of South Australian Forestry Corporation

This clause establishes *South Australian Forestry Corporation* (the 'Corporation').

Clause 6: Application of Public Corporations Act 1993

The *Public Corporations Act 1993* applies to the Corporation.

Clause 7: Functions of Corporation

The functions of the Corporation are to—

- manage plantation forests for commercial production;
- encourage and facilitate regionally based economic activities based on forestry and other industries;
- conduct research related to the growing of wood for commercial purposes;

and to carry out other functions conferred on the Corporation by an Act or the Minister or delegated to the Corporation by the Minister.

Clause 8: Powers of Corporation

This clause sets out the powers of the Corporation.

Clause 9: Common seal and execution of documents

This clause provides for the execution of documents by the Corporation.

PART 3

BOARD

Clause 10: Establishment of board

This clause establishes a five member board of directors (the 'board') as the governing body of the Corporation.

Clause 11: Conditions of membership

This clause specifies that board members will be appointed for a maximum term of three years but will be eligible for reappointment. The clause also provides for removal of a board member on the recommendation of the Minister and the circumstances in which the office of a board member becomes vacant.

Clause 12: Vacancies or defects in appointment of directors

An act of the board is not invalid because of a vacancy in its membership or a defect in the appointment of a director.

Clause 13: Remuneration

A director will be paid (from the funds of the Corporation) remuneration, allowances and expenses determined by the Minister.

Clause 14: Board proceedings

This clause specifies the quorum for the board and provides for—

- selection of a presiding member;
- voting;
- telephone conferences;
- decisions of the board other than those voted on at meetings of the board;
- the keeping of minutes of board proceedings.

In all other matters the board may determine its own procedures.

PART 4

STAFF

Clause 15: Staff of Corporation

The chief executive of the Corporation will be appointed by the board with the approval of the Minister on terms and conditions approved by the Minister. The Corporation may appoint such other employees (on terms and conditions fixed by the Corporation in consultation with the Commissioner for Public Employment) as it thinks necessary or desirable.

PART 5

MISCELLANEOUS

Clause 16: Delegation to Corporation

The Minister may, in accordance with this clause, delegate any of the Minister's powers or functions under any Act to the Corporation.

Clause 17: Payment of rates

This clause provides that the Corporation is liable to pay council rates in accordance with the provisions of the *Local Government Act 1999* in respect of land managed by the Corporation for commercial purposes. Half of the money received by a council must then be applied (in consultation with the Corporation) towards the maintenance or upgrading of roads affected by the Corporation's operations. The clause also provides that section 29(2)*(b)* of the *Public Corporations Act 1993* does not apply to the Corporation.

Clause 18: Regulations

This clause provides for the making of regulations for the purposes of the measure.

SCHEDULE 1

Transitional Provisions

This schedule includes transitional provisions dealing with—

- interpretation issues;
- vesting of property, rights, etc. in Corporation;
- the application of the *Real Property Act 1886*;
- transfer of staff from ForestrySA;
- the appointment of the Corporation's first chief executive;
- the Corporation's annual report.

SCHEDULE 2

Consequential Amendments to Other Acts

This schedule makes consequential amendments to the *Forestry Act 1950* and the *Local Government (Forestry Reserves) Act 1944*.

The amendments to the *Forestry Act 1950* transfer responsibility for forest reserves from the Minister to the Corporation and deal with other consequential matters.

The amendments to the *Local Government (Forestry Reserves) Act 1944* remove all references in that Act to the 'Conservator of Forests'.

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

FORESTRY PROPERTY BILL

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

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

That this bill be now read a second time.

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

Leave granted.

I am pleased to bring before the House a Bill which provides improved investment security and support for the expansion of private forestry in South Australia. Although South Australia already has a well-established private forestry sector, these measures seek to increase investment and expansion opportunities by addressing known impediments to plantation forestry development and investment security.

Increased investment in plantation forestry can play a key role in the economic development of the State and also help reduce Australia's current trade deficit in wood and wood products. A major economic study completed in late 1998 revealed that the wood and wood products sector contributed approximately 29 per cent of the gross regional product within the State's South East, while additionally it accounted for around 25 per cent of total employment in that Region, involving both direct and indirect employment. The same study also indicated that the forestry and wood processing sectors accounted for 34 per cent of all exports from the region. Apart from these specific economic benefits, plantation expansion can also provide significant greenhouse benefits through the sequestration of carbon.

Under the National strategy *Plantations for Australia: The 2020 Vision*, the Commonwealth, States and Industry are seeking to treble the area of Australia's plantation forest estate by the year 2020.

