LEGISLATIVE COUNCIL

Tuesday 30 May 2000

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

PAPERS TABLED

The following papers were laid on the table:

By the Treasurer (Hon. R.I. Lucas)—

Regulations under the following Acts—
- Gaming Machines Act 1992—Fees
- Land Tax Act 1936—Certificate Fees
- Lottery and Gaming Act 1936—Licence Fees
- Petroleum Products Regulation Act 1995—Licence Fees
- Tobacco Products Regulation Act 1977—Licence Fees
- Water Resources Act 1997—Licence Fees

RESI Corporation—Charter

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

Road Block Establishment Authorisations—Return as per Section 74b of the Summary Offences Act 1953

Regulations under the following Acts—
- Associations Incorporation Act 1935—Schedule 2 Fees
- Bills of Sale Act 1886—Fees
- Business Names Act 1996—Fees
- Community Titles Act 1996—Fees
- Co-operatives Act 1997—Fees
- Cremation Act 1891—Fees
- Criminal Law (Sentencing) Act 1988—Fees
- Dangerous Substances Act 1979—Fees
- District Court Act 1991—Fees in Civil Division
- Environment, Resources and Development Court Act 1993—
  - Fees
  - Fees and General Jurisdiction
- Explosives Act 1936—Fees
- Magistrates Court Act 1991—Fees—General and Minor Claims and Criminal
- Meat Hygiene Act 1994—Fees
- Mines and works Inspection Act 1920—Fees
- Mining Act 1971—Fees
- Occupational Health, Safety and Welfare Act 1986—Fees
- Opal Mining Act 1995—Fees
- Pastoral Land Management and Conservation Act 1989—Fees
- Petroleum Act 1940—Licence Fees
- Public Trustee Act 1995—Commission and Fees
- Real Property Act 1996—
  - Fees
  - Fees—Schedule 1
- Registration of Deeds Act 1935—Fees
- Roads (Opening and Closing) Act 1991—Fees
- Seeds Act 1979—Fees
- Sexual Reassignment Act 1988—Recognition Certificate Applications
- Sheriff's Act 1978—Fees
- State Records Acg 1997—Fees
- Strata Titles Act 1988—Fees
- Supreme Court Act 1935—
  - Fees—No. 61
  - Fees—No. 62
- Valuation of Land Act 1971—Fees
- Worker's Liens Act 1893—- Fees
- Youth Court Act 1993—Fees

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

Correctional Services Advisory Council—Report, 1998-1999

Regulation under the following Act—
- Firearms Act 1977—Fees

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

Regulations under the following Acts—
- Births, Deaths and Marriages Registration Act 1996—Fees
- Building Work Contractors Act 1995—Fees
- Conveyancers Act 1994—Fees
- Land Agents Act 1994—Fees
- Liquor Licensing Act 1997—Fees
- Plumbers, Gas Fitters and Electricians Act 1995—Fees
- Second-hand Vehicle Dealers Act 1995—Fees
- Security and Investigation Agents Act 1995—Fees—Regulation 21
- Trade Measurements Administration Act 1993—Fees
- Travel Agents Act 1986—Fees

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

Metropolitan Adelaide—Significant Trees Control Plan Amendment Report—Report on the Interim Operation

Regulations under the following Acts—
- Adoption Act 1988—Fees
- Botanic Gardens and State Herbarium Act 1978—Fees
- Controlled Substances Act 1984—
  - Schedule 2 Fees
  - Schedule D Fees
  - Regulation 76 Fees
- Crown Lands Act 1929—Fees
- Development Act 1993—Fees
- Environment Protection Act 1993—
  - Fee Unit and Miscellaneous Fees
  - Fees
- Harbors and Navigation Act 1993—Fees
- Historic Shipwrecks Act 1981—Fees
- Housing Improvement Act 1940—Fees
- Local Government Act 1999—
  - Fees
  - Prescribed Fees
- Local Government (Implementation) Act 1999—Fees
- Motor Vehicles act 1959—
  - Prescribed Fees
  - Schedule 5 Fees
- National Parks and Wildlife Act 1972—Fees
- Passenger Transport Act 1994—
  - Schedule 2 Variation
  - Schedule 4 Variation Fees
- Private Parking Areas Act 1986—Expiation of Offences
- Public and Environmental Health Act 1987—Fees if Authority is Council
- Radiation Protection and Control Act 1982—Fees
- Road Traffic Act 1961—
  - Fees for Inspections
  - Expiation Fees
- South Australian Health Commission Act 1976—
  - Regulation 8 Fees
  - Schedule 3 Fees

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

Remuneration Tribunal—Supplementary Report to Determination No. 9 of 1999.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE

The Hon. J.S.L. DAWKINS: I lay upon the table the report of the committee on environment protection in South Australia.

QUESTION TIME

BUDGET DEFICIT

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

Leave granted.

The Hon. P. HOLLOWAY: On 25 May the Treasurer brought down his third successive budget deficit since he became Treasurer. In today's media, the Treasurer finally acknowledges this. In his defence in today's paper, the Treasurer claims that the budget has a cash surplus of $2 million, but he admits that on an accrual basis the budget is in fact in deficit and will continue to be in deficit in coming budgets.

Standard and Poor's credit agency has drawn attention to the accruals-based deficit as well as rejecting the government's claim that there is any cash-based surplus whatsoever. Standard and Poor's states:

> As the annual expenses of running the government exceed operating revenue, the government's net worth is in fact declining over time. This is not a sustainable position in the long term. . . The government appears to be spending somewhat more than the ongoing savings from the electricity privatisation.

The nominal cash surplus of $2 million in the budget—

Members interjecting:

The PRESIDENT: Order, Mr Davis!

The Hon. P. HOLLOWAY: —comes from using $86 million of the proceeds from the sale of the casino to boost the current budget bottom line. Once this is acknowledged, the cash surplus of $2 million becomes a deficit of $84 million. Standard and Poor's has stated that it is unlikely to upgrade the government's credit rating because of the deficit. My questions are:

1. Does the Treasurer now accept that the budget is in underlying deficit in both cash and accrual terms?

2. Why is the current spending for 2000-01 now expected to be $107 million more than was estimated for that year in Budget Paper 2 for last year?

3. Given that the Premier has referred to Standard and Poor's recent decisions when he says 'South Australia is ready for business again' (I refer to Budget Paper 6, Page 1), does the government accept Standard and Poor's latest claim that the government is spending more than the ongoing savings from the sale of ETSA?

4. Will the Treasurer now advise the Premier that his statement in the House on 25 May that 'we are bringing in balanced budgets for the forward'(I assume the Premier was referring to forward years) was misleading and inaccurate?

The Hon. R.I. LUCAS (Treasurer): No. At last, after years of trying, we have flushed out a policy position for the Labor Party. I congratulate the Hon. Mr Holloway and, before him, Kevin Foley. We now have a Labor Party position that, coming into the next election, there will be a very significant increase in taxation under a potential Labor Government. Kevin Foley, Michael Rann and the Hon. Mr Holloway have now made it quite clear that under a state Labor Government—should it be elected—there will be a very significant increase in state taxation. I understand the areas it would have to look at include further increases in motor vehicle registration and other imposts on cars, stamp duty and payroll tax. I am assuming, although one should not assume anything, that it will not go down the path of re-introducing land tax on the principal place of residence or, indeed, death duties, although I understand that there are one or two members within the caucus who are prepared to have a look at that proposition.

How did we get to this situation? Clearly, we now have a position where the Labor Party put its policy down. It is saying that the government needs to spend more on education and health as well as in other portfolio areas.

The Hon. R.R. Roberts: Stretching the truth—

The Hon. R.I. LUCAS: The Hon. Mr Roberts says that is stretching the truth.

The Hon. R.R. Roberts: You're stretching the truth.

The Hon. R.I. LUCAS: I am just quoting what Mike Rann and Kevin Foley were saying, that is, that there should be more spending in these areas. At the same time, they are critical of the fact that the government has delivered a cash balanced budget but has not yet achieved a balanced budget in an accrual accounting sense. For them to achieve a balanced budget in an accrual accounting sense, the only option left is a massive increase in state taxation under any future Labor government.

The Hon. L.H. Davis: And what was the Labor Party budget position in 1993?

The Hon. R.I. LUCAS: It is interesting to note, as my colleague the Hon. Mr Davis points out, that the Labor Party has highlighted a 40 to 50 per cent increase in revenue from state taxation under a liberal government in six years. That is to be compared with the record of the Mike Rann, Kevin Foley and John Bannon Labor government, the last Labor government, in its last six years of an increase of some 91 per cent in state taxes. And they still delivered a cash deficit, not an accrual deficit, of $301 million in their last year. So we are indebted to the Hon. Mr Holloway and to Kevin Foley—

The Hon. R.R. Roberts: We're indebted, all right, thanks to you.

The Hon. R.I. LUCAS: The Hon. Ron Roberts says we are indebted as a result of us. He has more front than Myer. Any member of the Labor Party who has the temerity and the brass—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: —to say in this Chamber that we in government are responsible for the indebtedness of the state's finance should hang his or her head in shame.

The Hon. R.R. Roberts interjecting:

The PRESIDENT: Order, the Hon. Mr Roberts! You do not have to repeat your interjections, which are out of order.

The Hon. R.I. LUCAS: From today onwards through to the next election in March 2002 the government will be making it clear to the people of South Australia that there is now a clear alternative between the government and the opposition, which will adopt a high taxing approach with further increases in taxation on motor vehicles, payroll tax and stamp duties in order to achieve its policy goals. The government does not accept the proposition in the honourable member's question. The government has brought down a cash balanced budget—the same way we have been measuring budgets for past decades under Labor and Liberal governments, and the same way the Labor Party left the government with a $301 million cash accounting deficit in 1993-94. For the past three years in an accrual accounting sense the government has been producing both cash—

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: It is certainly very cruel, but it is actually accrual. For the past three years we have brought down both cash and accrual accounting bottom lines, and for the next three years it is correct to say—and the government makes it quite clear in its budget documents—that there remains an accrual accounting deficit, albeit declining over the coming three years. At the same time the government makes quite clear that, in the context of how we have reported budgets for past decades, the government for the first time has been able to achieve and will achieve over the next three years balanced budgets in a cash accounting sense. I made

quite clear that we have brought down a cash accounting balanced budget for next year and for the next two years.

In relation to accrual accounting, for the purists in the Legislative Council who follow accrual accounting in its purest form, the government could have reported—both this year (1999-2000) and next year—massive surpluses in an accrual accounting sense, had we wanted to, because the purists of accrual accounting adherence include in the accrual accounting bottom line profit from asset sales, which is the debate that is going on in the federal arena at the moment. So, if you want an accrual accounting bottom line, the profit from an asset sale—

An honourable member interjecting:

The Hon. R.I. LUCAS: —no, not seasonally adjusted—in a financial year goes into an accrual accounting bottom line. If we wanted to report in the purest version of the accrual accounting bottom line, we could have reported a $3 billion surplus in 1999-2000 and a multi-hundred million dollar surplus or above next year as a result of the asset sales from the electricity businesses. We did not believe that that was a fair indication of the underlying position for accrual accounting even though, if you want to talk to the CPAs, and those who follow accrual accounting to a much greater degree than does the Deputy Leader, the profit from the asset sale—some $3 billion-plus or whatever the number happened to be this financial year—could have gone in and been reported as a $3 billion-plus accrual accounting surplus this year, and next year we could do exactly the same thing, and the new found adherents to accrual accounting in Kevin Foley, Mike Rann and the Hon. Mr Holloway would have a situation—

Members interjecting:

The Hon. R.I. LUCAS: Yes, we have, but we are reporting on both lines. It is Kevin Foley and the Labor Party who are arguing that this budget is now a deficit budget because of the accrual lines rather than because of the cash accounting lines. That was in the press release yesterday—just looking at the accrual accounting line. If you really want to follow the accrual accounting technique in detail, we can produce a set of figures which even the accrual accountant purists could not criticise and which would show significant surpluses for both this year and next year.

Another massive untruth that Kevin Foley has been repeating around the place is that the government has taken the money from the Casino asset sale and put it into the budget to turn a deficit into a surplus. That is untrue, and Kevin Foley knows it is untrue. On Friday when I challenged him to produce a budget document which shows that one dollar from the Casino asset sale went into the budget, he was unable to do so. I challenge the Hon. Mr Holloway—

An honourable member interjecting:

The Hon. R.I. LUCAS: That's right. I challenge the Hon. Mr Holloway to show me a budget document where one dollar goes from the Casino asset sale into the budget. I challenge him. I will make arrangements; I am happy for the deputy leader to table any document or photocopy of a document that disproves what I have just said.

Members interjecting:

The Hon. R.I. LUCAS: I know what we have done: it is certainly not what the deputy leader said. When we have a closer look at the deputy leader's question today, we may see that he stands accused of having misled this Council in framing it. We will have a closer look at his endeavours to mislead the Council. Finally, in relation to these outrageous claims that are being made by Kevin Foley and others about the budget position, even if we were to believe Kevin Foley's claims about the 2000-01 budget—which as I have just demonstrated are not true, and the challenge remains with Mr Holloway—that would be only a one-year adjustment. The government has brought down a three year budget plan with balanced budgets for 2001-02 and 2002-03. Even if we accepted Kevin Foley's argument, there is no Casino impact in the years 2001-02 and 2002-03. The challenge to these members opposite is: if they are critical of the accrual accounting line in these budget papers, what would they do?

I will leave members with the memorable vision with which I was confronted during the debate on Friday afternoon. When I put the challenge to Kevin Foley: 'Okay, you say there is a deficit in this and you will fix that and there should be more spending; how will you fix it?' we got nothing from him. He looked like an ageing groper out of water; his mouth opened and closed, but nothing came out. The Hon. Mr Crothers would know well what that looks like.

All Kevin Foley could do after he had spluttered and flustered on that televised debate was to say, 'Well, we're still thinking about that. We'll come up with a policy some time closer to the election.' Heaven help us if this is the shadow Treasurer, the economic guru of the opposition, and if that is the best he can do, when he must have known he would be challenged on this issue! He cannot run and hide forever; sooner or later he will have to find a policy. We think we have now found it: it is a Labor Party committed to massive increases in state taxation. We will have to highlight that over the coming two years as we lead up to the next election.

ELECTRICITY, PRIVATISATION

The Hon. P. HOLLOWAY: My question is directed to the Treasurer. Given that portfolio statements for the Department of Treasury and Finance indicate that payments to the Electricity Reform and Sales Unit were $72.317 million in the current year and are estimated to be $14.483 million in 2000-01, will the Treasurer provide a detailed breakdown of the costs associated with the sale of electricity assets? Do these figures include the success fee for Morgan Stanley and other recipients of success fees and, if not, what are the fees and where are they accounted for in the budget?

The Hon. R.I. LUCAS (Treasurer): As members will know, this is a very accountable government and every year, at the end of each financial year, I have publicly reported on the payments to consultants in relation to the electricity reform and sales process. I have indicated that I will do so again at the end of this financial year, and members will therefore again be properly apprised of the amounts of funding or money paid to the various consultants that have been employed by the government in this process.

In relation to the figure mentioned by the honourable member, I understand that, for budget reasons, it may include two years' costs for the Electricity Reform and Sales Unit, that is, for 1998-99 and 1999-2000. Previously the Electricity Reform and Sales Unit was funded out of an asset sales account off budget, and this line may well be a line which brings into the budget two years' costs. I have sought further advice on that and will provide further detail about that figure, as to whether it is a two year figure as opposed to a one year figure.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: It would include the total payments to consultants estimated for 1999-2000, and possibly 1998-99 as well. If that is the case, it would include

success fees that have been paid during that period. As I have indicated, I will report at the end of this financial year on the breakdown of total payments to consultants individually, as I have done for each of the past two years; and I have committed to do so at the end of this process, which will be in August or September. I do not think that I can be any more open or accountable than that.

ADELAIDE REMAND CENTRE

The Hon. T.G. ROBERTS: I seek leave to give a brief explanation before asking the Attorney-General, representing the Minister for Correctional Services and Police, a question about the Remand Centre.

Leave granted.

The Hon. T.G. ROBERTS: I previously asked a question in the Council about the closure of a section of the Remand Centre and stated that remandees had been transferred to Yatala goal for pre-trial remand. Last week there was an incident at the Remand Centre that required the hospitalisation of a remandee. A difficult circumstance appears to occur as a result of the sharing of cells and the close proximity of remandees who have grudges against each other. To manage properly, management requires more cells to be available to make it easier to avoid these circumstances. When will the government reopen the closed section of the Remand Centre to allow all remandees to be held in relevant safety?

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

TRANSPORT, PUBLIC

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning a question about public transport fares.

Leave granted.

The Hon. J.S.L. DAWKINS: Members of this place would be aware of speculation over the past 12 months about the cost of public transport fares—in other words, the metro ticket—for the next financial year. This follows the freeze on fares this year and the imminent introduction of the GST from 1 July 2000. As someone who travels on trains, on the Gawler central line, I have frequently been asked questions on this matter by fellow travellers. Following the release of last week's budget, I ask the minister: how has the government been able to contain the fare adjustment from 1 July 2000 to 2 per cent across the bus, train and tram system?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I am pleased that the honourable member will be able to tell fellow passengers on the Gawler line and elsewhere the good news, because the fares for next year, despite all the propaganda and scaremongering from members opposite, are exceedingly modest by any standards, and particularly when you have to take into account GST, and the impacts, which other states have had to do. I think the fares should also be considered in the context of the freeze this year. As the honourable member said, inflation was factored into fees and charges across the board but not for public transport this financial year, and that inflation factor for all other fees and charges was about 2.5 per cent. So public transport passengers have been spared that increase, and this coming financial year the increase will be 2 per cent, which is below the 3.3 per cent figure for cost increases for fares and charges this coming year.

On top of that we have had to take into account the 10 per cent GST, and what is good in terms of the GST is that it came as part of a package with offsets and rebates for diesel fuel. I have been asked in the past few days why the offset for rail, in terms of diesel rebates, has not meant a considerable fall in fares for rail passengers but an increased fare for bus passengers, because our bus fleet does not generate the same diesel rebates; therefore, why have bus and tram fares not increased? Unlike most other states, in South Australia we have an integrated ticket system which applies to all modes of public transport. While it is true that, taking the diesel rebate into account, fares for rail could dramatically drop, it was seen that it was much more important for us to maintain the integrated one fare structure across the metropolitan system and not start a new practice of different fares for rail, bus and tram.

The Hon. T.G. Roberts interjecting:

The Hon. DIANA LAIDLAW: Well, it would be cross-subsidisation, on top of all the taxpayer subsidisation. But what we have done is average the benefits from the rebate for diesel in the rail system and shared that benefit across the tram, train and bus system, and I think that is the fairest approach. It does provide for a 2 per cent increase from 1 July, but I think it is worth noting very briefly for the record that in New South Wales the increase will be 11.3 per cent from 1 July; for the metropolitan system in Tasmania, 4.7 per cent; in the Northern Territory, 13.5 per cent; in Victoria, 5 per cent; in Western Australia, 6.2 per cent; and, in the ACT, 11.6 per cent. So, by far, public transport users in South Australia gain in terms of the flat fare increase of 2 per cent across the system, compared to the fare increases from 1 July in every other state.

I hope that the fact that this increase of 2 per cent is well under the CPI increase of 3.3 per cent, which is to be factored in for the next financial year in respect of all other fees and charges, will be viewed by public transport passengers as exceptionally good value and that they will patronise the system in increasing numbers.

NATIVE TITLE

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Attorney-General a question about the Shack Freeholding Project and its relationship to native title in South Australia.

Leave granted.

The Hon. SANDRA KANCK: The state government has been pursuing a policy of upgrading shack leases to freehold since, I think, 1996. A committee has been established to oversee the project, and certain criteria need to be met before a shack owner can be granted freehold title. These include: public health issues; a minimum size for the allotment; indemnity of all tiers of government against future claims for damage from erosion or flooding; road access; public access issues; and environmental considerations.

However, it is notable that the potential to impact on native title is not amongst the issues to be considered by the committee. Of greater concern is the fact that the South Australian Government has failed to notify native title claimants about the freeholding of crown land. This is despite the fact that native title is most likely to have survived on crown land and that any move to convert so-called lesser estates to freehold title has profound implications for it.

Indeed, when the freeholding of lesser estates is proposed, the Crown Tenure Unit is obliged to conduct a native title search and refer contentious matters to the Crown Solicitor's Office for advice.

As of December last year, some 1 700 sites had either been converted to freehold or were in the process of being converted to freehold. My questions to the Attorney-General are:

1. Why has the Aboriginal Legal Rights Movement, as the native title representative body for all South Australia, not been formally notified of this policy and invited to comment on the implications for native title?

2. Why is the committee that is overseeing freeholding not required to consider native title issues, and does the Attorney-General believe that issues of compensation for native title holders are likely to result from the freeholding of shacks?

The Hon. K.T. GRIFFIN (Attorney-General): The answer to the third question clearly is 'No.' Regarding the other issues, the government is complying with its obligations under the Commonwealth Native Title Act. Where native title has been extinguished—and it has been in relation to a number of these tenures—the obligations of the government cease.

Regarding the committee's having to consider native title issues, that issue is not one for the committee but for the whole of government. I know of no basis upon which it can be asserted that the government has, in some respects or others, ignored its obligations under the Native Title Act. We are meticulous on every occasion where the issue of native title may arise in satisfying our obligations under the law.

If the honourable member has details about which she is concerned, I am happy to refer those matters to my officers. In any event, I will refer her questions to my officers to check that I have not overlooked any aspect or given an inaccurate answer, but as far as I am aware the state has complied with its obligations.

ARTS, OPPOSITION POLICY

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Minister for the Arts a question about the arts in South Australia.

Leave granted.

The Hon. L.H. DAVIS: This morning I read in the *Advertiser* an article headed 'Rann's artistic vision'. This heading attracted my attention, so I went on to read the article in which the Labor Leader, the Hon. Mike Rann, said that he would be the Minister for the Arts in any future Labor Government and that, during his term, he would want an iconic building erected which would be a concert hall, a gallery for contemporary art, a gallery of Australian art or perhaps an investigator centre.

I was nodding over my Vitabrits reading this, because all members would remember that the Hon. Mike Rann has had some experience with iconic buildings, having been associated with a government that took an option over an iconic building in Melbourne at 333 Collins Street, which cost taxpayers a lazy $500 million; the Myer Centre complex—

The Hon. T.G. Cameron interjecting:

The Hon. L.H. DAVIS: Exactly right—the all up cost was $500 million. There was also the Myer Centre, which cost the State Bank a billion dollars; and of course the ASER complex, which not only was architecturally controversial and disappointing but also overran the budget by some $160 million to $360 million. So, one could understand that the Leader would know all about iconic buildings. What also struck me was the curious nature of the timing of this announcement.

The Hon. Carolyn Pickles, the Leader in this chamber for the Labor Party and the spokesperson for the arts who, sadly, is indisposed through broken bones in her foot and is not around, has had the indignity of effectively losing the portfolio to Mr Rann who, in her absence, has announced that he will be the arts minister if Labor is elected to government at the next election. In addition, there was overt criticism of the state of the arts in South Australia, notwithstanding that last weekend, on Saturday 27 May, in the *Advertiser* there was a very gracious piece by Tim Lloyd, which said, amongst other things, that the current minister had foreshadowed a long-term arts plan that was due to be announced in mid-June. It seems as though the Hon. Mike Rann pinched that idea from the minister. Also, there was quite a good resume of the current government initiatives in the arts in South Australia. My questions are:

1. Could the minister comment on the somewhat startling announcement by the Hon. Mike Rann that he would develop an iconic building and take over as arts minister?

The PRESIDENT: Order! The honourable member should frame a question and not ask for a comment.

The Hon. L.H. DAVIS: I will rephrase it, Mr President.

1. Could the minister advise the Council about her long-term plans for the arts in South Australia, and did she have an opportunity to read the Hon. Mike Rann's claims in the *Advertiser* this morning?

2. Does the minister have any views on Mike Rann's capacity to be the arts minister?

The Hon. DIANA LAIDLAW (Minister for the Arts): I know that, to every member of this parliament and possibly to those who know him outside, Mike Rann's capacity to be an opportunist is legendary, but I think that many in this place were a little surprised that, while the shadow minister Carolyn Pickles was laid low, having broken her ankle just six days ago, in her absence Mike Rann has raised his profile in the arts and assumed that, if ever the Labor Party gets into government and he is still Leader, he will be the arts minister. This will hardly be met with rapturous—

An honourable member interjecting:

The Hon. DIANA LAIDLAW: She may not have known. She is laid up for another two weeks, I understand. I suspect that she would not be pleased to have it assumed that she will be a puppet shadow arts minister for the next two years or be replaced forthwith, when she is not even present in this place. It will hardly be welcome news to the arts community itself, because people remember when Mike Rann was shadow arts minister from 1993 to 1997: no-one was aware he was shadow arts minister.

The Hon. R.I. Lucas: We never saw him at the arts.

The Hon. DIANA LAIDLAW: As the Treasurer says, he was rarely seen at arts activities and, when he did attend, he was not acknowledged. The newspapers still assumed that Anne Levy was the shadow arts minister: even the arts editor of the *Advertiser* at the time assumed that Anne Levy was shadow arts minister, not Mike Rann. If Mike Rann was ever to become Premier I hardly think his assuming this role would be a highly popular policy announcement.

It is a bit rich for Mike Rann to think that he could ever walk in the footsteps of Don Dunstan. As I said, he is an opportunist. I think his statement will be recognised as simple opportunism and, based on his shadow ministry performance

some three years ago, not one made with conviction, long-term planning, sincerity or commitment to the arts.

In terms of the iconic building, it was typical of Mike Rann to say what he wanted but not to know for what purpose it would be built. When the Labor Party was in government, there was a lack of commitment to build infrastructure for the arts. The program for the upgrading of the South Australian Museum was deferred for some eight years. Under this government, it is now being undertaken—an Aboriginal Cultures Gallery is now being built at a cost of some $19 million. Also, in terms of its commitment to the Art Gallery, the Labor Party was prepared to approve only stages 1 and 3. This government has built all three stages. All of the buildings undertaken by this government have been cost-effective with purpose-built infrastructure, not iconic sites with money lavished on them with no particular purpose in mind.

Members interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: I would have thought that this state had learnt long ago that you do not go around lavishing money on any project, especially a project like x-lotto or, picking it out of a hat, a contemporary art gallery, a science museum or a concert hall. He has no idea.

FIRE BLIGHT

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

Leave granted.

The Hon. T. CROTHERS: My question relates to two articles that featured in the *Advertiser* of 10 and 17 May this year. According to the articles, apple and pear growers fear that a bid to allow imports of New Zealand apples could wipe them out. The growers have said that they fear that foreign apples could carry the fire blight disease, which has the capacity to wipe out Australia's pear industry and damage apple production.

The General Manager of the Australian Apple and Pear Growers Association, Mr Trevor Ranford, believes a range of political pressures are being applied to the federal government and that political forces will override scientific evidence. Australian quarantine officials say they hope to make a decision on import approval by the end of this month. In light of the above, will the minister endeavour to communicate with his federal counterpart immediately in an effort to arrest the possible importation of New Zealand apples and, if not, why not?

The Hon. K.T. GRIFFIN (Attorney-General): I will refer that question to my colleague in another place and bring back a reply.

LOCUSTS

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Primary Industries, a question about plague locusts.

Leave granted.

The Hon. CAROLINE SCHAEFER: Last week in the *Advertiser* of 25 May there was an article about a new fungus-based spray known at Metarhizium, which may be a natural combatant of plague locusts. The Hon. Ron Roberts raised last week as a matter of concern the impending and present threat of plague locusts to most of the agricultural crops north of Adelaide. I point out for the benefit of anyone who has not travelled in the area that these plague locusts are being seen in swarms the size of which has never been seen before: apparently, the plague is the worst since the 1930s, if ever. Many locusts are breeding already and in some areas they are into a third generation of reproduction. This situation has been unknown prior to this time: we have always expected them to fly in and lay their eggs, which do not hatch until spring. It can only be assumed that there is the potential for a plague of unprecedented proportions in spring, and everything possible must be done, including the production of a biologically based spray.

While the article states that the spray was developed and produced by the CSIRO in Australia, I have been informed that it is licensed and readily available overseas, particularly in South Africa. My questions are:

1. What efforts are being made to fast track licensing to produce Metarhizium in Australia?

2. Have inquiries been made about the suitability and possibility of importing the spray from overseas?

3. What other steps are being taken to put in place a full strategy to combat the projected onslaught of plague locusts in spring?

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

INFORMATION TECHNOLOGY

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Minister for Administrative and Information Services a question about information technology applications.

Leave granted.

The Hon. CARMEL ZOLLO: I reference Portfolio Statements, budget paper 4, volume 2, under 'Project delivery services and targets for 2000-1', page 8, point 14. Will the minister indicate when the government ICS strategic directions paper will be released and provide further details on how the government will enhance the provision of government services by better use of information technology and telecommunications? I also ask the minister how much has been budgeted for these targets.

The Hon. R.D. LAWSON (Minister for Administrative and Information Services): The honourable member seeks detailed information from the budget and, in particular, the date upon which the ICS report will be delivered. That report is still in the course of preparation and I will be reporting to the Council in due course about the strategies that will be developed in it. However, until the report is finalised, it is premature to speculate upon its results. There is some certain further additional statistical and financial material which the honourable member inquires about. I will examine those issues and bring back a more detailed response as soon as possible.

AGED CARE FACILITIES

The Hon. IAN GILFILLAN: I seek leave to make a brief explanation before asking the Minister for Disability Services, in his role as Minister for the Ageing, a question about the rights and duties of relatives when a person dies in an aged care facility.

Leave granted.

The Hon. IAN GILFILLAN: I have received a letter from and had conversations with a constituent whose father died earlier this year in an Adelaide nursing home. I am aware that nursing homes are regulated under commonwealth legislation, but the circumstances of this case raise issues of common law as well as common courtesy. Mr Rhys McLeod was a resident of The Lodge at Wayville when he died close to midday on 22 January this year. His daughter Rosslyn McLeod arrived shortly afterwards. She wrote to me as follows:

> As I walked towards my father's room a nurse came up to me and asked me not to go to my father's room as he had just died. I was told that when a resident dies that terminates the residency. I was then shown to the nearby public nurse station, where we sat and discussed arrangements to be done. I found it difficult to focus so soon on all that needed to be done, especially as there were interruptions, general noise and distractions which were not conducive to making decisions.

Despite her understandable grief, within 2½ hours Ms Mcleod had gone home, made some decisions about funeral arrangements and rung back to The Lodge to say that she would clear out her late father's room from 10 a.m. the next day. There was no objection to this arrangement.

When Ms McLeod arrived at The Lodge the next day she discovered that, despite her instructions, many of her father's books and other possessions had been put into large packing boxes that were too big to lift or to fit into a taxi. She was therefore forced to unpack everything and repack it into smaller boxes so that it could be moved, unnecessarily prolonging the task by two hours. I might add that a friend who came to get some furniture from the room that morning described it as a 'shambles'. Despite the intervention of staff on the day after her father's death, in effect clearing out the room within 24 hours of his death, The Lodge took rent for another day beyond that. The Lodge also had ongoing access to Mr McLeod's $70 000 entry fee and received interest from that until the estate was settled.

Ms McLeod has received a letter from Eldercare assuring her that 'Staff acted in a proper manner and followed normal work procedures in tidying up' her late father's room so promptly after his death. I have checked with the commonwealth Department of Aged Care and have satisfied myself that it is true that technically the tenancy terminates at death and that, as far as commonwealth funding is concerned, no period of grace—not even 24 hours—is allowed to relatives to clear a resident's room in their own manner and at their own pace. This means that if a resident died at five minutes to midnight the body should be out and the room cleared by five minutes past. I ask the following questions:

1. Does the minister agree that this is an unfortunate and inconsiderate policy?

2. Will the minister approach his federal counterpart, the commonwealth Minister for Aged Care, to discuss amending the policy so that it is more sympathetic to grieving relatives by allowing a 'dwell period' before termination?

3. Finally, in the meantime, as the room is for all intents and purposes the resident's home, will the minister join with me in urging all aged care facilities to allow a period of grace of at least 24 hours in which relatives can take their time to go through the possessions of a deceased relative and arrange removal?

The Hon. R.D. LAWSON (Minister for Disability Services): I am unaware of the circumstances described by the honourable member in his question. I have no reason to doubt the sincerity of his constituent's reporting. Certainly, from his description of events it would appear that the operator's responses were insensitive and rather heartless. However, I would want to see a report from the operator of the particular nursing home to determine whether the constituent's account of events was a fair representation of what occurred. The honourable member's question has highlighted what would appear to be an inconsiderate approach, but once again I would propose seeking advice from the operator before necessarily agreeing with that sentiment.

I agree that a period of grace—certainly one day's grace—would be appropriate in these circumstances. As the honourable member says, the commonwealth Aged Care Act and the regulations made thereunder govern the conditions of commonwealth funding for nursing home, hostel and other aged care subsidies. Subject to a report from my department, I would be prepared to take up this issue with the commonwealth Minister for Aged Care and determine whether the current practices can be justified and, if not, whether they can be changed, and changed promptly.

GAMBLING AND CRIME

The Hon. NICK XENOPHON: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Police, a question about the link between gambling and crime.

Leave granted.

The Hon. NICK XENOPHON: A report in today's *Age* headed 'Gambling and crime inquiry abandoned' states:

> Research into a link between gambling and crime has been abandoned by the Victorian Casino and Gaming Authority because of a lack of available data.

The article goes on to quote the VCGA Chairman, Ms Sue Winneke, as follows:

> The consultants to the project have found that official statistics. . . cannot be used to identify crimes as gambling related.

She goes on to say that official statistics currently collected in the three major areas of the criminal justice system cannot be used to identify crimes as being gambling related. The article continues:

> The report recommended that data on gambling-related crime be obtained as a matter of course across Victoria for at least three years. Police, 'as gatekeepers to the criminal justice system', were best placed to generate the information.

Research carried out by Professor Alex Blaszczynski of the University of New South Wales in both 1989 and 1996 found that over 50 per cent of pathological gamblers admitted to a criminal offence that was directly related to their gambling problem, with over 20 per cent being charged for such an offence.

Given the response of the Attorney-General on 25 May 1999 to a question on the link between gambling and crime—that there were difficulties in collecting such statistics but that he would consider asking the Office of Crime Statistics to explore the possibility of including questions on the link between gambling and offending—my questions are:

1. Have any steps been taken to ascertain the extent of the link between gambling and crime and the cost to the community?

2. Will the police minister consider the report of the VCGA and look at the feasibility of the police, as gatekeepers to the criminal justice system, having a role in collecting data on the link between gambling and crime?

3. Will he consult the Attorney in relation to any such inquiry?

The Hon. K.T. GRIFFIN (Attorney-General): In relation to the last question, I will ask the Minister for Police, Correctional Services and Emergency Services whether or not he will consult with me and I will bring back a reply. I will take the remaining questions on notice, refer them to my colleague in another place and bring back a reply.

NATIVE TITLE

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General a question about native title.

Leave granted.

The Hon. T.G. ROBERTS: In the editorial of today's *Age* there is an article entitled 'Out of step on the law of the land'. I know that the Attorney-General has been on the airwaves over the past two days explaining the application to the public, and to some extent there has been community debate on the issue. I suspect that the Attorney-General would like to set the record straight in this Council in relation to the application. I do not think it has anything to do with the two native title bills that are before us, but I am sure the President will call me to order if I am out of order.

The *Age* article describes the current reconciliation process and how the application fits the feelings of people who are trying to put some distance between the acts of the past and reconciling our present circumstances, and how the application goes against that. I am not a lawyer, but I know that some legal steps need to be taken from time to time to clarify circumstances.

The Hon. G. Weatherill interjecting:

The Hon. T.G. ROBERTS: The honourable member says that I am a bush lawyer. I think all members of parliament tend to develop that trait after a while.

The Hon. K.T. Griffin: Only some.

The Hon. T.G. ROBERTS: Perhaps the Attorney-General believes that some do it better than others. I am seeking a response, because I do not know the answers to my questions. I know that, in industrial relations, members of the community do not understand exactly what an ambit claim is and to what extent ambit claims are pursued and what settlements proceed from that. I know that the media does its best to explain what an ambit claim is but they never seem to be able to do it accurately. So, the questions I have in relation to this application, which is developed on the Colonisation Act 1834 are:

1. What is the intention of the state government in developing a challenge to native title around the Colonisation Act 1834?

2. What has the application cost to this point?

3. What are the final projected costs for this application?

4. Is it the government's intention to pursue the application to its final judgment through to the High Court?

The Hon. K.T. GRIFFIN (Attorney-General): Generally I think everybody regards this as the age of enlightenment, although on occasions I must stay that I have some doubts about some sections of the media, particularly the *Age*, and if I make that statement in relation to the *Age* I am sure that I will probably get no more favourable comment in the *Age*, and maybe that was the honourable member's ulterior motive. But I saw the article in the *Age*. I intend in a moment to make a ministerial statement on the subject. It was not ready at the commencement of question time. But the honourable member's question gives me an opportunity to refer to the editorial in the Melbourne *Age* today and to the article which appeared yesterday in both the *Age* and the *Sydney Morning Herald* and to say that I was not made aware that the *Age* and the *Sydney Morning Herald* were writing an article on this issue. I was not consulted. The material which is attributed to me quite obviously was taken from a *Hansard* report back in April.

What staggers me about the Melbourne *Age* editorial today is that they seek to make some comment and give advice without ever having talked to me about the context in which this issue is being dealt with by the government. I know we will have some disagreement about whether or not it is the correct approach, but the fact of the matter is that I would have thought normal courtesy would require that before a newspaper editorialises and makes criticism and gives advice at least they would give the person to whom the editorial is directed an opportunity to comment; even if they did not report the comment, at least give an opportunity to put the whole issue in context.

The Hon. Sandra Kanck interjecting:

The Hon. K.T. GRIFFIN: I am quoted in the *Age* article but the author did not ring me. That is a quote from the *Hansard* in April 2000. It is written as though it was a comment made by me in the context of this particular article, and that was not the case.

The Hon. Sandra Kanck: Don't you stand by your comments in April?

The Hon. K.T. GRIFFIN: Well, let's see who stands by what now.

NATIVE TITLE

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to make a ministerial statement.

Leave granted.

The Hon. K.T. GRIFFIN: I wish to make a ministerial statement to correct the record following seriously inaccurate and misleading articles in the *Age* in Melbourne and the *Sydney Morning Herald* yesterday and in an editorial in the *Age* today.

The gist of these articles is that South Australia should not be putting forward certain arguments in native title litigation before the Federal Court, in particular the De Rose Hill matter. These virtually identical articles, written by local journalist Randall Ashbourne, selectively quote an answer I gave in the Council on 12 April 2000 to a question asked by the Hon. Sandra Kanck. At no time did Mr Ashbourne contact me to discuss or seek my comment on the contents of his article.

South Australia has a long and proud history of achieving real outcomes in relation to indigenous issues. In the mid 1960s this state was the first to enact land rights legislation creating the Aboriginal Lands Trust and vesting large tracts of land in the trust. It was the first to grant inalienable freehold title to Aboriginal people when it granted approximately 20 per cent of the state to the Pitjantjatjara and Maralinga groups, almost 20 years ago. The Pitjantjatjara Land Rights Act is an achievement with which I was closely involved as Attorney-General at the time.