The Bill before the House confirms the South Australian Government's support for this National initiative and follows on from earlier commitments made under the *National Forest Policy Statement* to 'establish a sound legal basis for separating the forest asset component from the land asset for the purposes of selling timber'. The Bill also provides certainty for plantation owners and potential investors by securing the rights to harvest plantations established for wood production.

The lack of a sound legal mechanism for clarifying ownership rights in relation to trees, in particular those trees grown on another person's land, has long been identified as a major impediment to private forestry expansion, especially farm forestry.

Under common law, trees are regarded as part of the land to which they are attached and like other land fixtures, belong to the landowner. Unfortunately, this can often present a difficulty for investors growing trees on another person's land, especially in terms of preserving separate ownership rights.

To date investors have relied on the use of leasehold and other contractual arrangements in order to secure separate tree ownership rights. While these common law arrangements have been used, they all have certain limitations, including limited flexibility and often inadequate security for the tree grower.

Having regard to the inherent limitations of these common law options, South Australia's approach to this issue has been to develop specific legislation to provide a safe and secure investment environment, without burdening either the landowner or potential investor with unnecessary costs or restrictions.

The first part of the Bill allows for the secure ownership of trees separate from land ownership through the creation of an agreement between the land owner and tree owner known as a '*forest property agreement*'. Under such an agreement, individual ownership rights are clearly identified and separated, while the agreement is also capable of being noted as a form of covenant on the actual land Title. Such a mechanism is considered important in terms of enhanced investment security, while it will also provide greater flexibility and options for both investors and landowners, including the opportunity for land and trees to be traded independently.

Although this legislation will enable investors to participate in plantation development without the purchase of land, it will also enable landowners to participate without giving up land ownership rights. For example, it will cater for landowners who may wish to create an asset capable of later sale, while it will also facilitate possible joint venture arrangements.

One of the other important considerations in developing this Bill was the Kyoto Protocol and possible additional opportunities for the forestry sector arising from these international negotiations.

As forests absorb carbon dioxide they offer significant potential to reduce greenhouse gas emissions and also the potential opportunity for financial returns to the forest owner in the form of carbon credits under a possible future emissions trading scheme.

As the international arrangements for emission trading are still being negotiated, there is no system in place at this stage to provide carbon credits to forest owners. The Commonwealth Government is currently developing a policy position on emission trading, involving the release of a number of discussion papers to progress the issue. Although it could be some considerable time before such a system is introduced, one of the key issues to emerge already is the question of ownership of carbon rights and future carbon credits.

While the focus of this Bill is on investment security and industry development, the Bill includes specific provisions which confer clear ownership in terms of carbon rights, and in particular, the commercial right to exploit the carbon absorption capacity of the relevant forest property.

These provisions will help provide greater legal recognition of such rights in advance of a possible future emission trading system and also enable investors to participate with greater confidence on the basis of the added security over these rights.

The second key element of the Bill is its aim to remove uncertainty in terms of plantation harvesting rights and thereby enhance investor confidence.

Where timber plantations are established for commercial purposes, plantation owners have a reasonable expectation, like other crop owners, that they can harvest their plantation and receive a return on their investment.

In view of the time it takes for forest plantations to reach maturity, plantation owners are exposed to a greater period of risk compared with other crops. In addition to the risk of physical damage from fire and other natural agents, there is also the risk that plantation owners may be prevented from harvesting their forest plantations due to possible future public or government intervention.

Subject to planning requirements being met to establish a plantation, normal plantation forestry operations, including harvesting, do not require any specific approvals at this present time. Notwithstanding current arrangements, there is a perceived risk with plantation investments that even after the owner has met all relevant environmental and associated requirements, plans to harvest the plantation may be thwarted through the intervention of another party.

Under the Bill, harvest security is achieved through a commercial forest plantation licence, which authorises normal forestry operations, including harvesting, and secures these rights under State law. The requirements to obtain a licence will be kept simple to ensure that plantation owners are encouraged to take advantage of the added security that this harvest guarantee will bring.

While the licence would confer certain rights to the plantation owner, it will not authorise the establishment of plantations contrary to the provisions of State and Local Government planning requirements. Potential investors will still need to comply with any relevant planning requirements.

Any other conditions that may be imposed under the licence would be confined to ensuring environmentally sustainable management practices are maintained over the full term of the licence.

Like the forest property agreement, the licence would be readily transferable to facilitate any sale of the associated plantation to another party.

The commercial forest plantation licence and the forest property agreement are separate initiatives and although some plantations will be covered by both, they are independent of one another.