South Australia is also the only state with a scheme approved by the commonwealth under the Native Title Act giving native title claimants a right to negotiate on mining and exploration proposals. That scheme was approved by the Keating Government in 1995. This government continues to believe that native title issues can be resolved through understanding, discussion and negotiation between affected parties. However, in pursuing that aim, the government must take into account and work within the legislative scheme established by the federal government in the Native Title Act 1993.

That scheme has required the state to adopt a three pronged strategy in relation to native title. The three prongs of the strategy are: legislation; litigation; and negotiation. I will deal, first, with legislation. The 1998 amendments to the Native Title Act introduced measures to which this state has to respond through legislation of its own. Bills relating to some of this are before the parliament at the moment, and have been since December 1998. I do not propose to canvass issues relating to the bills in this statement.

I turn now to the issue of litigation. Until 1998, the Native Title Act scheme relied heavily on the litigation of native title claims in the courts as the means for determining native title issues. As a result, we now have 26 native title claims in the Federal Court. By their very nature, all such cases are slow, costly and divisive. The state government did not initiate these cases but is automatically a party to every one of them. As a party to the cases, the government is expected and has a public duty to put before the court all arguments relevant to the matters in issue.

The courts and the Native Title Act have made it clear that native title can be extinguished in many circumstances. In cases before the court in other states, the question of extinguishment by the manner in which those states were settled has been raised and argued. Given the unique circumstances of South Australia's settlement, this is also an issue that must be decided for this state.

The articles suggest that the South Australian Government has only recently put forward this argument. In fact, it has been part of the government's case in the De Rose Hill matter since August 1999. De Rose Hill is the test case on this and other native title issues in South Australia. It will be the first South Australian native title claim to go before the Federal Court some time next year.

The colonisation argument is one of many that the state will be putting before the court and is one of many issues that the court will have to decide. It is simplistic and shows a fundamental misunderstanding of our legal system to suggest that unresolved questions should not be put before the court just because we are in a climate where a large number of people and the state government support a process of reconciliation between indigenous and other Australians.

I now turn to the issue of negotiation. At the same time that the native title claims are making their way through the court system, the government is holding discussions and negotiations with the Aboriginal Legal Rights Movement (ALRM) as the representative body for all native title claimants in South Australia, the South Australian Farmers Federation (SAFF) and the South Australian Chamber of Mines and Energy (SACOME).

These discussions and negotiations are aimed at achieving practical resolution of native title issues through indigenous land use agreements under the Native Title Act. Discussions, initiated by the state government, have been going on for over two years. Formal negotiations started towards the end of last year. If those negotiations are successful, it may well be that native title claimants will not wish to proceed with their claims before the courts, thus avoiding the need for protracted, expensive litigation.

However, we have to be realistic and accept that, despite all the positive goodwill between the negotiating parties, the negotiations may not succeed for whatever reason or may not be concluded before the De Rose Hill matter is heard in the Federal Court. If that occurs, the De Rose Hill matter will still be the test case for many native title issues in this state.

The government's commitment to pursuing a negotiated settlement of native title issues is demonstrated by the fact that it has allocated significant resources to support the negotiation team that it has established. It has also provided significant financial support to the ALRM to allow it to take part in the negotiations and to convene meetings of native title claimants throughout the state to ensure that their views on the negotiations are communicated.

At just such a meeting in February this year, which I attended at the invitation of the ALRM, the claimants agreed that the ALRM could pursue discussions with the government, the Farmers Federation and the Chamber of Mines and Energy aimed at achieving a number of indigenous land use agreements, even while the court proceedings continued to take their course. All four parties have entered into these negotiations of their own volition, as they recognise that a negotiated outcome is far preferable to litigation.

Agreements will not be reached unless all parties are satisfied that they provide a better solution. All parties have agreed that, whatever differences they might have in relation to other matters (including litigation), it is still worth pursuing these negotiations and to do so in a spirit of goodwill.

The government's commitment to a negotiated outcome is further demonstrated by the fact that it has recently reviewed the progress made so far and agreed that the negotiations should continue into the future. As part of that, further considerable financial assistance will be made available to the ALRM (which, unlike the Farmers Federation and the Chamber of Mines and Energy, is unable to secure funding through any other source) to allow it to take its part and to involve native title claimants in the process. This government's commitment to resolving native title issues through discussion and negotiation is on the public record and is backed up by its actions over recent months in convening negotiations with the ALRM, the Farmers Federation and the Chamber of Mines and Energy.

Articles such as those which have appeared in recent days misrepresent the state's position and do not help the sensitive negotiation process. They give a false impression to the people represented by the negotiating parties and may drive a wedge between different parts of communities. This would be tragic for all concerned. I therefore urge all members to support the efforts of the government and the other negotiating parties to settle these issues, given their great importance to the entire South Australian community.

OLYMPIC DAM CALCINER EMISSION

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I seek leave to table a ministerial statement from the Minister for Human Services in the other place on the Olympic Dam calciner emission event.

Leave granted.

MODBURY HOSPITAL

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I seek leave to table a ministerial statement from the Minister for Human Services in the other place on the Modbury building structure.

Leave granted.

SOUTHERN STATE SUPERANNUATION (CONTRIBUTIONS) AMENDMENT BILL

The Hon. R.I. LUCAS (Treasurer) obtained leave and introduced a bill for an act to amend the Southern State Superannuation Act 1994. Read a first time.

The Hon. R.I. LUCAS: I move:

That this bill be now read a second time.

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

Leave granted.

This Bill seeks to make a number of important amendments to the *Southern State Superannuation Act 1994*, which establishes and continues the Triple S Scheme for government employees. The Triple S Scheme provides benefits based on the accumulation of contributions paid into the scheme.

The amendments fall into two main categories. The first category of amendments deal with two administrative procedures which are being changed under the Bill. The second category of amendments propose a series of amendments of a technical nature to accommodate contributions elected to be directed to the scheme by an employee in terms of a salary sacrifice arrangement.

The current provisions of the Act provide that voluntary member contributions be based on the member's salary as at 31 March each year. Once determined, the contribution is essentially fixed for 12 months. This results in a very concentrated effort being required by the South Australian Superannuation Board in having to collect salary data from over 150 employers, calculate the new contribution, and advise the employers of the rate to apply from the following July. There are presently about 11 500 contributory members in the scheme, and the number is increasing at a steady rate. This is both a time consuming and inefficient annual exercise. With the advent of more powerful and efficient payroll systems, the proposed amendment will enable the member's contribution to be directly linked to the payroll system and adjusted immediately there is a variation in salary. The result will be that member contributions will be based on actual earnings in a pay period. This proposed method is consistent with that which applies in respect of the calculation of employer contributions under the Triple S Scheme.

For those employers that are unable to accommodate the revised calculation of member contributions, the amendment will enable the Superannuation Board to allow the current contribution adjustment arrangements to remain in place until revised payroll systems are implemented.

The second of the administrative procedures which are being changed in the Bill, deals with the setting of administrative fees and charges under the scheme. Section 27 (7) of the Act currently requires fees and charges to be determined by the Government and prescribed by regulation. The Government believes that it is more appropriate for the fees and charges to be determined by the Superannuation Board which is charged with the responsibility for administering the scheme in accordance with the Act. Accordingly, the Bill proposes an amendment to make the Board responsible for setting the fees and charges.

The second category of changes deal with salary sacrificing. With the advent of salary packaging across the public service, the Government believes that public sector employees should have the opportunity to salary sacrifice additional contributions to their superannuation scheme. Provisions in this Bill will enable members of the Triple S Scheme to elect to make additional contributions to the scheme from pre tax salary, as an alternative to receiving cash remuneration. However, the basic underlying structure of the scheme will not change and therefore if members wish to obtain the higher employer contribution of 9% of salary instead of the mandatory Superannuation Guarantee which is currently 7% of salary, members will be required to contribute at least 4.5% from cash remuneration.

The current provisions of the Act prevent active contributors of the State Pension and 1988 Lump Sum schemes from being members of the Triple S Scheme. However, this Bill proposes to allow these members to direct salary sacrifice contributions into the Triple S Scheme. These contributions which the employee could have taken as cash salary will in terms of the Income Tax Assessment Act (Cth) become recognised as employer contributions. Salary sacrificed contributions paid into Triple S by active members of the Pension or 1988 Lump Sum schemes will not entitle the member to any other benefit in the scheme other than a return of the accumulated salary sacrifice contributions together with interest earnings on retirement, or earlier death or invalidity. On the basis that the schemes under the Superannuation Act 1988 provide essentially defined benefits, it is more appropriate that the voluntary additional contributions be directed into the Triple S Scheme.

The additional salary sacrifice contribution provisions will apply to any employee who is able to take part in an approved salary sacrifice arrangement. These arrangements for salary sacrificed contributions have no impact on Government costs of the scheme.

The Government also proposes to amend the provisions relating to the entitlement to a temporary disability pension benefit, as a consequence of the new salary sacrifice arrangements. The general principal under the Act is that this benefit is only available to members who contribute to the scheme from cash salary. The amendment will extend the coverage for a temporary disability benefit to include those members making contributions under a salary sacrifice arrangement, on the basis that such contributions could have been made by the member from cash salary. This expansion of coverage will ensure that those members who are directing salary sacrifice contributions into the scheme are treated in a fair and equitable manner with the members making normal cash salary contributions to the scheme. Active members of the Pension and 1988 Lump Sum schemes who are having salary sacrificed contributions directed into the scheme will not be entitled to temporary disability benefit cover.

The Public Service Association, Australian Education Union (SA Branch), South Australian Government Superannuation Federation, and the South Australian Superannuation Board have been fully consulted in relation to these amendments, and have indicated their support for the proposed amendments.

I commend this bill to honourable members.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 3—Interpretation

Clause 3 introduces the definitions of 'monetary salary' and 'non-monetary salary'. These definitions are required in relation to salary sacrificing. Subsection (3) of section 3 of the principal Act is replaced with a new subsection that includes negotiated contracts of employment as a vehicle for non-monetary remuneration (from salary sacrificing) that is included in the definition of 'salary' for the purposes of the Act.

Clause 4: Amendment of s. 9—The Southern State Superannuation (Employers) Fund

Clause 5: Amendment of s. 14—Membership

These clauses make consequential amendments to section 9 and 14 respectively.

Clause 6: Insertion of s. 15B

Clause 6 inserts new section 15B. This section enables an active contributor to the pension or lump sum schemes under the *Superannuation Act 1988* to become a member of the Triple S scheme so that his or her employer can make contributions to the member's employer account in respect of salary sacrificed by the member for the purpose. The section makes it clear that the only benefit that a person can receive in respect of membership under this section is the employer component of benefits.

Clause 7: Amendment of s. 25—Contributions

Clause 7 amends section 25 of the principal Act. By removing subsection (8) contributions will in the future be based on the amount for the time being of fortnightly salary. Subsection (7) provides that where an employer's systems are not capable of accommodating such a change the Board may direct that the existing method of determining contributions will continue for that employer. The other changes made by this clause are consequential.

Clause 8: Amendment of s. 25A—Additional contributions

This clause makes a consequential change to section 25A.

Clause 9: Amendment of s. 26—Payments by employers

This clause amends section 26 of the principal Act. New subclause (1a) requires employers to pay (or arrange for payment) to the Treasurer an amount equivalent to salary sacrificed by its employees under an award or enterprise agreement for the purpose of increasing their employer components of benefits.

Clause 10: Amendment of s. 27—Employer contribution accounts

This clause amends section 27 of the principal Act. New subsections (2a) and (2b) provide for employer contribution accounts to be credited with amounts paid by or on behalf of employers to the Treasurer under section 26(1a) and 15B(2) respectively. Paragraph *(c)* replaces subsection (7) and inserts new subsection (7a). These new subsections provide for the South Australian Superannuation Board to fix administrative charges and factors for future service benefits and disability pensions.

Clause 11: Amendment of s. 33A—Disability pension

This clause amends section 33A of the principal Act by replacing subsections (4) and (5) with new provisions that take account of the various methods of contributing to the Triple S scheme.

The Hon. CARMEL ZOLLO secured the adjournment of the debate.

SUPERANNUATION (MISCELLANEOUS) AMENDMENT BILL

Adjourned on second reading.

(Continued from 4 April. Page 761.)

The Hon. R.I. LUCAS (Treasurer): I thank members for their indication of support for the bill, which was originally introduced in November last year. As the Hon. Mr Holloway observed in his second reading contribution, the superannuation legislation appears to be the latter-day equivalent of local government legislation: we inevitably seem to have amendments being moved to the act on a continuing basis. That is a view in which I concur.

From the government's viewpoint and as Treasurer in the past two years, I have sought to reach a position whereby we might actually collapse some of the amending packages together into one bill. I even had the rather naive view that we could perhaps completely rewrite the act and do the whole lot. That is too foreboding a task even for me to contemplate, evidently. These things arise and we need to respond to them. To the degree that we can, we will try to collapse many of these technical amendments together and do them as a package.

One of the reasons for the delay has been that, once we had introduced the bill, I received another series of amendments that were introduced in relation to salary sacrifice, which is a policy position that has now been broadly supported and endorsed by the unions and government negotiators, and all that had been done. But there are some flow-on impacts in relation to superannuation, so I received a series of amendments. What members now have before them is a series of amendments circulated, I think, some time in April, although I cannot remember exactly when, that now covers this further area of salary sacrifice.

I will take the opportunity during the second reading reply to give some reasonable degree of explanation for these amendments. As I said broadly, it is simply putting into practice an agreed position between unions and the government in relation to salary sacrifice and regarding the superannuation provisions, but these superannuation flow-on impacts need to be catered for in either this or a separate bill.

These proposed amendments will introduce a set of provisions dealing with salary sacrificing for members of the pension scheme and the 1988 lump sum scheme. They will also introduce greater clarity to the arrangements that apply where persons are employed pursuant to a TEC contract and a non-contract non-TEC position. Whilst the current provisions of the Superannuation Act cope with salary sacrificing, they were of course designed before salary sacrificing and are therefore less than ideal in terms of coping with the current arrangements.

There are some additional amendments of a technical nature, dealing with the administration of preserved benefits for former ETSA employees who have been transferred to the state superannuation scheme in terms of the provisions of the Electricity Corporations (Restructuring and Disposal) Act 1999. These amendments broadly cover a new definition of 'salary' in relation to a contributor who is employed pursuant to a total employment cost (TEC) contract (executive officers), specifying that salary for the purposes of contributions and benefits shall be the prescribed proportion of the value of the total remuneration package specified in the contract.

At the present time, where such an employee salary sacrifices cash for a motor vehicle, the employee is often required to make an election under section 4(4) of the Superannuation Act in order to maintain superannuation cover at the higher cash salary level applying before cash salary was exchanged for a non-cash benefit. The provisions of section 4(4) were designed to cater for situations where a person's overall salary is reduced due to non-disciplinary reasons and the provisions rely on a person making application to receive the benefits of the section.

A further provision complements this new definition of 'salary' for a person employed pursuant to a TEC contract, by providing that the proportion of the total remuneration package that will constitute salary for contributions and benefits shall be the proportion as prescribed by regulation. The proposed amendment also provides that different proportions may be prescribed in relation to old scheme contributors (that is, the pension scheme) and new scheme or lump sum contributors.

Essentially, the idea here is that the proportion to be prescribed should be at a level to exclude the value of the employer cost of superannuation, with the two different proportions reflecting the different levels of employer subsidy in the two schemes. This proposal has been discussed with the Office of the Commissioner for Public Employment, with strong support being indicated for the proposal.

From a mathematical and equity perspective, the percentage of TEC use of defined salary for superannuation purposes should be the same for each person. The current difficulty is that we have executives on TEC contracts with superannuation based on a percentage of TEC ranging from 72.8 per cent to 78.2 per cent. From a strict mathematical position, the portion of TEC to be salaried for a person in the pension scheme should have been 82.6 per cent, less the old fixed travelling allowance of $5 000.

The divergence from having a consistent level of TEC as salary occurred in the transition of these employees to contract TEC positions. The portion of the value of a motor vehicle that was initially agreed to be recognised as a salary sacrifice component, and the impact of a fixed travelling allowance, which was a hangover from the pre-TEC regime, had a major impact in creating the inconsistency.

The proposal is to re-establish a consistent definition of salary for persons on a TEC contract with a prescribed percentage of the TEC being salary. The first step in this tidying up process is to provide the framework within the legislation, which is the basis of the drafted amendment. The

second step will be to prescribe the appropriate level of TEC that will constitute salary. A further provision will specify that non-monetary remuneration received by a contributor as a result of a non-TEC contract employee salary sacrificing cash salary for non-cash benefits shall be salary for the purposes of the act.

This provision is similar to that recently made to the definition under the Southern State Superannuation Act and, whilst not technically necessary, will substantially improve the understanding of the operation of the act. A further provision will specify that member contributions required to be paid to the Treasurer for the purpose of the act must be paid from cash salary so as to prevent member contributions being paid from pre-tax remuneration which, in terms of the Income Tax Assessment Act, are then classified as employer contributions.

A further provision makes clear that any salary sacrificed into superannuation cannot be paid into the schemes under the Superannuation Act. This is necessary to address the issue that salary converted to additional superannuation under a salary sacrifice arrangement is classed as an employer contribution. A separate provision is also included in the proposed package of amendments to prevent the possibility of a member of one of the schemes under the Superannuation Act using the scheme's variable contribution rate system to double dip in remuneration benefits.

This is technically possible at present if a member employed on a TEC contract with a fall-back permanent position elects to reduce their member contribution to the scheme. The problem is that such a member can elect to take the high cash salary now by reducing the member contribution, and then receive the forgone superannuation benefit if they come off the TEC contract but with the cost of the higher than normal benefit accrual not being chargeable back to the employee.

That, as I said, is a more detailed explanation of the package of amendments that have been agreed, I am advised, with unions, employees and the other negotiators in what has been a very long process in terms of how we provide the appropriate framework for salary sacrifice within the public sector with the inevitable flow-on implications for the superannuation schemes that apply to public servants. With that, I thank members for their indication of support for the second reading of the bill.

Bill read a second time.

In committee.

Clauses 1 and 2 passed.

New clause 2A.

The Hon. R.I. LUCAS: I move:

Page 1, after line 16—Insert new clause as follows:

Amendment of section 4—Interpretation

2A. Section 4 of the principal act is amended—

(a) by inserting the following definition after the definition of 'retrenchment pension' in subsection (1):

'salary', in relation to a contributor who is employed pursuant to a TEC contract, means that proportion of the value of the total remuneration package specified in the contract that has been prescribed by regulation for the purposes of this definition;;

(b) by inserting before 'includes all forms of remuneration' in the definition of 'salary' second occurring in subsection (1)', in relation to a contributor who is not employed pursuant to a TEC contract,';

(c) by inserting after paragraph (d) of the definition of 'salary' second occurring in subsection (1) the following paragraph:

(da) non-monetary remuneration referred to in subsection (2d);;

(d) by inserting the following definition of 'the Superannuation Funds Management Corporation of South Australia':

'TEC contract' means a contract of employment between a contributor and his or her employer under which the value of the total remuneration package specified in the contract reflects the total employment cost to the employer of employing the contributor.;

(e) by inserting the following subsections after subsection (2a):

(2b) A regulation prescribing the proportion of the value of the total remuneration package for the purposes of the first definition of 'salary' in subsection (1)—

(a) may prescribe different proportions in relation to old scheme contributors and new scheme contributors; and

(b) in relation to a contributor whose salary would be less under the first definition of 'salary' in subsection (1) than if it were determined under the second definition of 'salary' in that subsection—

may prescribe a proportion to ensure that the value of the contributor's salary for the purposes of this act is not less than it would be if determined under the second definition of 'salary'.

(2c) Non-monetary remuneration received by a contributor as the result of the sacrifice by the contributor of part of his or her salary in accordance with—

(a) an award; or

(b) an enterprise agreement prescribed by regulation for the purpose of this subsection,

is included in the second definition of 'salary' in subsection (1).

(2d) All non-monetary remuneration, except for non-monetary remuneration referred to in subsection (2c), is excluded from the second definition of 'salary' in subsection (1).

(2e) For the purposes of determining the amount of the salary received by a contributor who is in receipt of non-monetary remuneration of a kind referred to in subsection (2c), the value of the non-monetary remuneration of that kind will be taken to be the amount of salary sacrificed by the contributor in order to receive that remuneration.

(2f) A regulation referred to in subsection (2c)(b) may prescribe an enterprise agreement by reference to the agreement or by reference to a class to which the agreement belongs.;

(f) by striking out 'actual' from paragraph (a) of subsection (3).

Clause 2A(a) seeks to insert an additional definition of 'salary' under section 4 of the Superannuation Act. The new definition will define 'salary' for superannuation contribution and benefit purposes for those members of the pension or lump sum scheme who are employed pursuant to a total employment cost (TEC) contract.

In general, persons employed on a TEC contract are executive officers. This new definition is required to provide clarity to the proportion of the TEC which is salary. At present, there is confusion by executive officers as to what constitutes 'salary' in their situation under the act. It will also mean that, where they salary sacrifice cash salary for a motor vehicle, they will not have to use the provisions of section 4(4) to maintain their benefits on a higher cash salary level before taking a motor vehicle as a non-cash benefit as part of the remuneration package.

New clause 2A(b) is consequential on the amendment in respect of new clause 2A(a). It ensures that the current definition of 'salary' in the act will not apply to a person employed under a TEC contract because they will fall under the new definition of 'salary' inserted by new clause 2A(a). New clause 2A(c) is consequential. New clause 2A(d) inserts the definition of 'TEC contract' into the act. New clause 2A(e)(2b), which is to be inserted in section 4 of the act, complements the insertion of the additional definition of 'salary' into the act. The provision contemplates regulations

being made to prescribe the proportion of a total employment cost contract that constitutes 'salary' for superannuation purposes.

This measure will also lead to a consistent proportion of a TEC being recognised as 'salary'. At present, there is no consistency between persons on a TEC in regard to this proportion. As the pension scheme and the lump sum scheme have different employer costs, it logically follows that the proportions of TEC that are 'salary' will be different. The pension scheme has a higher employer cost and, therefore, the proportion of TEC to be 'salary' will be less than for the lump sum scheme.

New clause 2A(e)(2b)(b) is a grandfather clause to protect any person who would have had a higher superannuation benefit under the existing definition of 'salary' than the proposed definition dealing with TEC contracts. New clause 2A(e)(2c) deals with persons who salary sacrifice other than persons covered by a TEC contract (who have their own new definition of 'salary' which is being inserted by new clause 2A). The provision states that salary which is converted to a non-cash benefit remains 'salary' for superannuation purposes.

This is the first of a series of amendments and, as I indicated in concluding the second reading, it seeks to ensure that the salary sacrificing arrangements with the public sector flow on to the superannuation of those public servants and not to their ultimate detriment or their ultimate cost.

The Hon. P. HOLLOWAY: The opposition supports the amendments moved by the government. During the second reading, I indicated that, at the briefing we had on the bill, the government foreshadowed that there may be some amendments (we had not seen them at that stage) and, now that we have had the opportunity to examine them, we accept that these amendments correct potential anomalies within the salary sacrifice arrangements and also modernise the provisions as they relate to salary sacrifice.

The opposition has consulted with the various unions concerned—the ASU, the electrical unions affected by one of the later amendments and the PSA. They fully support these amendments, so there is no reason why the opposition would seek to oppose them.

I have just one comment and a question I would like to ask the Treasurer, not so much in relation to the matters before us. These amendments concern salary sacrifice in a situation where salary is sacrificed for superannuation. Of course, it is possible within public services to have salary sacrificed for other fringe benefits. I note from this morning's *Advertiser* the following article:

> Tens of thousands of [federal] public servants can now swap their Australian-made cars for imports, through salary packaging deals. The Federal Government has quietly abolished a rule that makes locally-built vehicles mandatory under the packages. . . It is understood salary packaging is now available to a sizeable proportion of Australia's 100 000-strong public service, although no central figures are kept as sacrificing does not have to be declared.

That leads to my question: does the government intend to extend salary sacrificing, as we are envisaging here in relation to superannuation, to motor vehicles and, if so, will the Treasurer give an assurance that he will not follow the federal government's lead and enable imported vehicles to be available under such schemes?

The Hon. R.I. LUCAS: I would need to take some advice because, as the honourable member is frank enough to admit, it is not strictly covered by this legislation, albeit the general issue of salary sacrifice does lead to the question the honourable member has raised. I am happy to take some advice on that question. Clearly, there are salary sacrifice arrangements in relation to the health system: that is the debate we are having at the moment with salaried medical officers, involving vehicles and a whole range of other things. I am not sure what provisions apply for salaried medical officers. In relation to cars that are available for an executive officer in the public sector, I would have to check whether that is a salary sacrifice issue or part of an employment package: they may get a salary and a car as opposed to a salary that they are then able to sacrifice in purchasing a particular car, that being a decision for them.

My understanding is that it is more likely in relation to executive officers within the public sector in South Australia to fall more into the former category rather than the latter: that is, they are employed on a package that includes a salary plus a car. I am almost certain that those cars under that arrangement have to be at the very least Australian made, and I would not be surprised if it is more restrictive than that and they have to be South Australian made cars. However, I would need to check that for the honourable member. I am happy to take that question on notice and bring back a reply for the honourable member.

New clause inserted.

Clauses 3 to 5 passed.

New clause 5A.

The Hon. R.I. LUCAS: I move:

5A. Section 23 of the principal act is amended—

(a) by striking out 'A contributor' from subsection (2) and substituting 'Subject to subsection (2a), a contributor';

(b) by inserting the following subsections after subsection (2):

(2a) A contributor who is employed pursuant to a TEC contract must contribute at the contributor's standard contribution rate or at a higher rate referred to in subsection (2) unless he or she was contributing at a lower rate during the financial year in which the term of the contract commenced in which event he or she must contribute at that rate or a higher rate referred to in subsection (2).

(2b) Subsection (2a) operates in relation to the financial year following the financial year in which section 5A of the *Superannuation (Miscellaneous) Amendment Act 1999* comes into operation and in relation to subsequent financial years.

I will not waste the time of the committee by going again into a detailed exposition of the import of the amendment. In the second reading debate I explained the package in some detail. Under an earlier clause the Hon. Mr Holloway and I gave the support of both the government and the opposition to this package of amendments.

The Hon. P. HOLLOWAY: We support the new clause.

New clause inserted.

Remaining clauses (6 to 12) passed.

New clause 13.

The Hon. R.I. LUCAS: I move:

Page 8, after line 19—Insert new clauses as follows:

Insertion of s. 51A

13. The following section is inserted after section 51 of the principal Act

Method of malting contributions

51A. (1) Contributions to be made to the Treasurer by a contributor under section 23 are to be deducted from the contributor's salary and paid to the Treasurer.

(2) A contributor cannot make any contribution to the Scheme in addition to the contributions he or she makes under section 23.

This new clause is consequential on earlier discussions.

New clause inserted.

Schedule 1B.

The Hon. R.I. LUCAS: I move:

Amendment of Schedule 1B

14. Schedule 1B of the principal Act is amended by striking out subclause (7) of clause 4 and substituting the following subclauses:

(7) Where—

(a) a person who was a member of the Electricity Industry pension scheme before being transferred to the State Scheme under subclause (1) or the spouse or eligible child of such a person is entitled to a pension under section 39(5), the pension will

(i) in the case of a retirement pension or an invalid pension payable to the person-be equivalent to his or her notional pension;

(ii) in the case of a pension payable to a spouse or eligible child-be determined in accordance with section 38 on the basis that the persons's notional pension as defined in subclause (8) is the notional pension referred to in section 38;

(b) the estate of a person referred to in paragraph (a) is entitled to a hump sum under section 39(5)(e) or (0, the lump sum will

(i) where section 39(5)(e) applies—be the amount stated in section 39(8a);

(ii) where section 39(5)(f) applies—be the aggregate of the following amounts—

(A) an employee component (to be charged against the person's contribution account) equivalent to the amount standing to the credit of that account; and

(B) an employer component being an amount equivalent to 1.8 times the employee component.

(8) In subclause (7)—

'notional pension' in relation to a person means the pension that the person would have been entitled to receive under the Electricity Industry pension scheme if he or she had become entitled to receive that pension immediately before being transferred to the State Scheme adjusted to reflect changes in the Consumer Price Index from the date on which the person was transferred; 'spouse' means a person referred to in section 38(1a).

(9) A person who was a member of either of the contributory lump sum schemes before being transferred to the State Scheme under subclause (1) will (or, where the person has died, the spouse or estate of the person will) be entitled to a lump sum under section 28(2) that is the aggregate of the following amounts:

(a) an employee component (to be charged against the person's contribution account) equivalent to the amount standing to the credit of that account; and

(b) the person's notional employer component adjusted to reflect changes in the Consumer Price Index from the date on which the person was transferred.

(10) In subclause (9)—

'notional employer component; in relation to a person means the employer component that the person would have been entitled to receive under the contributory lump sum scheme if he or she had become entitled to receive that component immediately before being transferred to the State Scheme;

This amendment relates to schedule 1B, which was inserted into the act by the Electricity Corporations (Restructuring and Disposal) Act 1999. The amendment will modify slightly the method by which the preserved benefits under the Electricity Industry Superannuation Scheme are handled. The revised method will simply transfer the crystallised benefit from the EISS into the State Superannuation Scheme. The original intention is reflected in the current provisions of schedule 1B in relation to the data which could be used to determine the preserved benefit to be transferred rather than the already determined or crystallised benefit. The proposed changes will streamline the transfer procedure. The amendments have no impact on the value of each members' preserved benefits.

The Hon. P. HOLLOWAY: I ask for an undertaking from the Treasurer in this regard. I spoke to the unions and I think it was their understanding that this measure only affected members of the industry who had retired; in other words, it does not affect members currently working within the electricity industry. Will the Treasurer confirm that that is the case?

The Hon. R.I. LUCAS: My cavalry has not arrived yet in terms of much needed back up for that question. I understand that that is the case, and certainly the way the explanation has been drafted for this division that is the case. We are in a position where this has to go to the Lower House. I will take the question on notice. We can process the legislation. If a particular issue has to be pursued, the honourable member will be able to have it pursued by his colleagues in another place and we could further consider it. Certainly my understanding is as he has indicated but, to put a guarantee on it, I would like to have my cavalry with me to give me some comfort in relation to that guarantee.

Amendment carried; schedule as amended passed.

Title passed.

Bill read a third time and passed.

NATIONAL TAX REFORM (STATE PROVISIONS) BILL

Adjourned debate on second reading.

(Continued from 24 May. Page 1111.)

The Hon. R.I. LUCAS (Treasurer): I thank members for their contribution to the second reading. It is fair to say that a number of members have summarised their position thus: that, whilst they are not personal adherents to the GST or to the national tax reform package, they acknowledge the reality of this legislation as it applies to South Australia. There is one issue that we will obviously need to discuss in committee, that is, government accounts. Rather than start the debate now and repeat it again in committee, it may be better to leave the discussion until we get into committee. In the interests of trying to get some of our legislation through the Council in the remaining three or four weeks, the government is more than willing to seek some sort of compromise or middle ground in relation to these and some other bills. We hope there is at least a reasonable and sensible mechanism to try to achieve that middle ground in relation to that issue. I thank honourable members for their indications of support for the second reading.

In committee.

Clause 1.

The Hon. M.J. ELLIOTT: I was out of the chamber briefly and did not contribute to the second reading stage. I want to indicate that the Democrats are supporting this bill. What we are seeing here is part of a package of reforms to which the Democrats had agreed at a national level and which the Democrats here in South Australia support. While some people like playing games with the GST package and pointing out areas where there might be negatives, the fact is that there would always be some positives and negatives in the package, and it was the net result of the whole package that was important.

This piece of legislation is seeking to equalise the states with the federal government in terms of impacts of the GST, and in some cases the state is giving up some of its taxing powers or making contributions which will be compensated for by the receipt of GST moneys, all of which will be coming to the state. People must realise how important it is that the GST money is coming to the state. It is worth noting

that, between 1993 and 1998, income to the state from the commonwealth dropped by about $1.3 billion, and I think there was a further small drop again last year but, with the arrival of the GST package, we are guaranteed that there will not be further cuts. In fact, the GST revenue will eventually rise above what we currently receive from the commonwealth government.

As a person who is greatly concerned about the quality and standard of public education, public health and many other public services, I see that as a good thing and far better than commonwealth Labor and Liberal governments have done to this state in recent years. Frankly, the hypocrisy of the Labor Party which at a commonwealth level has been cutting money to the states while the state members go running around complaining about the levels of services is absolutely breathtaking. So, I see this as part of that overall package. Whilst the state is seeing a cut in revenue in some areas, this has been worked in as part of the overall GST package. On the swings and roundabouts, within a couple of years we in the state of South Australia will be significant net beneficiaries as a consequence of the package. For that reason, the Democrats support the bill.

Clause passed.

Clauses 2 to 4 passed.

Clause 5.

The Hon. R.I. LUCAS: I wish to move my amendments en bloc. I move:

Page 7—
Line 4—Leave out '1 January 2001' and insert:
the relevant date
Line 11—After '1972' insert:
but does not include a receipt, ticket or other document issued when or after payment is made
After line 13—Insert:
'relevant date' means—
(a) for a government account for, or including, a charge for compulsory third party motor vehicle insurance—1 July 2003;
(b) for any other government account—1 January 2001.

I will speak to the amendments; rather than repeat the second reading debate, I thought it made sense to leave this discussion to this clause. To trace the history of this without going into all the gory detail, I remind members that there was a debate some time ago in the House of Assembly in relation to specifying the GST component on government accounts. During that debate, the member for Hart moved an amendment and his explanation made clear that it was to cover not just the usual understanding of the word 'account' but also such items as zoo tickets, which was the example he used. Clearly, what was in contemplation was not only zoo tickets but also bus tickets and a variety of other accounts such as that.

When one looks at the debate in the lower house, one sees that some time was spent talking about zoo tickets and a variety of other items. As it turns out, I understand that zoo tickets are not part of a government account anyway, because the zoo is controlled by a non-government incorporated association. Nevertheless, the intent of the amendment being moved by the member for Hart was clear: it was to include not just the standard form account that might go out from a government department but a range of other tickets such as zoo or bus tickets and a variety of other items.

There was then some further discussion. I think one of the Independents moved a further amendment which they believed would in some way clarify this, that is, that it was to apply not to zoo or bus tickets and the like but to the traditional form of account that we might understand. However, the amendment that was moved by the Independent member did not clarify that issue. I think the member for Chaffey took the view that, because she had indicated her intention or her understanding of this amendment with her further amendment, it would be sufficient for any court to interpret it in that way. However, I am afraid that that is really not the way the parliamentary or legal systems operate when it comes to any issue that might be challenged in a court of law; they end up relying on the precise form of words that is used.

The problem with this is that there were two varying forms of legal advice, and this is not uncommon in these issues. The Independent members advised that Parliamentary Counsel's view was that it could not be read to mean zoo or bus tickets or the like. Crown Law advice which had been provided to the government (a description of which had also been provided to the Independent members) indicated a view that it could not be guaranteed that indeed that would be the way a court would read this provision. That is, it could not be ruled out that a court might not find that, if this amendment were passed, the government would be required to put the GST component on a variety of items such as bus and zoo tickets. The Independent members indicated that that was not what they were supporting and their legal advice indicated that that was not the impact of this amendment.

Even as it moved out of the House of Assembly, that dilemma remained. The legal advice is still conflicting, and that available to the government is still that, even though the member for Chaffey may well believe that her amendment should be read in the way she has indicated, the honourable member's well intentioned views do not necessarily count for much when it comes to a legal argument in the end. That is why, in the interests of trying to resolve this issue, the government is moving a further package of amendments which make quite clear that this measure does not cover a receipt, ticket or other document issued when or after payment is made.

It is intended to cover what the Independents and what I now understand the Labor members in the lower house indicated as their original intention—that is, if the government issues an account to a business or an individual for the delivery of certain services it will have to include the GST component. For example, if the Department of Primary Industries provides a service to a farming company and sends it a bill for $100, it will have to include the GST component. In essence, that is the plain person's summary of the amendment we have before us. From a quick survey of government departments and agencies, it appears that most plan to include the GST component in those types of bills that they send out.

From the state government's viewpoint, we have no hesitation in highlighting the GST impact on various government charges and fees. However, we do not want to have an onerous administrative burden placed upon government departments and agencies which, for example, if it were to include bus tickets, could include significant system costs and changes and a variety of other costs that we believe would be a pointless waste of money.

The point we made to the Independents was that to be required to do this legislatively was not our preferred position. There are examples where we believe it makes less sense to go down this path rather than a more sensible path of deciding on an account by account basis how we should approach it.

Contrary to the claims that were made in the lower house, it is our understanding that no other state has legislated down this path. All of them have basically left open the flexibility for certain accounts not to have to include the GST impact because it may be that it is too onerous or impractical to do so. From the government's viewpoint, in terms of trying to stop waste or any expenditure that need not be incurred for a particular benefit, that seemed to be a sensible course to follow. We believe it would have been sensible to have some flexibility, as all other governments and Labor governments in particular have left for themselves in terms of implementing this broad policy position.

It would appear that the only way that would be achieved—that is, the preferred policy position of this government and all other state governments—is to have a long, drawn-out battle, perhaps leading to a conference of managers between the houses. Given the workload that we have before us in the next four weeks, the government does not believe that this issue warrants that sort of delay.

However, we flag that we have some concerns about being legislatively required to do this as opposed to the commitment that I gave to members of the House of Assembly—that the government would adopt this as a broad policy position, as all other governments have done, and would report on a regular basis in any areas where it did not implement a policy of identifying the GST component on government accounts. As I indicated then, it would then be possible for members to seek legislation to require the government to include it in certain areas if there was a majority view that the government's decision was unacceptable.

As I said, what I think is a reasonable position has not been accepted by the other house. However, the government does not want to die in a ditch on this issue and is moving this amendment to make explicit what members of the House of Assembly hope or believe this clause will now achieve.

The other aspect I need to highlight is the issue in relation to the CTP scheme. As has been highlighted before, there are special transitional arrangements in relation to the GST impact on CTP. The transitional GST arrangements apply to CTP premiums for the first three years, and this allows CTP insurers to claim a credit on payouts to businesses which minimise the GST impact on business CTP premiums for this three year period. As a result, during this transitional period businesses cannot claim an input credit on CTP premiums. These transitional arrangements were put in place at the request of CTP insurers to enable sufficient time to modify systems, etc., through motor vehicle registration agencies. After the three year period the federal legislation will require that the GST component of CTP premiums be shown separately given that it appears on an account with other government charges which are GST free.

In relation to this amendment, I am further advised that CTP insurers, as a result of the transitional arrangements, had been lobbying the commonwealth to exclude it from the requirement of the GST legislation to issue a tax invoice. In May this year the commonwealth tabled a range of amendments to the GST legislation in federal parliament which removed the requirement for tax invoices to be issued for CTP insurance until 1 July 2003, that is, this transitional period. Given the specific federally legislated and approved arrangements for CTP for this transitional period of three years, from the government's viewpoint it makes sense that we similarly adopt that position in South Australia for that three year period, and after that it will need to apply, as I have already indicated.

We publicly announced last November, I think, that the GST impact on CTP premiums was 5 per cent. There is no state government secret in relation to that: that was publicly announced. However, we believe that the specific and special transitional arrangements the commonwealth has allowed in relation to CTP should be reflected in our legislation as well.