As a consequence, landholders growing trees on their own land, together with those growing trees on the land of another will be able to take advantage of either or both initiatives.

We are confident that this legislation will provide improved investment security and added incentives for plantation development in South Australia, and continue to support an industry of vital importance to this State.

I commend the Bill to the House.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

This clause is formal. The measure is empowering and will come into operation on assent.

Clause 2: Interpretation

This clause contains definitions for the purposes of the measure.

Clause 3: This Act to be read subject to the law of native title

This clause makes it clear that the provisions of the Act do not derogate from the law of the Commonwealth and the State relating to native title.

PART 2

FOREST PROPERTY AGREEMENT

Clause 4: Alienation of forest property

This is the central clause establishing forest property agreements—an agreement between the owner of land and another under which forest vegetation is to be grown for the benefit of the other.

To enter into an agreement the land holder must be an owner in fee simple or a lessee from the Crown (see definition of owner).

Forest vegetation is defined broadly to mean trees and other forms of forest vegetation including—

- roots or other parts of the trees or other forest vegetation that lie beneath the soil; and
- leaves, branches or other parts or products of a trees or other forest vegetation,

but excluding edible fruit.

The person for whose benefit the forest vegetation is to be grown is defined as the forest property owner for the purposes of the measure.

Subclause (3) provides that a forest property agreement may contain provisions—

- conferring on the forest property owner rights to enter the land to plant, maintain and harvest forest vegetation; and
- requiring the owner of the land, the forest property owner, or both, to take specified action for cultivation, maintenance and care of the forest vegetation; and
- dealing with the duty of care to be exercised by each party to the other; and
- dealing with any other incidental matter.

Clause 5: Registration of forest property agreement

This clause contemplates registration of a forest property agreement.

Registered is defined to mean—

- in relation to a forest property agreement relating to land alienated in fee simple from the Crown—
  - if the land has been brought under the *Real Property Act 1886*—registered under that Act or noted on the certificate of title to the land; or
  - if the land has not been brought under the *Real Property Act 1886*—registered under the *Registration of Deeds Act 1935*;
- in relation to a forest property agreement relating to land subject to a Crown lease—registered or noted in the Register of Crown Leases.

The clause requires consent of the holder of any registered encumbrance in the land, ie a life estate or a lease or a mortgage, charge or encumbrance securing a monetary obligation.

The Supreme Court or District Court may dispense with consent on the ground that the consent has been unreasonably withheld or there is some other good reason to dispense with it.

Clause 6: Nature of interest of forest property owner

This clause sets out the interests conferred on a forest property owner under a forest property agreement as follows:

- ownership of the forest vegetation to which it relates; and
- a right (exclusive of the right of the owner of the land) to the commercial exploitation of the carbon absorption capacity of the relevant forest vegetation; and
- an interest in the nature of a profit à prendre in the land on which the forest vegetation is being, or is to be, grown.

If the agreement is registered, the interests will be effective at law and have priority over—

- the interests of the holders of encumbrances over the land who consented to the registration of the forest property agreement or whose consent was dispensed with; and
- the interests of the holders of encumbrances over the land registered after the registration of the forest property agreement; and
- the interests of all persons with unregistered interests in the land or the forest vegetation.

If the agreement is not registered, the interests are equitable in nature and are liable to be defeated by a bona fide purchaser for value without notice.

Clause 7: Dealing with interest of forest property owner

This clause contemplates the forest property owner mortgaging, charging or otherwise dealing with or disposing of the interest conferred by a forest property agreement. Consent to the transaction is required by the owner of the land and the holder of any prior registered mortgage or charge, subject to dispensation from the Court. The clause also contemplates registration of the transaction if the agreement is registered.

Clause 8: Enforceability of registered forest property agreement by and against successors in title to the original parties

This clause makes it clear that a registered forest property agreement is binding on successive owners of the land and successive forest property owners.

Clause 9: Variation of rights under agreement

This clause provides for variation of a forest property agreement by further agreement. If the agreement is registered the consent of the holders of any registered encumbrances is required, subject to dispensation from the Court.

Clause 10: Revocation of agreement

This clause provides for revocation of a forest property agreement by further agreement or as contemplated by the agreement. A consensual agreement for revocation must be consented to by the holder of any registered mortgage or charge, subject to dispensation from the Court.

Clause 11: Termination of agreement on abandonment by forest property owner

Under this clause, the Court may, by order, terminate a forest property agreement and order that the land be discharged from the agreement, if satisfied that a forest property owner cannot be found or has abandoned the exercise of rights under the agreement.

Clause 12: Discharge of land from forest property agreement

This clause contemplates an interested person applying to the Court for an order that land be discharged from a forest property agreement on the basis that the agreement has been validly rescinded, avoided or otherwise terminated.

Clause 13: Applications for registration

This clause contains procedural requirements for applications for registration under the measure.

Clause 14: Application of relevant registration law

For the purposes of registration under a relevant registration law, a forest property agreement is to be regarded as a profit à prendre.

A relevant registration law may be the *Real Property Act 1886* or the *Registration of Deeds Act 1935*.

PART 3

COMMERCIAL FOREST PLANTATION LICENCES

Clause 15: Commercial forest plantation licences

This clause empowers the Minister to grant a licence in respect of a commercial forest plantation authorising forestry operations, including harvesting, in respect of the plantation. The plantation must be lawfully established.

If a licence is granted, operations authorised by the licence may be undertaken despite the provisions of any other law to the contrary and without any further authorisation, consent or approval under any other law.

PART 4

REGULATIONS

Clause 16: Regulations

This clause provides general regulation making power.

SCHEDULE

Amendment of Real Property Act 1886

The amendment defines easement to include a profit à prendre so as to make clear the registration procedures that are to apply in relation to an interest of that class, such as a forest property agreement.

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

BOXING AND MARTIAL ARTS BILL

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

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

That this bill be now read a second time.

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

Leave granted.

Boxing and martial arts are competitive sports in which the primary aim is for opponents to strike blows against each other. This fact alone differentiates them from all other sporting activities and, when coupled with financial and other incentives for those involved in contests, presents governments around the world with challenges related to ensuring the safety of participants and the probity of events.

The Martial Arts Industry Association, the peak national body representing most marital arts associations in Australia, has advised that in Thailand, for example, there are currently about 39 Australian

kickboxers training at various camps. Over the next two years these fighters will be returning to Australia after having trained in camps where the art of striking fatal blows is an accepted and often applauded talent. On average between 30 and 40 people a year are killed in Thai boxing bouts in Thailand. The MAIA also advises that similar fatality rates are experienced in Cambodia, Burma and Laos.

Members may also recall that in November 1998 the national media reported on two girls engaged in a boxing competition on Australia's Gold Coast. A photograph accompanying the text showed one of the girls in tears.

These events have sparked community debate surrounding boxing and martial arts sports, management of these activities and the role of government regulation.

In response to this debate, Ministers for Recreation and Sport throughout Australia agreed to investigate the issue of appropriate management of boxing and martial arts.

Ministers agreed that the major objective of any legislation should be to promote contestant safety and ensure probity within the industry.

To that end, a Government Officers Working Group on boxing and martial arts was established and met at the end of March 1999. As a result of that meeting a set of draft National Principles has been developed.

Further meetings determined that it was preferable for each State to consider legislation in relation to boxing and martial arts based upon the nature and size of the industry within their respective jurisdictions.

In line with those concepts, I am today introducing the *Boxing and Martial Arts Bill 2000*. This bill, the result of extensive consultation with stakeholders in the boxing and martial arts industry, will require promoters of boxing and martial arts events to be licensed. Licences will require promoters to operate under rules approved by the Minister and the use of appropriately skilled people, including officials accredited under the National Officiating Program. Where appropriate the use of protective equipment will also be required.

The bill also requires all contestants in boxing and martial arts events to be registered on a national register and to be examined by a qualified medical practitioner both prior to, and after, events so that injuries are tracked and, if contestants are injured, contestants fully recover before competing again.

The Government's view in relation to the management of boxing and martial arts is that, in as many situations as possible, the sport should develop the rules, regulations and codes of practices.

However, the legislation will give the Minister the right to approve the contest rules and, if the Minister is not satisfied that the rules are appropriate, the Minister may approve variations to those rules.

There is wide recognition in the community that there is a growth in the Martial Arts industry and some concern has been expressed that the legislation would, in fact, stop instructors from teaching martial arts. This, however, is not the case. This bill is designed to ensure the probity of contests and the safety of contestants around events rather than around instruction.

Instead instructors, as with others involved within the martial arts industry, will be invited to adopt a code of conduct designed to ensure that the highest standards possible are practiced within the industry which, when combined with this bill, will prevent unnecessary injury and instil confidence in the industry.