The Hon. P. HOLLOWAY: In view of the Treasurer's comments, the opposition will not oppose the amendment. As the Treasurer indicated, the amendment originally arose from my colleagues in the House of Assembly and was subsequently modified by the Independents in that house. It was the opposition's preferred view that, wherever the GST applied to government charges, it should be completely transparent. We accept that there has to be some practical restraint on that, and that is why the opposition in another place agreed to the amendments that were moved in that house that sought to clarify it. We are prepared to accept the reasons the Treasurer has given, that there is an arrangement in place in relation to compulsory third party insurance. We do not oppose the amendment.

The Hon. M.J. ELLIOTT: It seems to me that this whole clause has been nothing more or less than a Labor stunt. The fact is that there have been many taxes on many things for years and the Labor Party has never before attempted to put any of those on to any account, but it has done it on this occasion. The fact the government is succeeding I presume means that there is one more Independent in the other house that I had not counted, like Peter Lewis, because otherwise there would not have been any need for this clause. As the government appears to be accepting it with amendments, so be it. As I said, it is nothing more or less than a stunt, and it is totally unnecessary. Members of the Labor Party are hypocrites: they have never previously attempted to do this sort of thing in relation to any other taxes on anything else.

The Hon. P. HOLLOWAY: I will respond to those comments, as you would expect, I am sure, Mr Chairman. It is a bit rich from the Australian Democrats, who are the ones who have given us the GST. They went to the last election—

The Hon. M.J. Elliott interjecting:

The Hon. P. HOLLOWAY: Well, we will see just how proud they are when the next election comes around and the people of Australia have a chance to pass their verdict on it. But the Australian Democrats went to that federal election making promises that they would not support a GST. In the end they did this deal with the government and, of course, we have had this absolute mish-mash. Their changes have totally complicated it, and, of course, we can see in some ways the Democrats are trying to bail out now.

The Hon. M.J. Elliott interjecting:

The Hon. P. HOLLOWAY: Look at the situation with the federal government over beer at the moment.

The Hon. M.J. Elliott interjecting:

The CHAIRMAN: Order!

The Hon. P. HOLLOWAY: The Democrats are now trying to completely disown what they agreed in relation to beer. But it is a bit late. This is the first time in some 25 years that the Australian Democrats have actually tried to play in the big league and to do deals with the government, and look how it has backfired. It has caused all sorts of trouble. It has divided them. We have Senator Stott Despoja desperately trying to disown the deal. I think she voted against parts of it, or all of it.

The Hon. M.J. Elliott interjecting:

The Hon. P. HOLLOWAY: Well of course they do, because it is completely irrelevant. But there had to be enough of them to get the numbers through, of course.

Members interjecting:

The CHAIRMAN: Order!

The Hon. P. HOLLOWAY: Even with seven or eight of them—or how ever many there are now—they could not get unanimity on this issue.

The Hon. M.J. Elliott interjecting:

The Hon. P. HOLLOWAY: Well, we go to the people giving a position and we stick with it.

Members interjecting:

The CHAIRMAN: Order!

The Hon. P. HOLLOWAY: The Labor Party puts its views and it sticks to them, and we intend to do that. I think it is incredible that the Hon. Mike Elliott, who always says that the Democrats stand for accountability, apparently thinks that on this matter, when a tax is being proposed by his colleagues federally, we should not know about it. I am sorry, but he is wrong on this matter. I am pleased to see that the House of Assembly supported this resolution, and we will certainly support it here so that the people of Australia and the people of this state will know exactly what they are paying in the tax that the Democrats and the Liberal government have imposed upon us.

Suggested amendments carried; clause as suggested to be amended passed.

Clauses 6 to 27 passed.

Clause 28.

The Hon. R.I. LUCAS: I move:

Page 15—

Lines 5 to 18—Leave out the definition of 'exempt transaction' and substitute:

'exempt transaction' means a conveyance of a quoted marketable security made after 30 June 2001 (other than one arising out of a sale or purchase of the marketable security before that date);

Line 20—Leave out 'definition' and insert:

definitions

After line 20—Insert definition as follows:

'quoted marketable security' means a marketable security that is quoted on a recognised stock exchange;

Lines 23 to 27—Leave out paragraphs (c) and (d) and insert:

(c) by inserting after section 90AB the following section:

Exempt transactions

90AC. (1) No duty is payable under this Part in relation to an exempt transaction.

(2) No return is required under this Part in relation to an exempt transaction.

Line 30—Leave out 'transfer' and insert:

conveyance

I have moved these as a package as they are all consequential on each other. This is a technical amendment. Consistent with the intergovernmental agreement, the marketable securities provisions of the bill seek to exempt from stamp duty conveyances of quoted marketable securities made after 30 June 2001. Consultation with industry took place, but following further late comment from industry it has been identified that the amendments only exempt the sale or purchase of marketable securities made through a broker rather than the conveyance of all quoted marketable securities, irrespective of whether they are sold or purchased through a broker; or, for example, conveyances purchased through a securities clearing house.

The Hon. P. HOLLOWAY: We understand these are technical amendments and we do not oppose them.

Suggested amendments carried; clause as suggested to be amended passed.

Schedule and title passed.

Bill read a third time and passed.

SUMMARY OFFENCES (SEARCHES) AMENDMENT BILL

In committee.

(Continued from 2 May. Page 994.)

Clause 3.

The Hon. R.R. ROBERTS: These matters were canvassed quite extensively during the second reading debate, and there is an amendment before the committee. Whilst I was not handling the bill at that time, I have read the contributions of all members. I say at the outset that this amendment, which is moved by the Labor Party, provides that 'except where the detainee objects or it is not reasonably practicable to do so, an intimate search must be recorded on videotape.'

This provision gives all the options to the police, because the bill contains a number of reasons where videotaping may not be reasonably practicable or required, for example, if they do not have a camera on at the time or if it has broken down. The legislation ought to protect the rights of the citizen, not necessarily those of the police. I am not saying that we should abandon the police or the correctional services officers in the pursuit of their duties, but I think it is a fundamental tenet of British law that most people are deemed to be innocent when they enter the system. We are talking about detainees who have been either convicted or charged and held, and I believe that every human being has the right to dignity.

Intrusive searches are being conducted today, and they always have been. On most occasions, another person must be present to ensure that the rights of the detainee and the people who conduct the search are maintained. If a search is to be videotaped, it demands that the detainee must bare all and suffer the indignity of an intrusive search and that it be recorded on video, principally, it would seem, to avoid the cost of having a proper witness present. Under this legislation, videotaping is available for those who want to have the procedure videoed in order to produce evidence in court. They have the right to do that, but the legislation also proposes that, because of religious beliefs or personal beliefs or just the fact that they do not want—

The Hon. T. Crothers: How about medical beliefs?

The Hon. R.R. ROBERTS: For medical beliefs also. If they do not believe in this type of procedure being recorded, they should have the choice to do what is done today. They will suffer the indignity of a search anyway, but if they do not want the search to be recorded I submit that they should not have to. The Attorney-General has filed an amendment to this provision. Obviously, this amendment was filed in response to concerns expressed by the Hon. Mr Crothers during his contribution—

The Hon. K.T. Griffin interjecting:

The Hon. R.R. ROBERTS: You are actually looking for a vote. The Attorney-General is employing a tactic which has proved to be successful in the past where, at a certain stage when the votes of certain members have not been attracted, operations are suspended, a fair amount of lobbying and convincing takes place, and the appropriate amendment is trotted out. According to the Attorney-General, the appropriate amendment is that the fine for breach of this provision be set at $10 000. In many states of America, the death penalty applies to anyone who is inclined to commit this type of an offence, but the crime rate has not been affected whatsoever.

So, whilst the Attorney might have put this offer in an attempt to solicit the vote of the Hon. Trevor Crothers, it does not take away the indignity that will be suffered by these people who, in some cases, will later be proven innocent. It is not as though correctional services officers and the police do not have the option of conducting a search in order to gain the evidence they require; the procedure is available. Detainees who wish to have the procedure recorded on videotape (for whatever reason) have the right to do so. Those who do not ought to have the same human right to reject it, because the only cost involved will be to do what is done today, that is, to have an independent credible witness present to ensure that the rights of the detainee, the correctional services officers and the medical practitioner (if one is present) are maintained so that people do not get tripped up in the court proceedings.

I support the amendment moved by me on behalf of the Hon. Carolyn Pickles and the proposition of the Hon. Ian Gilfillan, which, I understand, is almost the same. I ask the committee to understand that I came into this matter late but that these are the instructions that I have been given.

The Hon. IAN GILFILLAN: I move:

Page 2, lines 22 to 32—Leave out proposed paragraphs (e) and (f) and insert:

(e) except where the detainee objects or it is not reasonably practicable to do so, an intimate search must be recorded on videotape;

(f) before an intimate search is carried out, the member of the police force supervising the search must—

(i) read aloud to the detainee (with the assistance of an interpreter if one is to be present during the search) a written statement, in a form approved by the minister, explaining—

(A) the value of recording the search on videotape; and

(B) that the detainee may object to the search being so recorded; and

(C) that if the detainee objects to the search being recorded, it will not be recorded; and

(ii) provide the detainee with a copy of the written statement;

The Hon. T. CROTHERS: If only for the sake of rebutting the assertion made by the last speaker that I can be bought for 30 pieces of silver, I indicate that I oppose the amendment moved by the Hon. Ron Roberts. I would like to think that I will address myself to this matter in a meritocratic fashion. As an Independent member, I am not like any member of the major parties who must determine matters in accordance with political correctness. As I said the other day when addressing the Young Offenders Act, this parliament must keep abreast with changes in society. Failure to do so on our part will lead to this parliament becoming a reactive parliament as opposed to one that is right up with the pace.

The major reason, if not the reason, for conducting an intimate search relates to the fact that, today, society has become awash with drugs. If you assert that a search can only be conducted with the permission of the detainee, you are protecting people who potentially may be hiding drugs anally or vaginally.

The Hon. Mr Roberts said that the public has to be protected. The public does have to be protected: it has to be protected from drug traffickers, albeit, I suggest, that we do not get the big fish; we get only the little fish, the traffickers. I understand that our prisons and other areas of confinement for people who have been found guilty of offences and who are detained because they are facing serious charges are absolutely awash with drugs.

Obviously, that is not due to the secretive carriage of those drugs by people into the prison; it is due to some corrupt officials being able, if the right amount of money is provided by a prisoner, to smuggle in those drugs. I am talking about officials within our prison system, within our police system. As America and Colombia have shown, if sufficiency of money is available—which there is through drugs—you can buy anyone; that is, those people who, unlike myself, can be bought. I cannot be bought.

I like to think that I consider matters on their merit, and I am supporting the Attorney's bill in this respect subject to my suggested amendment to the Attorney, which he took up. I had in mind the proper protection of people in the following respect. After the mass murders committed by two young students over in America, we found that the fire department in that state had videotaped the scenes of the carnage, I think after the bodies were removed, and then one of the fire department's officers sold it for 30 shekels of silver to a television station, which then broadcast it—gore, blood and all.

It was for that reason that I wanted the harder sentence than the $10 000 fine; so that the presiding officer of the court could then, if he or she saw fit to do so, impose a much harsher sentence if some of our officials were to carry out the same sort of absolute repulsive behaviour they did in America. That is why my suggested amendment to the Attorney went in, and I have not spoken to him since about the matter. So much for his kibitzing me or lobbying me!

Anyhow, I like to think that the Attorney is a fair judge of character and he knows, as I know in my inner self, that I am not a person to be meddled with when it comes to making up my own mind as to how I shall vote or what I shall do apropos a certain matter. I again put to this chamber, and again take up the refrain of the Hon. Ron Roberts, that in the interests—

The Hon. L.H. Davis: Do you call that a refrain?

The Hon. T. CROTHERS: My refrain as previously stated; this was a personal refrain. I shall again take up my personal refrain, stated earlier in my contribution, that the public does indeed need to be protected from the drug traffickers and drug peddlers in our society, particularly amongst our young. Of course, we know ever since the time of the first secret service, probably back in the time of Adam and Eve when Cain killed Abel—probably the first secret service that ever existed—that anal and vaginal passages have been used to secretly cache or hide coded messages or any other matter that can comfortably fit into those areas.

Indeed, condoms are not beyond the use of people. Many of them have burst in people's stomachs when they were using them to smuggle drugs across state borders. For all those reasons, which I think have merit, I will be supporting the Attorney's bill. I will be supporting the wording of the present clause and, hopefully, a sufficient number of members in this committee will support my suggested amendment to the Attorney, which stands in his name, as a way of dealing with the problem of those who have access to videotapes that have accumulated during the currency of those searches, should they attempt to make money out of them by selling them to the pornographic niches and other niches that currently exist in our society.

The Hon. IAN GILFILLAN: I support the amendment. Quite simply, it stands as a matter of civil liberty that a person who is presumed innocent has and should have and retain the right to say, 'No, I do not want a procedure videotaped.' In relation to the justification that such a

videotape could be used to minimise complaints against police, in an earlier contribution I indicated the actual data. The number of complaints laid over the past four years during which records were kept, from 1994 to 1998, was eight in total. It is a minimal area of concern either to the police or to the public at large, and I do not have a clear understanding of the Hon. Trevor Crothers' contribution.

The videoing in no way excuses or exempts the person from having to undergo the procedure. The intimate search proceeds whether or not it is videotaped. So, the apprehension of a drug-carrying individual will take place regardless of whether or not it is videoed. This argument on the basis that it will attack drug peddlers and reduce the introduction of drugs into certain areas is irrelevant, because the search takes place; the deterrence takes place. The only thing that would occur, if the amendment that I and the Hon. Ron Roberts are supporting was passed, is that a person would have the right to say, 'No, I do not want this particularly private intrusion of my body to be captured on video.' The evidence acquired and the effectiveness of a search is in absolutely no whit diminished by the fact that it is not videoed.

The Hon. K.T. GRIFFIN: I will deal first with some of the remarks of the Hon. Ron Roberts. I suspect that he is trying to be colourful rather than accurate, but I take some exception to his assertion on this occasion that the debate has been taken so far and then it has been a matter of lobbying and picking off members to try to get adequate support. As the Hon. Trevor Crothers has indicated, he raised the issue—

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: He raised the issue in the Council and I responded: simple as that. I said that I would give some consideration to it. I decided that it was worth upgrading quite significantly the penalty for improper use and distribution of a video recording. That is how that all came about: there was no sense in which I had to go cap in hand to and consult with the Hon. Mr Crothers or anyone else. It was all done in the public arena, on the public record.

The other point I want to make is that it is very interesting that the Hon. Ron Roberts should say that penalties will not necessarily stop crime. That is quite contrary to what his colleague Mr Atkinson (the shadow Attorney-General) and his Leader have been promoting, because in the broader debate about law and order it is always about increasing penalties. Now we have the Hon. Ron Roberts honestly reflecting upon the fact that these sorts of upping-the-penalty provisions will not necessarily stop crime.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: That is what you said. But, in relation to this offence, it is not an issue in the normal run of issues relating to criminal behaviour. We are dealing with people who know the law, who are undertaking the videotaping, who are processing it, and who are generally men and women of integrity. They are subject to a great range of disciplinary processes that other members of the community are not. I certainly would not put this in the same category as any other law and order type issue.

At the appropriate time I will be moving an amendment dealing with what I see as the relevant issues. It is probably appropriate that I speak now to my amendments, to put on the record the basis as to why I do not support either the opposition's amendments or the Hon. Mr Gilfillan's amendments. However, I must say that there are some aspects of the Hon. Mr Gilfillan's amendments that I am prepared to acknowledge have merit and are on file in a different form. I will deal with those amendments in a moment.

The Hon. T.G. Cameron: You will not be supporting them?

The Hon. K.T. GRIFFIN: No, not all of them. I have put amendments on file in a different form, and they pick up several of his issues. They are in a different form because I do not necessarily agree with every aspect of what he is proposing.

An honourable member interjecting:

The Hon. K.T. GRIFFIN: Yes, they are all on file. First, I will deal with the issues raised by the Hon. Mr Crothers. He asked whether the police record what is taken from a person in the course of a search. He was particularly interested in knowing whether the police simply would record that money was taken or whether they would record that $100 was taken—that is, to what extent the items are itemised. I indicated that I believed that all items were recorded and itemised but undertook to double check and get back to the honourable member in committee.

I have double checked this matter with the police and I am informed that South Australia Police (SAPOL) has confirmed that all items removed from the detainee in the course of a search are itemised and a receipt for these items is given to the detainee. SAPOL's general duty manual, which contains basic instructions to all police officers, states:

> When an officer removes articles from the detainee, money and other property must be checked and the officer must make sure that these items are itemised on the receipt.

That is a basic instruction that must be followed by all police officers.

The primary issue that concerned the Hon. Mr Crothers was the security of any video recordings. I certainly agree that security of the recordings is an important issue. I have indicated previously that new subsection (3e) provides for an offence, as follows:

> [to play], or cause to be played, a videotape recording. . . .except—
>
> (a) for purposes related to the investigation of an offence or. . . misconduct. . . ; or
>
> (b) for the purposes of, or. . . related to, legal proceedings, or proposed legal proceedings. . .

Currently, in the bill—as the Hon. Mr Crothers has indicated—the maximum penalty for this offence is $10 000. I have placed an amendment on file that picks up the suggestion made by the Hon. Mr Crothers that the maximum penalty for committing this offence will be $10 000 or two years' imprisonment. That would place the offence in the highest level of summary offences.

The Hon. Mr Crothers has also raised an issue about the proposed contents of the regulations, because that was an issue about what had to be recorded and what steps were taken to protect the integrity of the video recording. I can indicate that, while there has been no final decision taken on the contents of the regulations—on the basis that it is unusual to formulate regulations before the legislation is passed—I can give an indication of the proposed drafting instructions that would be used as the basis of the regulations. I can also indicate that the regulations will need to be the subject of consultation with police and others to ensure that they operate properly on a practical level.

The regulations will provide that videotape recordings and written records are kept in a secure place (except while being dealt with under subsection 3e), with access confined to those required to deal with the recording or records. The regulations will require a record to be kept of any person who has access to a video recording or written record and of all movements

of video recordings and written recordings. For example, I would propose that each tape be given a unique identifier, with details relating to the tape to be recorded in a bound record book to be used for the purposes of logging the creation, movement and destruction of the records.

An authorised officer will be responsible for auditing that record book and ensuring all video tapes and written records are accounted for at all times. The record book should include prescribed information such as: the date received into storage, the record's identification number, the date removed from storage, the reasons for removal, the name, rank and station of the person removing the tape (or equivalent details if the person is not a police officer), the signature of the person removing the tape, the date returned, and the signature, printed name and rank of the person receiving the tape.

The regulations will also need to regulate any copying of video recordings made under the section. The regulations will provide that only authorised persons are permitted to carry out the copying, and any copies must be given an identifying number, and any movements logged in the record book. The record book will also need to include details as to why the copy was made (which, most commonly, will be because the detainee has requested a copy of the tape). This will ensure that no unauthorised copying takes place.

In addition, the regulations will provide that where a video recording is to be destroyed under subsection 3f a record must be kept of the time of destruction, the method of destruction, and the name of the officer destroying the video recording or written record and copies. The regulations could also provide that the destruction must be carried out by an authorised officer who will be responsible for destroying all video recordings and written records (including any copies, except for the copy provided to the detainee) made under the section. I hope that that gives some clear indication of the government's intention, remembering that the regulations, when made, will be available both for scrutiny and ultimately for disallowance, if that is the view of the interested parties.

The amendments which I have on file with which I would like to deal to finalise my contribution may also expedite consideration of this bill. My amendments will clarify a police officer's obligations to explain certain matters to a detainee. Everybody has picked that up as an issue which should be better addressed than it is in the bill. The bill presently provides that before a search is conducted the member of the police force supervising the search must explain to the detainee:

(A) the value of recording the search on videotape; and
(B) that the detainee may object to the search being so recorded; and
(C) where relevant, that if the detainee objects to an intimate intrusive search being recorded, the intimate intrusive search will not be recorded;

It is the government's view that a police officer should inform the detainee why the search will be video recorded—that is, to provide an independent contemporaneous record of the search—and that the video recording has general benefits, that is, that the recording is independent evidence of the performance of a search. It is also important that the detainee know his or her rights with respect to the videotaping, and this is why the provision was inserted in the first place. However, as all honourable members would be aware, the Police Association of South Australia expressed concerns about the provision on the basis that the association assumes that the provision will require a police officer to undertake the role of a solicitor and provide legal advice.

I am not convinced that the Police Association's interpretation of the provision is correct. However, equally the government recognises that there is no harm in clarifying a police officer's obligations. These amendments are in very similar terms to the amendments placed on file by the Hon. Ian Gilfillan and in principle have the same effect. Essentially, the police officer will be required to read out a written statement, in a form approved by the minister, which explains certain matters. However, the government's amendments are worded in such a way that a police officer must first provide a copy of the written statement to the detainee and then read a copy of that statement. The government's amendment also recognises that it is necessary to read this statement only if it will be reasonably practicable to videotape the search. There is no need to inform the detainee of matters relating to the videotaping of the search if the search cannot be video recorded.

The Hon. Ian Gilfillan's amendment will require a police officer to read the statement, regardless of whether or not it is reasonably practicable to video record the search and deals with this matter in the reverse order, that is, the written statement is read and then handed to the detainee. The government amendment also does not adopt the proposition that was included in the Hon. Ian Gilfillan's amendment. The search will not be recorded if the detainee objects to the recording of the intimate search, regardless of whether or not the search is intrusive. Therefore, I move:

Page 2, lines 26 to 32—Leave out proposed paragraph (f) and insert:

(f) if, apart from the question of whether or not the detainee objects to the recording, it is otherwise reasonably practicable to record an intimate search on videotape, the member of the police force supervising the search must, before the search is carried out—
  (i) give the detainee a written statement in a form approved by the Minister outlining—
    (A) the value of recording the search on videotape; and
    (B) that the detainee may object to the search being so recorded; and
    (C) where relevant, that if the detainee objects to an intimate intrusive search being recorded, the intimate intrusive search will not be recorded; and
  (ii) read the statement to the detainee (with the assistance of an interpreter if one is to be present during the search).

The Hon. R.R. ROBERTS: I did not know my entry to the debate would cause such a furore. To correct the record, the Hon. Trevor Crothers suggested that I had somehow said that he could be bought for 30 pieces of silver. I have not made that statement at all: I said that he was lobbied. I did not know that that was a sin around here: I thought that it had been going on for at least 100 years. I wonder why he was so sensitive about the matter. I want the Hon. Trevor Crothers to know exactly what he is talking about because in his contribution—

The Hon. K.T. Griffin: Doesn't he know what he's talking about?

The Hon. R.R. ROBERTS: I do not think he does, quite frankly, and I am happy to explain why. I will quote you in my explanation. The Hon. Trevor Crothers was talking about videoing an intimate intrusive search. His whole contribution was about the intimate intrusive search. I am not actually talking about this. The Hon. Ian Gilfillan's amendment and my amendment talk about the intimate search. That means where they go in and put hands into the crotch or groin area or on the buttocks or, in the case of a female, around the

breast. This amendment suggests that under those circumstances the detainee ought to have the same rights as he has under the intrusive intimate search, about which the Hon. Trevor Crothers made a long contribution.

In the circumstances in which the Hon. Trevor Crothers made his contribution, the detainee does have the right to refuse. In the very circumstances to which the Hon. Trevor Crothers directed his remarks, the detainee does have the right to object. As I said in my first contribution, a qualified third person is present, verifying the fact that the search is taking place in a proper manner. I said in my first contribution that, in the case of the intimate search, that does not occur. The Attorney-General has explained this on two occasions and I understand that on this occasion the honourable member engaged in another conversation. I will read it again, quoting the Hon. Trevor Griffin (page 990 of *Hansard)* as follows:

> An intimate intrusive search will be videoed unless the defendant objects.

Clearly, in the circumstances you have the right to object. As I also said in my opening remarks, an independent third person is there. With an intimate search the searcher, wherever practicable, should be someone of the same sex, unless the detainee requests otherwise, so they have a choice in that regard. The amendments moved by the Hon. Carolyn Pickles and the Hon. Ian Gilfillan both provide that you should apply the same principles. You can video it if the detainee does not object, but if they object for religious or other reasons the options are as reinforced on page 3 of the bill in new subsection (3a), which provides:

> (3a) In deciding whether it is recently practical to make a video recording under this section, the following matters must be considered:
>
> (a) the availability of the recording equipment within the period for which it would be lawful to detain the detainee;
>
> (b) mechanical failure of recording equipment;
>
> (c) any objections made to the recording by the detainee;
>
> (d) any other relevant matter.

If a person is detained and a search is to take place, this legislation requires that a video recording take place, unless they do not have the gear. All the options go that way. The amendments of the Hon. Carolyn Pickles and Hon. Ian Gilfillan simply require that you provide the same instruction if it is an intimate search—and therefore that would mean that you would have another qualified person there to witness the search if they did not want a video—as you would in an intrusive intimate search where, because it is mandatory for the third person to be present, you do not need to video. We are saying that, if it is an intimate search, all that correctional services officers have to do, if the detainee has a religious belief or simply does not want to be videoed, is to have present a credible third person. That is what it means.

The Hon. K.T. Griffin: That is not what the amendment says.

The Hon. R.R. ROBERTS: It does say that. So we are talking about the intimate search and all that has to happen is that, if the person does not want to be videoed, under those circumstances he has the same rights as if it is an intimate intrusive search. That is all that is really required. If it is an intimate intrusive search, it is fair enough for the purposes of the evidence and the court proceedings to have a third credible witness present—a doctor or nurse—and the equivalent should apply in an intimate search. Obviously, the Hon. Trevor Crothers is committed to supporting the Attorney-General, but what is happening needs to be very clear. If we are to vote a certain way, let us vote that way for the right reasons and not for the wrong reasons.

The Hon. K.T. GRIFFIN: The honourable member does not understand his own amendment, because it does not provide that with intimate searches a third person should be present if that is the choice of the person who is being searched. Even if it did provide that, I would still object to it, because it is impractical and the videotape recording process is by far the preferable way to go.

The Hon. T. CROTHERS: I rise again by way of rebuttal. I am told that I was erroneous in part of the contribution I made. I remind the Hon. Ron Roberts, in case he has forgotten, that he referred to my amendment in his first contribution and I was addressing myself to that very matter, which was my amendment. I remind him of that, in case he thinks, as he said, that I was talking to the wrong amendment. I asked the Attorney to consider moving an amendment, which he has subsequently done, but it was the Hon. Ron Roberts in his first contribution in opposition to the Attorney's bill that introduced that matter. I subsequently gave a number of reasons why I believed that was necessary. It was the Hon. Ian Gilfillan who talked about civil liberties, as indeed did a number of members who have spoken today, when last we visited this matter. So, I correct the Hon. Ron Roberts and, again, in his second mistake—

The Hon. L.H. Davis: He needs correcting.

The Hon. T. CROTHERS: Yes, I understand that, but sometimes it is like trying to teach algebra to students who do not want to learn. Having said that, I will paraphrase the immortal Dr Johnson who said, 'Oh, civil liberties; what foul deeds are done in thy name?' I conclude by saying—

The Hon. R.R. Roberts interjecting:

The Hon. T. CROTHERS: Listen and you might learn; you are not as good as you used to think you were. There are those here who are better and more intelligent than you. Never mind; let the rest of the committee judge for itself.

The Hon. T.G. Cameron: It would be quicker to name those who are not.

The Hon. T. CROTHERS: Do you have a couple of pencils?

The Hon. R.R. Roberts: You don't need to out yourself for us, Trevor.

The Hon. T. CROTHERS: I would not do that, Ron, as you know from my previous history. I want to say this: people talk about civil liberties, but what about the civil liberties of the kids who are being hooked on speed and marijuana (and I believe that marijuana should be decriminalised) before getting them onto the big league drugs such as heroin, which is so easily secreted anally, vaginally, at the curvature of the female mammary glands and in other spots—who knows just what the mind of man and woman can devise when they seek out to engage in the illicit drug trade by illegally transporting heroin for sale locally or across national or international borders? I support the Attorney.

The Hon. T.G. CAMERON: The amendment of section 81(2)(a) provides that a search may be carried out only by a member of the police force. Is it the government's intention to in any way regulate which police officers may carry out this search?

The Hon. T. Crothers interjecting:

The Hon. T.G. CAMERON: I understand that that is the case, but would they have any medical training or will there be any regulations?

The Hon. K.T. GRIFFIN: I understand that the present practice allowed under police general orders and the law is

that, when a person is detained and brought into the police station, the investigating officer will conduct the search in the station. If it is an intimate search, again, it will be carried out within the station by the investigating officer with another police officer present. But that is not regulated by the general law. We are seeking to set down a clearer process. Intimate and intrusive searches are now conducted by a medical practitioner or registered nurse, and the bill does not change that. This bill seeks to establish a clearer procedure than is presently provided. In relation to my amendment to increase penalties for improper use of video recordings, I have indicated to the Hon. Mr Crothers that, in consultation with the police, regulations will be prepared to regulate the way in which the recordings are used and handled.

At this stage I do not believe that a regulation would deal with the issue of the rank of an officer who might be required to conduct a search. The difficulty with authorising rank is that, in some country locations or even in some local suburban stations, if you put, say, an inspector over that, frequently an inspector will not be available to give the authorisation. Even a sergeant might not be available to give that authorisation. I understand that presently that process is regulated by the police general orders.

The Hon. T.G. CAMERON: The Hon. Ian Gilfillan's amendment to clause 3, page 3, lines 36 and 37 proposes to leave out 'on payment of the fee fixed by regulation' and insert 'free of charge'. What would be the charge and what is the Attorney's attitude towards that fee?

The Hon. K.T. GRIFFIN: The government's attitude is that—

The CHAIRMAN: Order! The Hon. Mr Cameron has asked a question, and the Attorney wants to answer it.

The Hon. K.T. GRIFFIN: As with the forensic procedures legislation, the fee for the provision of a copy of the videotape will be set by regulation, so it will have to be laid before both houses. In respect of forensic procedures (and members should remember that the Forensic Procedures Act allows a defendant to obtain a copy of a videotape), the charge is currently $10 for a videotape and, in relation to records of interviews, the fee prescribed for obtaining a copy of the audio track of the interview or copy of the audio tape is also currently $10. The government would be concerned if there was no fee; we are endeavouring to ensure consistency with the Forensic Procedures Act and, as the honourable member can see, that hardly covers the cost of the tape, let alone—

The Hon. T.G. Cameron interjecting:

The Hon. K.T. GRIFFIN: They may want it for defence purposes.

The Hon. NICK XENOPHON: With regard to the approach being adopted in this bill to videotapes being made as a matter of course for intimate searches, as distinct from intrusive searches, what is the position in other states? Do any other states have a similar method of recording these sorts of searches as a matter of course, or is this something in which South Australia is unique?

The Hon. K.T. GRIFFIN: My understanding is that this is not yet the position in other jurisdictions. The Queensland Criminal Justice Commission has a reference to look at intimate searches and intimate intrusive searches, part of which is the issue of videotaping. My recollection is that, when we got to the videotaping of the taking of statements, we were at the forefront of that practice around Australia on the basis that it provided incontrovertible evidence of both the means by which the statement was obtained and the demeanour of both the questioner and the accused, and was evidence which led to many fewer challenges as to both the validity and quality of the statement that was being taken. I suggest that the same motivation and principles will apply in this case.

The Hon. NICK XENOPHON: In terms of the current position with respect to searches, to what extent is evidence contested on the basis that the search was somehow improperly carried out? To what extent is it a problem in the criminal justice system, from a prosecutorial point of view, that they are not videotaped? Clearly, the Attorney-General is seeking to remedy a problem that currently exists in the criminal justice system in terms of challenges being made, and some would say unnecessarily. Can he enlighten the committee in relation to that?

The Hon. K.T. GRIFFIN: The Hon. Mr Gilfillan has already indicated that the statistics kept by the Police Complaints Authority show that not many complaints have been made in relation to searches of an intimate nature. The basis for this legislation is not the number of complaints but, rather, the significance of such a complaint and the issue of personal humiliation and attack on human dignity that might be the consequence of searches that are improperly carried out. And for police officers there is considerable anxiety and possible adverse consequences if a complaint of an improper search is made which might be substantiated without the benefit of videotape evidence. In those circumstances those complaints are too many, and one complaint is one too many.

In terms of the courts, we do not have any record of the number of occasions when the propriety of the search might be the subject of questioning. In relation to the taking of statements, what prompted that change to the law several years ago was the constant voir dire examination in courts of police officers about circumstances in which statements from accused persons were taken and the allegations of verballing and so on. We have taken the view that this is a necessary improvement to the law and the process, setting out accurately the procedure that must be followed and the evidence that must be obtained to put those sorts of issues beyond doubt.

The Hon. NICK XENOPHON: New subsection (3a) (and I know we are not dealing with it now but in the context of this amendment it is important) provides:

> In deciding whether it is reasonably practicable to make a videotape recording under this section, the following matters must be considered. . .
>
> (c) any objections made to the recording by the detainee;

Does the Attorney concede that that in itself is so imprecise—some could argue vague—that it is open to an enormous amount of contention? I will give several instances. To what extent is a person's religious beliefs—say, a person of the Muslim faith or other certain beliefs—considered with regard to undressing? That could be a particular issue and does not appear to be covered. If a person was in a distressed state, they would find it particularly humiliating. A person who is suffering from a psychiatric illness and who is severely depressed might find the thought of being videotaped extremely distressing.

I can understand the policy considerations behind what the Attorney is trying to do, and, from my limited experience in years gone by in the very few criminal law cases I was involved in as a solicitor, the question of voir dire and court resources are matters to be considered. But I am concerned that the new subsection, in the context of this amendment, leaves open more questions than it seems to answer.

The Hon. K.T. GRIFFIN: What we have endeavoured to do is to try to get a consistency of approach between this new procedure and that part of the Summary Offences Act which deals with recording of interviews. The worst thing that we can have is a whole series of different regimes and procedures under which an interview might be held and videotaped or a search made or forensic material taken. In relation to the criteria, it is important to recognise that there is presently no statutory provision that determines the procedure that must be followed. What we are seeking to do is to try to codify that so that it is clearer for everybody—police, defendants/suspects, and defendant's lawyers.

I draw the honourable member's attention to section 74D of the Summary Offences Act which deals with 'obligation to record interviews with suspects' and, in almost identical terms, it was unnecessarily changed to suit the matter that is being addressed. Subsection (3) provides:

> In deciding whether it is reasonably practicable to make a videotape or audiotape recording of an interview, the following matters must be considered:
>
> (a) the availability of recording equipment within the period for which it would be lawful to detain the person being interviewed;
>
> (b) mechanical failure of recording equipment;
>
> (c) a refusal of the interviewee to allow the interview to be recorded on videotape or audiotape;
>
> (d) any other relevant matter.

Those sorts of matters, particularly where one uses the words 'reasonable' or 'reasonably practicable', are always capable of interpretation, and different interpretations, but what the law seeks to do is to develop the principles, building on the statute law with the benefit of experience. The difficulty is that I do not think you can define more clearly what is reasonable or what is reasonably practicable. They are concepts well known to the law. They are well known to police officers and to the courts, and all that I can suggest is that at the moment this is significantly better than what the law currently provides for.

The Hon. NICK XENOPHON: Does the Attorney concede that there is a difference not in degree but of substance between the recording of an interview of a suspect as to whether they have committed an offence or in putting certain questions to them and the whole issue of videoing a person in varying states of undress for the purposes of a search? Surely there is a difference in substance there as well as degree. I think there is a substantial difference. As I have indicated previously, I think the amendments as moved by the Attorney have merit and I can see the public policy considerations behind them, but I have reservations in the detail with respect to that. One is the issue of cost. I can indicate that if this amendment is passed I will be supporting the Hon. Ian Gilfillan's amendment that it be free of charge. I certainly hope that my colleagues the Hon. Terry Cameron and the Hon. Trevor Crothers consider that.

But in the context of objections there is a fundamental difference between a person of certain religious beliefs taking real issue with being videotaped, photographed, in various stages of undress and a person with a problem in terms of an interview. I am not aware of any religious beliefs where there is a problem in terms of speaking for the purposes of an interview—apart from a Trappist monk. But there is a substantial difference in relation to videoing someone who may be partly undressed, with the concerns that person may have through religious beliefs or in the context of the person being in a fragile emotional state. To what extent will those concerns be taken on board in the context of determining whether that person is in fact videotaped or not? This is an area of concern for me.

The Hon. K.T. GRIFFIN: I acknowledge that there is a difference between videotaping the giving of a statement, on the one hand, and videotaping a search on the other, but we have tried to get consistency of approach in order that we minimise the prospects that police officers, who have a fairly heavy responsibility, inadvertently break the law. All that I can say in relation to this is that we are providing the framework in which searches will be videotaped, which I have argued and I believe is in the interests of both the police officers involved and the accused person, and that it is all directed towards providing better evidence to reduce the areas of dispute and conflict.

In terms of religious and cultural beliefs, I have some recollection of some groups objecting to being filmed at all, which applies equally to those giving a statement as to those being searched, but I must confess I cannot remember the detail. I do not have that recollection which the honourable member does, referring, obviously in a casual throwaway line, to Trappist monks. I can understand the sensitivity of it. What we are dealing with are people who are reasonably suspected of having committed an offence, and we are dealing with a regime which is intended to provide protections, the best protections that we can provide at this stage.

The Hon. T.G. CAMERON: I have a final question. I notice in the amendments to be moved by the Hon. C. Pickles and the Hon. I. Gilfillan that they wish to leave out the definition of 'intimate intrusive search'. If those amendments were to succeed, what are we to take the words 'intimate intrusive search' to mean when they bob up in the bill?

The Hon. IAN GILFILLAN: If the first part of that amendment is successful there will be no distinction between the treatment of 'intimate intrusive'; so there is no point.

The Hon. K.T. GRIFFIN: That is really the answer. What the Hon. Mr Gilfillan is seeking to do is to ensure that there is no difference between the two. We do distinguish between the two sorts of searches, and it is important for the bill that we do distinguish between those two sorts of searches.

The Hon. NICK XENOPHON: I refer to the playing of these videotapes and to proposed subsection (3e), which provides:

> A person (other than the detainee) must not play, or cause to be played, a videotape recording made under this section except—
>
> (a) for purposes related to the investigation of an offence or alleged misconduct to which the person reasonably believes the recording may be relevant; or
>
> (b) for the purpose of, or purposes related to, legal proceedings, or proposed legal proceedings, to which the recording is relevant.

I am worried, Attorney, that there may be some stretching of that particular clause, that police officers may decide that it is within the purpose of the investigation to watch a particular videotape over and over again at various times, and it could involve prurience. Ostensibly it could be for the purposes of the investigation, but my concern is that that could be subject to abuse by some members of the police force simply because it is there and available. Could the Attorney elaborate in terms of the safeguards in that respect?

The Hon. K.T. GRIFFIN: The written law can only go so far. It has to set the principles. It sets the offences. Hopefully, we will be upgrading the penalties in relation to the use of the videotape. We have police disciplinary

processes. We have the Police Complaints Authority. There are a number of safeguards in place, so that if it does happen in the way in which the honourable member suggests then we have fairly powerful means by which those who have abused the system can be brought to account. But in any application of the law you have to have the proof, which means you have to have the evidence, which means also that you then have to have someone who is prepared to identify that the behaviour actually occurred. I really can take it no further than that, other than to say that, ultimately, with all our laws, particularly where it relates to personal behaviour, we have safeguards in place and then it is back to having someone who is identifying the particular problem and then being prepared to stand up and be counted.