I commend this bill to honourable members.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Interpretation

This clause defines certain terms used in the measure. In particular—

- boxing is defined as fist fighting;
- martial art is defined as kickboxing or a sport or activity (other than boxing) organised so that contestants engage in a fight principally by inflicting blows on each other;
- professional or public boxing or martial art event is defined as a boxing or martial art event that is conducted for profit or in which the contestants participate for money or a prize or public attendance at which is actively promoted (whether or not a fee is to be charged for admission).

Clause 4: Advisory committee

This clause provides that the Minister may set up an advisory committee to obtain advice on matters relating to the administration of the measure.

Clause 5: Minister may delegate

This clause gives the Minister power to delegate any powers or functions under the measure.

Clause 6: Promoters must be licensed

This clause makes it an offence to act as a promoter of a professional or public boxing or martial art event without a licence. The maximum penalty for non-compliance is $10 000 or 12 months imprisonment. The Minister must issue a licence to a person if satisfied that the person is an adult (where the applicant is a natural person) and that the person is a fit and proper person to hold a licence. A licence remains in force for three years and may be renewed.

Clause 7: Conditions attached to licences

This clause provides that a promoter's licence may be subject to conditions determined by the Minister which may be varied or revoked at any time. Failure to comply with conditions is an offence and has a maximum penalty of $10 000 or imprisonment for 12 months.

Clause 8: Duties of promoter

A licensed promoter must ensure in respect of any professional or public boxing or martial art event that he or she promotes—

- that the event is conducted in accordance with rules approved by the Minister under the measure; and
- that the contestants are registered as required under the measure; and
- that the contestants have been found to be fit to participate.

Breach of these duties is an offence punishable by a maximum penalty of $10 000 or imprisonment for 12 months.

Clause 9: Suspension or cancellation of licence

This clause gives the Minister power to suspend or cancel a promoter's licence.

Clause 10: Minister to approve rules for conduct of events

This clause provides that the Minister will approve rules for the conduct of professional or public boxing and martial art events. Such rules may adopt, or operate by reference to, any specified code, standard or other document. The approval of rules and any amendment or revocation of rules is to be notified in the *Gazette*.

Clause 11: Person must not compete unless registered

This clause makes it an offence for a person to compete in a professional or public boxing or martial art event unless the person is registered. The maximum penalty is $5 000. The offence does not apply to a person who is registered or otherwise authorised to compete in such events by a recognised authority in another State or Territory unless the person has been given notice by the Minister.

Clause 12: Application for registration

This clause sets out the procedure for applying for registration as a contestant and provides that such registration remains in force for three years and may be renewed.

Clause 13: Suspension or cancellation of registration

A contestant's registration must be suspended or cancelled if it appears to the Minister, from a medical practitioner's certificate or declaration, that the contestant is not fit to engage in professional or public boxing or martial art events of the kind in relation to which the contestant is registered. In such a case the Minister cannot remove the suspension or re-register the person unless provided with two medical certificates certifying that the contestant is fit to compete.

The Minister may, in addition, suspend or cancel a contestant's registration if the contestant has contravened the measure or a corresponding law or has been a contestant in a professional or public boxing or martial art event after being declared to be unfit to compete.

Clause 14: Compulsory medical examinations before and after events

A contestant in a professional or public boxing or martial art event must be examined by a medical practitioner within 24 hours before and after the event. These examinations must be conducted by a medical practitioner in accordance with the regulations and, if the contestant is found to be unfit, the medical practitioner must take the action specified in the clause.

Breach of any of the requirements of the clause results in a maximum penalty of $5 000.

Clause 15: Review by Minister

This clause provides for review, by the Minister, of a decision under Part 2 or 4 of the measure.

Clause 16: Appeal to District Court

This clause provides a right of appeal to the Administrative and Disciplinary Division of the District Court.

Clause 17: Exemptions
This clause gives the Minister power to exempt a person, or a class of persons, from specified provisions of the measure.

Clause 18: False or misleading information
It is an offence to make a statement that is false or misleading in information provided, or a certificate or declaration given, under the measure.

Clause 19: Prosecutions
Prosecutions under the measure can only be commenced with the consent of the Minister.

Clause 20: Evidence
This clause provides for the acceptance, in evidence, of certain Ministerial certificates.

Clause 21: Service of notices
This clause provides for the service of notices under the measure.

Clause 22: Regulations
This clause provides a regulation making power.

SCHEDULE
The Schedule amends section 8 of the *Summary Offences Act 1953* to make it consistent with the measure.

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

MINING (ROYALTY) AMENDMENT BILL

The House of Assembly agreed to the amendment made by the Legislative Council without amendment.

ADJOURNMENT

At 6 p.m. the Council adjourned until Tuesday 23 May at 2.15 p.m.