The New South Wales Wood royal commissioner was given very wide powers, including the power to install video recording devices in motor vehicles and motel and hotel rooms so that evidence could be obtained. It must be remembered that, if the system is abused—by police officers, in particular, but also by others—to the point where it becomes illegal, there are other means by which investigations can be conducted to obtain evidence to bring a defaulting officer to account. I can take the matter no further.

The Hon. NICK XENOPHON: Does the bill in its current form provide for a detainee to be advised that their objection can be one of the factors involved in the consideration of whether it is reasonably practicable to make a videotape recording of a search?

The Hon. K.T. Griffin: Will the objection be recorded?

The Hon. NICK XENOPHON: Not only will the objection be recorded but, under subsection (3)(a), will the detainee be told that the police, in making a decision as to whether it is reasonably practicable to make a videotaped recording, must consider certain matters, including the availability or mechanical failure of recording equipment or any objection by the detainee? If the detainee does not know that their objection may be a factor in determining whether or not it is reasonably practicable for a recording to take place, I think that, for this safeguard to work, the detainee should be advised that one of the factors that is considered before a search is recorded on videotape is whether the detainee has any objection and that such an objection will be taken into account.

It may be that, in the exercise of the discretion of the police officer, the detainee's objections are not sufficient, but, for this section to work as a safeguard as to whether it is reasonably practicable for a search to be videotaped, surely the detainee will need to be advised that their objection can be taken into account in the exercise of that discretion.

The Hon. K.T. GRIFFIN: I think I understand the honourable member's question. I have acknowledged the concern of the Police Association about a police officer potentially being required to give legal advice, although I am not necessarily convinced by that. My amendment, which is similar to but not on all fours with the other amendment, provides:

> . . . the member of the police force supervising the search must, before the search is carried out—
>
> (i) give the detainee a written statement in a form approved by the minister outlining—
>
> (A) the value of recording the search on videotape—
>
> (B) that the detainee may object to the search being so recorded—
>
> if the detainee objects, that objection will also be recorded—
>
> (C) where relevant, that if the detainee objects to an intimate intrusive search being recorded, the intimate intrusive search will not be recorded; and
>
> (ii) read the statement to the detainee (with the assistance of an interpreter if one is to be present during the search).

I think that adequately addresses the issue raised by the honourable member. If it does not I will see whether I can take it further.

The Hon. A.J. REDFORD: The Attorney-General referred to sanctions if things go wrong. I wish to put on the record a general comment. The only sanction that I have ever seen that has been visited upon police officers who have collected evidence wrongfully or illegally is the sanction of the rejection of that evidence by the court. This is not the appropriate time to deal with this matter, but I have not seen any observable sanctions imposed upon police officers who have acted in an unlawful manner when collecting evidence other than through this means.

This debate should take place further down the track, but I have often seen situations where judges have been highly critical of the conduct of police officers, yet you see the same police officers appearing in cases subsequent to that. Sanctions may be visited on those officers from an internal perspective by the Commissioner of Police, but I have never seen that.

The Hon. IAN GILFILLAN: I would have preferred to move my amendment to paragraph (e) on its own, because the principal issue which the committee is debating involves the passage or otherwise of paragraph (e). If paragraph (e) is not successful, the balance of my amendment will not apply. It is clear that I would then support the Attorney's amendment.

The committee divided on paragraph (e):

AYES (11)

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

NOES (8)

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

PAIR(S)

Dawkins, J. S. L.	Pickles, C. A.

Majority of 3 for the Ayes.

Paragraph (e) thus passed.

The CHAIRMAN: The next question is the amendment moved by the Hon. Mr Gilfillan and that moved by the Attorney to paragraph (f).

The Hon. IAN GILFILLAN: My amendment to paragraph (f) is not relevant, and I seek leave to withdraw it.

Leave granted; amendment withdrawn.

The Hon. K.T. Griffin's amendment carried.

The Hon. R.R. ROBERTS: On behalf of the Hon. Carolyn Pickles, I move:

> Page 2, lines, 31 to 32—Leave out subparagraph (iii) and insert:
>
> (iii) that if the detainee objects to the search being recorded, it will not be recorded;

This amendment is consequential on the first one; therefore, I do not see any sense in pursuing it.

The CHAIRMAN: The next amendment on file is that of the Hon. Carolyn Pickles to page 3, line 25.

The Hon. R.R. ROBERTS: This was the key to the proposition put by me and by the Hon. Ian Gilfillan that would have made the procedures for an intimate search consistent with those of an intimate intrusive search. We have had extensive debate about it and lost the principal argument on the numbers, so I do not intend to pursue it.

The Hon. IAN GILFILLAN: Before we go to my next amendment, can I ask the Attorney to give an opinion about the deletion of paragraph (c)? Paragraph (c) is covered in the amendment that the Attorney just moved successfully to paragraph (f), that the detainee may object to the search being so recorded. The Attorney may wish to comment on it: I do not wish to belabour the point.

The Hon. K.T. GRIFFIN: I think you leave in paragraph (c), in my scheme of things. If your amendment had been carried, in drafting terms paragraph (c) would have to go. It remains consistent with my amendment.

The Hon. IAN GILFILLAN: In that case, I move:

Page 3, lines 36 and 37—Leave out 'on payment of the fee fixed by regulation' and insert:
free of charge.

I have argued relatively extensively previously and do not intend to go through this again, but I do not believe it is reasonable or fair that a person who has no say in whether or not the video will be taken does not have it available free of charge. As I am sure everyone realises, there can be many reasons. There can from time to time be a need or a desire by the person videoed to have a copy, and the Attorney has identified reasons himself. It virtually adds insult to injury to charge them whatever the fee is. I believe that it should be available free of charge.

The Hon. K.T. GRIFFIN: I oppose the amendment. I am not going to call for a division, although I hope that the numbers are with me. This is consistent with the law as it presently stands. The proposal for a fee is consistent with the provisions under the Summary Offences Act relating to videotaping interviews. We allow an accused and an accused's lawyer to view the videotape free of charge at a suitable location, generally a police station that is identified and agreed.

The Hon. R.R. ROBERTS: I will be supporting this amendment for the following reason. Just encapsulating what we have done today, we can have a situation where six or seven youths can be involved in a rowdy party; the police turn up; they are known to the police; someone smells marijuana; and one of the kids gives a bit of cheek. The police can then take them to the police station and read them their rights, video them being intimately searched and then—the ultimate inhumane act and humility, to really reinforce it—say, 'Now you can have a videotape for which you will pay $10.'

Some of those kids could be completely innocent, yet they are videoed and then asked to pay $10 or $20 for the video. That is what we are doing. We have lost the first amendment so, in respect of this, if people are to be videotaped against their will, they should not have to pay for it.

The Hon. T.G. CAMERON: One wonders, if they were completely innocent victims of some awful police exercise, why on earth they would want a copy of the tape; but I suppose that is a possibility. When I asked what was the cost of the tapes I was quite surprised to find out that it was only $10. If it was $50 or $100, or something like that, the Attorney would not have got my vote on this. The fee is only $10. I would be a little concerned if there was no fee, because everyone would ask for a copy. That is the problem when you make things like this free.

Amendment negatived.

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

Page 4, line 7—After '$10 000' insert:
or imprisonment for 2 years.

The clause provides for a penalty of a maximum fine of $10 000 for misuse of videos, and the amendment adds a penalty of a maximum of imprisonment for two years.

Amendment carried; clause as amended passed.

Clause 4.

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

Page 5, after line 3—Insert:

Amendment of Criminal Law (Forensic Procedures) Act 1998.

4. The Criminal Law (Forensic Procedures) Act 1998 is amended by striking out subsection (2) of section 38 and substituting the following subsection:

(2) If it is reasonably practicable to make a video recording of a forensic procedure, the person who is to carry out the procedure, or a police officer, must—

(a) give the person on whom the forensic procedure is to be carried out a written statement in a form approved the minister outlining—

(i) the value of making a video recording of the procedure; and

(ii) that the person may object to the procedure being so recorded; and

(b) read the statement to the person (with the assistance of an interpreter if one is to be present during the carrying out of the procedure).

The Hon. IAN GILFILLAN: I will not move my amendment but I will speak briefly to the reason for it. The principle could have been applied, and in my view should have been applied, to a separate act, the Criminal Law (Forensic Procedures) Act. At some stage the Attorney may feel inclined to amend the legislation so that there is this written instruction which is available to anyone who, through this legislation, finds themselves being searched. It is unlikely that there will be an international demand for the videos, and I understand that a copy of the video is available only to the person who has been the subject of the intimate search.

I think the Hon. Terry Cameron is quite wrong when he talks about a fee of $10 for the videos. A fee of $10 currently applies in respect of interviews, but I can see nothing that places a lid on how much the government of the day might charge for a video.

The Hon. K.T. GRIFFIN: This is an amendment to the Criminal Law (Forensic Procedures) Act which deals with the issue of the statement required to be given to the accused in relation to a forensic procedure. It ensures consistency with the amendment which was passed earlier.

New clause inserted.

Long title.

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

Page 1, line 6—After 'Summary Offences Act 1953' insert:
and to make a related amendment to the Criminal Law (Forensic Procedures Act 1998.

Amendment carried; long title as amended passed.

The Council divided on the third reading:

AYES (13)

Cameron, T. G.	Crothers, T.
Davis, L. H.	Elliott, M. J.
Gilfillan, I.	Griffin, K. T. (teller)
Kanck, S. M.	Lawson, R. D.
Lucas, R. I.	Redford, A. J.
Schaefer, C. V.	Stefani, J. F.

AYES (cont.)

Xenophon, N.

NOES (4)

Holloway, P. Roberts, R. R. (teller)
Weatherill, G. Zollo, C.

PAIR(S)

Laidlaw, D. V. Pickles, C. A.
Dawkins, J. S. L. Roberts, T. G.

Majority of 9 for the Ayes.

Third reading thus carried.

Bill passed.

[Sitting suspended from 6.15 to 7.45 p.m.]

STATUTES AMENDMENT (CONSUMER AFFAIRS—PORTFOLIO) BILL

Adjourned debate on second reading.

(Continued from 23 May. Page 1073.)

The Hon. CARMEL ZOLLO: I understand this bill amends four acts: the Fair Trading Act 1987, the Land and Business (Sale and Conveyancing) Act 1994, the Prices Act 1948 and the Trade Standards Act 1979. I am certain all fair-minded people are particularly pleased to see part 2, amendments to the Fair Trading Act 1987, the primary objective of the amendments being to target pyramid selling and to standardise a time limit on the instigation of prosecutions of schemes. The 1987 Fair Trading Act currently allows for 12 months. The amendment allows for within two years of the time of the offence or within five years with the authorisation of the minister. These amendments also allow offences under section 57 of the Fair Trading Act to be dealt with as summary offences and not minor indictable offences. An example of this offence is pyramid selling. Investigations into pyramid selling schemes have shown the current one year limit to be too short.

I gave some thought in the last session to asking a question on behalf of a constituent in relation to unsolicited mail, which clearly was a pyramid scheme. For the majority of people such letters are obviously what they are, but the concern I and my constituent had is that we have some very vulnerable people in our society and it makes us angry to see loved ones being exploited. The letter assured its recipients that all one had to do to make at least $100 000 in 90 days or less was to send four $20 dollars notes to four separate addresses to obtain some reports and then partake in lots of photocopying and mailing to as many people as possible. A short, warm, religious message was also included in the mail. The author of the scheme assured everyone that he had already made over $4 million and, as is the case in most of these schemes, people's names from all states were given as an example. The fact that these people do not exist does not seem to deter anyone. I particularly welcome this amendment to the Fair Trading Act.

Part 3 of this bill deals with an amendment to the Land and Business (Sale and Conveyancing) Act 1994. Amendments in this part propose to extend the period in which proceedings can be brought under this Act so that they are in line with those proposed in the Fair Trading Act, and again they are certainly welcomed. The other amendment in the section allows for the inclusion of the words 'prescribed body' as well as 'statutory authority' in the section dealing with providing information to an applicant, reasonably required in a transaction for the purchase of property. I ask the Attorney to advise in committee which prescribed bodies he envisages would be in need of this information other than those who currently have need of relevant information.

Some concern has been expressed by the Law Society, as already mentioned by the Hon. Ian Gilfillan, given that the section also allows a fee to be charged, which is fixed by regulation, that the government 'through its burgeoning and forever reproducing agencies' could seek a fee increase. The point was made that any increase would not be justified unless new information was required to be provided by prescribed bodies. The Attorney may also like to make some comment—and I am sure he will—on those concerns at the appropriate time.

Part 5 amends the Trade Standards Act 1979 so as to enable members of the Trade Standards Authority Advisory Council to be appointed in a different manner from that prescribed. The council plays an important role in advising the minister on matters connected with the administration of the Trade Standards Act, the prescription of standards, the declaration of goods to be dangerous goods or the declaration of services to be dangerous. At the moment the Trade Standards Act allows for nominations to be made by several means. In recent times I understand that it has become difficult to obtain nominations for the council and to constitute the council. This amendment allows for the redesignation of the composition of the council by essentially eliminating the naming of specific organisations and hence greater flexibility in the nomination process.

It is with some personal regret that I see such an amendment. The committee of which I am a member—the Statutory Authorities Review Committee—has received plenty of evidence in its inquiry into boards and committees that a lot of people want to see greater input at the community level on boards and committees. It is disappointing when there are difficulties in obtaining nominations for appointments. Apparently there have been difficulties for the council to be constituted for a variety of reasons, including that one of the nominating organisations no longer has adequate representation in South Australia. This could become an increasing difficulty as organisations rationalise their offices. I do not believe it is necessarily a lack of interest, as is sometimes indicated or implied. It may well be a lack of education and promotion, and it is certainly a general issue that should be investigated further, perhaps by the committee I am on.

The substitution of section 43 under clause 13 again complies with the new time periods allowing for within two years of the time of the offence or within five years with the authorisation of the minister. The two statute law revision amendments under clause 14 allow for the making of regulations as per schedule 4. I indicate opposition support for the legislation.

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their indications of support. I am proposing to speak in reply; if those members who have raised issues need to consider the reply, I am happy to put off the committee consideration until tomorrow. If it is not necessary, that is fine. What I have to say now will address the issues raised by the Hon. Ian Gilfillan and touch upon those concerns which are shared by the Hon. Carmel Zollo. In relation to the institution of prosecutions, that is a matter for the Commissioner of Consumer Affairs. Proceedings are not brought in my name. In the case of the Fair Trading Act, the Commissioner is empowered to enforce the requirements of that act

and related acts by the prosecution of offences and other appropriate action.

In the case of the other legislation the subject of this bill, prosecution cannot be commenced except by the Commissioner, an officer authorised under the appropriate act or a person who has my consent to commence the action. This does not mean that I authorise the commencement of proceedings: I can only say who is to do so. That person should always turn his or her mind to the question of whether or not prosecution is the best way to enforce the requirements of the act in question. This bill only allows me to give them time to collect the necessary evidence so as to allow them to make that decision.

The process of buying and selling land has been made much simpler by consolidating the availability of most of the information in one place through the means of the land information system. This facility is a vast improvement on the need for vendors or their agents to approach myriad bodies for information on over 50 types of encumbrances on land. The amendments to the Land and Business (Sale and Conveyancing) Act are designed to recognise that the responsibility for collating and providing the information has rested with a government department, not a statutory authority.

The honourable member incorrectly described the fee for what are known as 'section 7 statements' as a tax. A tax is a compulsory exaction of money by a public authority for public purposes and is not a payment for services rendered. In the context of the bill, the section 7 statements provide information which must be disclosed to the purchaser, and that information has to be collected, collated and provided. Therefore, the fee is actually a fee for the services rendered. If the agent for the vendor had to individually approach each of the agencies whose entitlements are required to be disclosed, I would suggest that the fee would be much more extensive and expensive than that which is being charged and is proposed to be charged under the principal act.

In relation to the constitution of the Trade Standards Advisory Council, the simple answer is that the bodies mentioned by the honourable member no longer exist as presently described in the Trade Standards Act. Members will be aware that the Chamber of Commerce and Industry merged with the Employers Federation some time ago. The South Australian branch of the Standards Association is now just a shop front from which literature is distributed. The amendments are designed to free up the need for seeking appropriate representatives from designated bodies and the process of doing so. I can say that it is quite frustrating when organisations do not or are unable to nominate. It is my view that the provisions in the bill will facilitate the appointment of members to the Trade Standards Advisory Council and facilitate the operation of the act.

The Hon. Nick Xenophon has informally raised the issue of whether the amendments extending time limits for instituting prosecutions under the acts which are the subject of this bill will operate retrospectively. My officers have consulted Parliamentary Counsel. It has been agreed that the amendments extending time limits for instituting prosecutions under the acts which are the subject of this bill will not operate retrospectively. It has been stated in many cases that the general rule that statutes are not to be given retrospective operation does not apply to statutes that are concerned with matters of procedure only. I cite Maxwell v. Murphy (1957) 96 Commonwealth Law Reports 261. The courts have, however, recognised that a change which might be described as procedural in character may nevertheless affect a vested right adversely. At page 277 of that case Justice Williams stated:

> Statutes which enable the person to enforce a cause of action which was then barred or provide a bar to an existing cause of action by abridging the time for its institution could hardly be described as merely procedural.

In such cases, the approach followed by courts is to hold that the statute is not merely procedural but also affects vested rights and, in the absence of a clear contrary intention, should not be read as having retrospective operation.

I hope that answers all the issues which have been raised by members. If I have not answered them I am happy to do endeavour to do so during the committee consideration of the bill. If any members who have raised issues want some more information, we can consider that today or tomorrow.

In committee.

Bill read a second time.

Clause 1.

The Hon. NICK XENOPHON: I wish to raise one issue that was touched on by the Attorney in the second reading stage, namely, time limits. I know that the time limit for prosecutions is here being extended to two years and, with the Attorney-General's discretion, five years. I note that, with respect to negligence claims, the time limit with respect to personal injury matters is three years; with respect to a civil case involving contract law, the time limit is six years. My question to the Attorney is: given that, with respect to civil damages claims for negligence, the time limit is three years and there is a facility to extend that time limit under provisions of section 36 of the Limitation of Actions Act, and given that in contract law matters the time limit is six years, why is it two years in this case? Certainly it is an improvement. Would you consider or at least concede that this is much more restrictive than, say, the rights of other people at common law with respect to contractual and tortious actions?

The Hon. K.T. GRIFFIN: This is nothing to do with civil law or negligence.

The Hon. Nick Xenophon interjecting:

The Hon. K.T. GRIFFIN: No. In terms of negligence it is in fact six years unless it relates to personal injuries; and for contract, mostly six years, but for certain specialties it will be up to 20 years. In the criminal law, generally speaking the Summary Procedure Act applies to summary offences, and that provides that if the offence is expiable, as I recollect, it is six months; if it is not expiable then it is two years; and the six months for an expiable offence runs from the date when the notice of expiation expires. I think that is correct.

What we have been trying to do throughout our legislation is get some consistency for time limits, although we recognise that there are some differences according to the circumstances of particular offences that have been created in the statutes. Sometimes offences under the Fair Trading Act, such as pyramid offences in relation to pyramid sales, can be particularly difficult to investigate when tracking a variety of people who are part of a pyramid and getting them to provide information and doing the research. By the time it comes to the notice of the Office of Consumer and Business Affairs and has been properly investigated, two years is likely to have elapsed.

So, what this seeks to do is to give the minister the power to authorise an extension of time of up to five years. That is consistent with a number of offences under the Corporations Law, and there are a number of other statutes which generally provide 12 months or two years but where the minister may

authorise an extension for up to five years. There have been some recent changes to the Corporations Law that remove the five year limit altogether and make it unlimited. That is the position with indictable offences: generally speaking, there is no time limit.

I am not attracted to any proposition that seeks to translate across the civil law principles. There is a well-established regime under the Summary Procedure Act that was extended only last year to achieve more consistency, and a well-established basis upon which a minister, usually the Attorney-General, can authorise the extension of the time limit for up to five years to facilitate investigation and prosecution.

Clause passed.

Clauses 2 to 11 passed.

Clause 12.

The Hon. CARMEL ZOLLO: The inclusion of the new words 'prescribed body' deals with providing information to the applicant. Which prescribed bodies does the Attorney envisage will need to be included?

The Hon. K.T. GRIFFIN: No decision has been taken on which bodies will be asked to provide nominees, but I can envisage that under paragraph (c), for example, we would certainly be asking Business SA, and perhaps the Engineering Employers Association, and there are other groups—

The Hon. Carmel Zollo: Power utilities?

The Hon. K.T. GRIFFIN: Well, power utilities would not normally represent the interests of employers in commerce and industry. A power utility is an employer, but it is not a representative employer. That is why it is better to deal with the relevant association. It may be that there is an association of power utilities that represents the interests of power utility employers, but I have not really addressed that. What we have sought to do is reflect the interests that presently are required to be represented but at the moment are represented by nominees of organisations that either no longer have a substantive office here or have changed their—

The Hon. Carmel Zollo: You are talking about the wrong clause. I am talking about Part 3, 'Amendment of Land and Business (Sale and Conveyancing) Act 1994'.

The Hon. K.T. GRIFFIN: Sorry, I am on clause 12, which deals with the establishment of the Trade Standards Advisory Council.

The Hon. Carmel Zollo: I think you have jumped the gun.

The Hon. K.T. GRIFFIN: I apologise for that, but at least I have explained that situation. I hope there is no further doubt about that.

The Hon. CARMEL ZOLLO: We are talking about the inclusion of the words 'or prescribed body' instead of 'statutory authority'. You said that at the moment there were about 50 bodies that have a reason for there to be encumbrances. I am wondering which other ones we are now including other than those 50.

The Hon. K.T. GRIFFIN: I do not have the detail of that, but it would be bodies that are likely to have an encumbrance or a charge over land. At the moment they include things such as council rates, because they create a charge on land; mortgages; easements; encumbrances—

The Hon. Carmel Zollo: That is why I asked about the power utilities.

The Hon. K.T. GRIFFIN: The power utilities, maybe, if they have an easement over land, but as I recollect they do not have a charge over the land for non-payment of electricity. Then you have the environmental protection legislation with regard to contaminated land. I can undertake to provide a list to the honourable member of those which are currently prescribed and which might be in contemplation of prescription to ensure that that is within the scope of what the honourable member was questioning me about. I will take the question on notice. I will not hold up the bill but will make sure the honourable member gets a response.

Clause passed.

Remaining clauses (13 and 14) passed.

Schedule 1.

The Hon. CARMEL ZOLLO: The Attorney has said that we are looking at a maximum penalty now of $5 000. What has been the history of this? Why is there now a need to say it is a maximum penalty? Also, I notice a $10 increase in the expiation fee.

The Hon. K.T. GRIFFIN: If one looks at section 18, for example, the penalty is presently described—Penalty: $5 000. I think it is just a change in drafting so it is clear beyond doubt that it is a maximum penalty, rather than a fixed penalty. It may be that the expiation fee is to make it consistent. The Land and Business (Sale and Conveyancing) Act, for example, deals with divisional penalties and we have made a policy decision that, whilst the experiment with the divisional penalties was all well and good, it did not have the backup that was necessary to periodically review the divisional fine. The theory behind divisional fines and divisional expiation fees was that they could keep pace with inflation. Every year there could be an amendment to the act just to give it a higher figure and it would translate right across the statute book. I looked at this three or four years ago. It was obviously not working and we decided to abandon divisional penalties.

The Hon. CARMEL ZOLLO: I was referring to section 34 of schedule 4. I think in the old one it was $150 and now it is $160.

The Hon. K.T. GRIFFIN: I do not know the answer to that. I suspect it is merely to bring it in line with the expiation of offences schedule of expiation fees.

Schedule passed.

Remaining schedules (2 to 4) and title passed.

Bill read a third time and passed.

PETROLEUM BILL

Adjourned debate on second reading.

(Continued from 6 April. Page 842.)

The Hon. SANDRA KANCK: Having dealt with the offshore mining bill earlier this year and being quite disgusted by that whole bill, particularly in relation to environmental concerns, this bill comes as a pleasant surprise. There is an environmental objective stated at the outset in clause 3—Objects of Act, and Part 12, comprising clauses 94 to 110, deals specifically with environment protection. Clause 84 requires the reporting of serious incidents, and a 'serious incident' can include serious environmental damage or the imminent risk of serious environmental damage. Clause 86 requires that the licensee must carry out the regulated activities with due care for the environment. Looking at that and being so pleased to see that things like this are incorporated in this bill made me speculate that the government must surely be embarrassed by the offshore mining bill by comparison, and I wonder why, given that we can have a bill like this, the South Australian government did not go back to COAG at the time and tell it to get its act together on the offshore mining bill and draft it like this Petroleum Bill.

Having praised the Petroleum Bill, particularly in relation to the environment aspects, I raise some concerns regarding site rehabilitation. Clause 88, which deals with the surrendering of all or part of a licence, allows the minister to order site rehabilitation, but it does not appear to come as a guarantee; it is only in the form of maybe, if the minister orders it. I wonder where in the bill there is a general requirement for rehabilitation.

I also seek some clarification in regard to clause 96. What is an environment impact report, as opposed to an environmental impact statement or an environmental impact assessment? It is clear in reading clause 98 that an environmental impact report is different from an environmental impact assessment, so what status will an EIR have? If it is different from an EIA, what sort of public participatory processes will there be and what sort of reporting will occur? In regard to the processes involved in an EIR, I note that clause 97 allows for classification of regulated activities after the EIR has been completed. It strikes me that the minister ought to be doing this before the EIR is prepared so that the proponents know what it is they are preparing for and the public knows what the EIR is examining.

The minister is required to classify the regulated activities into low, medium and high impact, which are then to be the basis of the statement of environmental objectives; yet in this bill there appears to be no definition of these three terms, and I observe that this allows a great deal of interpretation by the minister. So, I request the Attorney-General, when he sums up, to indicate how such an assessment as to whether something is low, medium or high impact will be reached.

Aside from the specific environmental aspects my general observation about the bill is that it reflects an attitude which I have heard the government express and which I have heard reinforced over the past six years by departmental advisers. There appears to be somehow a fervent hope that mining, in whatever form, whether it be for minerals or petroleum or gas, will somehow present itself as a saviour to South Australia's economy. There is something of a cargo cult mentality about it all. With that as the guiding light this bill puts in place concepts and processes that give the petroleum exploration sector some clear signals that we want such companies here in South Australia. This is shown particularly with the designation of highly prospective regions, the creation of a speculative survey licence, and assorted incentives, of both the carrot and the stick variety, to encourage those companies which obtain licences to use them or lose them.

I am not convinced that these provisions of the bill will necessarily create a petroleum exploration frenzy in South Australia, and I would not want that to occur, but, because the expectations are set out clearly, we can argue that this is the sort of legislation that creates certainty for the industry. I commend the accountability that has been built into this bill with the requirement of notification in the *Government Gazette* of applications and decisions. On numerous occasions in the past I have gone through the process of introducing amendments to ensure that this sort of accountability is built into the legislation. It is almost as though the drafters of this bill have anticipated me.

Because this is a reasonably large and complex bill (137 clauses and a schedule), I will ask a number of questions in committee. At this point, I still have a few questions outstanding with the Farmers Federation about its attitude to some of the clauses. I indicate that the Democrats are happy to support the second reading.

The Hon. T.G. CAMERON: SA First is happy to support the second reading.

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

CRIMINAL LAW CONSOLIDATION (SEXUAL SERVITUDE) AMENDMENT BILL

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

No. 1 Long title—Leave out 'a related amendment to' and insert: related amendments to the Criminal Assets Confiscation Act 1996 and

No. 2 Schedule—Leave out the heading and insert:

SCHEDULE

Related Amendments

Amendment of Criminal Assets Confiscation Act 1996

1. The Criminal Assets Confiscation Act 1996 is amended by inserting before subparagraph (i) of paragraph (c) of the definition of 'local forfeiture offence' in section 3 the following subparagraph and redesignating subparagraph (i) and the other subparagraphs of that paragraph as (ii), (iii), (iv), (v), (vi) and (vii) respectively:

(i) section 68(3)[1] of the Criminal Law Consolidation Act 1935;

[1]Section 68(3) of the Criminal Law Consolidation Act 1935 makes it an offence to—

- have an arrangement with a child who provides commercial sexual services under which the person receives, on a regular or systematic basis, the proceeds, or a share in the proceeds, of commercial sexual services provided by the child; or
- exploit a child by obtaining money knowing it to be the proceeds of commercial sexual services provided by the child.

Amendment of Summary Offences Act 1953

2.

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

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

After the bill left the Legislative Council, it was drawn to my attention that, through an oversight, we had not sought to amend the Criminal Assets Confiscation Act to deal with one of the new offences that had been created. The purpose of the amendment to the schedule is to insert a new paragraph to make offences against subsection (3) of new section 68, which would be added to this bill by the Criminal Law Consolidation Act, forfeiture offences. The amendment indicates a consequential numbering amendment to the schedule.

The Criminal Assets Confiscation Act 1996 allows the Supreme Court, on the application of the Director of Public Prosecutions, to order that the proceeds of certain criminal offences be forfeited to the Crown. These offences are called forfeiture offences. All offences that are indictable under the law of South Australia are local forfeiture offences. Other specified offences that are not indictable are also local forfeiture offences. Because the new offences to be added to the Criminal Law Consolidation Act in sections 66 and 67 and subsections (1) and (2) of section 68 are indictable offences, they will automatically become local forfeiture offences.

In order to make the offences to be created by subsection (3) of section 68 forfeiture offences, the definition of 'local forfeiture offence' in the Criminal Assets Confiscation Act 1996 must be amended to include them by express reference. This offence is a summary offence. As I said, this was overlooked when the bill was drafted. It is appropriate to make offences against subsection (3) of section 68

forfeiture offences because these offences involve the exploitation of minors for financial gain. It is appropriate that the exploiter be deprived of that gain. Forfeiture should also operate as a deterrent to the commission of these types of offences.

During the debate on this bill in the House of Assembly, the member for Newland made some comments. She asked the Minister for Environment and Heritage, who represents me in that chamber, to draw her comments to my attention before the debate on the bill in this place concluded. I have responded to the honourable member and would like to place my response on record in the Council.

The member for Newland asked whether I had considered providing one penalty for the two sexual servitude offences where the victim is a child in preference to two different penalties depending on the age of the child. She referred to children in the age range of 13 to 16 years being at risk in respect of this kind of offence and suggested that it may be more appropriate for the maximum penalty for the sexual servitude offences under proposed section 66 to be life imprisonment when the victim is under the age of 18 years.

Proposed section 66(1) provides a penalty of imprisonment for life where the child is under the age of 12 years and imprisonment for 19 years where the child is 12 years or over. Proposed section 66(2) provides a penalty of imprisonment for life where the child is under the age of 12 years and imprisonment for 12 years where the child is 12 years or over.

Whilst it may be true that children between 13 and 16 years are at risk of being compelled against their will to provide commercial sexual services, the offence becomes more heinous the younger the child victim. It is in recognition of both these considerations that the Criminal Law Consolidation Act not only makes the penalty for offences of a sexual nature greater where the victim is a child but greater still where the child is under 12 years of age.

Other sexual offences in the Criminal Law Consolidation Act for which the penalty is greater when the offence is committed against a child under 12 years of age are the offences of unlawful sexual intercourse (section 49) and indecent assault (section 56). For these offences the maximum penalty is life imprisonment.

As mentioned when introducing this bill, the South Australian Government is proposing this bill as part of a package of commonwealth, state and territory legislation dealing with slavery and sexual servitude. The penalty structure recommended by the Model Criminal Code Officers Committee and included in the commonwealth act is to make the penalty for sexual servitude offences against children greater than the penalty for offences against adults.

Regarding the level of penalty for sexual servitude offences, the Model Criminal Code Officers Committee recommended, and the commonwealth act provides, a maximum of 19 years where the offence is against a child and 15 years where it is against an adult. However, the commonwealth act does not further grade the penalty according to age because commonwealth law contains no offence of unlawful sexual intercourse against a child under 12 with which the penalty for a sexual servitude offence against a child had to be matched.

In all states, unlike the commonwealth, there is a pre-existing penalty structure for sexual offences which does differentiate between children under a certain age and other children with a threshold age differing between jurisdictions. In South Australia, the penalty is heavier where the child is under the age of 12 years as in the sections of the Criminal Law Consolidation Act to which reference has already been made.

In framing this legislation we had to be mindful of the following:

· sexual servitude offences against children under 12, to the extent that they involve keeping the child in a continuing state of sexual servitude, can be more heinous than the offence of unlawful sexual intercourse against a child under 12 and, therefore, should have a maximum penalty that is at least equal to the penalty for that offence, otherwise South Australian law would have contained an anomaly;

· the desirability of achieving the greatest level of consistency between the corresponding commonwealth law and state law.

For these reasons it was considered appropriate that sexual servitude offences against children over 12 should carry a penalty within the range suggested by the Model Criminal Code Officers Committee and adopted by the commonwealth act. For these reasons I believe that the penalty structure proposed by the bill is appropriate for South Australia.

The Hon. CARMEL ZOLLO: I indicate opposition support for these amendments. As the member for Spence (the shadow Attorney-General) stated in the other place, it is entirely appropriate that the ill-gotten gains of people who commit such crimes should be confiscated. However, I place on record that this legislation is a conscience vote for opposition members, as is the legislation dealing with prostitution. I am therefore disappointed that the government has treated this as a government bill without giving Liberal members of parliament a conscience vote.

I was one of the members who voted with the government in this chamber to the clause in relation to simple procurement, albeit with reservations, because I do not think it goes far enough. But it is better than nothing, which was what originally was on offer. I guess, put simply, many of us in the opposition do not believe that the clauses of this bill go far enough in terms of penalties, whether it be simple procurement or offences involving children.

I note that my colleague in the other place, Mr Atkinson, did suggest a higher penalty. I am certain that, had the legislation been made a conscience vote for Liberal members of parliament, many other members would have joined us on this side. I reiterate my disappointment at the manner with which this legislation has been dealt. Nonetheless, the legislation has been debated at length in both chambers and it is not for me to prolong—

The Hon. A.J. Redford interjecting:

The Hon. CARMEL ZOLLO: Prostitution is seen as a conscience issue in our party.

The Hon. A.J. Redford interjecting:

The Hon. CARMEL ZOLLO: I am sorry that you have a problem with it, but that is how we see it. As I said, we will not prolong the debate. I do accept defeat but I have some consolation, since I note that the Attorney-General did say that he was happy to look again at the legislation after whatever comes out of the prostitution legislation in the other house.

The Hon. T.G. CAMERON: SA First will be supporting the amendments that have been referred to us by the other place.

Motion carried.

HIGHWAYS (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 23 May. Page 1068.)

The Hon. SANDRA KANCK: The title of this bill reveals nothing, but it is quite significant legislation. It makes the Commissioner of Highways subject to the direction of the minister. It abolishes the office of Deputy Commissioner. It gives the commissioner extra powers over local roads. It will allow a private sector operator to build a third river crossing at Port Adelaide and for a toll to be directly levied on the users of that bridge. It brings the act in line with competition policy, and it provides for shadow tolling with funding through the Highways Fund.

I understand that in relation to the latter, which is probably one of the more controversial aspects of the bill, the opposition will be moving an amendment in the House of Assembly and that the government will accept that amendment. The Democrats welcome the move to allow the construction of the long-awaited third river crossing of the Port River. This bridge is very much needed. The current Birkenhead bridge is subject to a 40 kilometre per hour speed limit and on many occasions each year it is closed or traffic is restricted to allow repairs to the bridge.

When the Birkenhead bridge is closed, traffic from Port Adelaide gets on to Lefevre Peninsula by rerouting via the Jervois bridge and, when the Birkenhead bridge is fully functioning, its opening to allow boats in from time to time is an inconvenience, particularly for those people living or working in the Peterhead and Birkenhead areas. I should note that as a child, having spent my Christmas holidays every second year at Taperoo, coming down from the country, it was a magical sight to see that bridge opening up in front of us. My brothers and sisters and I would always wait as we were approaching the bridge and hope that it would open in front of us, because we always thought it was a special treat. It is all a matter of perspective.

On those occasions when the Birkenhead bridge is closed, access to Lefevre Peninsula is restricted and, similarly, movement off the peninsula is restricted. In the event of a major industrial accident on the peninsula—imagine, for instance, some of the big tanks containing oil blowing up—having a third river crossing might be vital for the safety of people in that region. With the advent of heavy trucks into the area in recent times, there is yet another reason for the third bridge, and it is another reason that the locals are keen to see this bridge built, because they do not want to keep on seeing and hearing trucks passing their houses.

Philosophically, the Democrats have tended to support the user-pays principle, although my parliamentary colleagues have some reservations about the provision for tolling in this bill because they are concerned that it might set a precedent. The essential purpose of the bridge will be to accommodate commercial interests, in particular the road transport industry. The Democrats have long been supporters of road transport having to bear some of the real costs of using road infrastructure.

Rail transport has always had to include the cost of the rail lines, and rail freight has often appeared not to be as competitive as road freight because road transport has not had to bear the cost of the building and maintaining of roads. I regard the use of the user-pays principle in this case to be very important, because it lets road users know that the provision of such infrastructure comes at quite a high cost.

We have only to pause and reflect that one of Australia's icons, the Sydney Harbour Bridge, has had a toll, I think since day one. Having lived in Sydney and used the bridge, I never resented it, nor did I see any problems with that toll being collected. And we have recently seen Victoria introduce a toll for a privately constructed freeway. I invite the minister to expand a little more on the tolling arrangements when she sums up at the end of the second reading debate, including providing information about which vehicles are likely to be exempted from paying the toll. One of my colleagues suggested that vehicles under a certain weight could be exempted from paying the toll, so that it would be only the heavy trucks that would be impacted. I would also ask the minister for some reassurance that the government is not intending to extend the tolling elsewhere.

What does the minister consider will be the likely cost per vehicle to cross the bridge and how will the toll be collected? Will it be like the Sydney Harbour Bridge where a coin is tossed into a basket as one passes through or will there be an electronic tab as applies in Victoria? What is the proposed timetable for the construction of the bridge? How soon after construction will the transfer of the bridge to government ownership occur? Once that transfer does occur, for how long will the government continue to collect the toll? Hopefully, we would have a guarantee that the government would cease levying the toll as soon as the bridge was paid for.

Like other honourable members, I have received correspondence from the LGA concerning the bill. Of the concerns raised with me, the one with which I particularly have sympathy is that regarding clause 26(11). This bill will give increased powers to the commissioner and, having done that, it will allow the commissioner to charge local councils for the installation of street lighting which, quite feasibly, might have been installed without any consultation with the council concerned.

Local government has just completed the exercise of arguing with the state government about who has responsibility for street lighting as a consequence of the privatisation of the distribution sector of our electricity utilities. I will deal with this matter in more detail in committee but at this stage—unless the minister is able to convince me otherwise—I am inclined to vote against this provision. Apart from seeking clarification on the tolling arrangements and guarantees that it will not extend elsewhere, I indicate the Democrats support for the second reading of the bill.

The Hon. A.J. REDFORD secured the adjournment of the debate.

CRIMINAL LAW CONSOLIDATION (MENTAL IMPAIRMENT) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 May. Page 1109.)

The Hon. R.D. LAWSON (Minister for Disability Services): I support the second reading of this bill. I do so principally because of my interest in the provisions relating to my disabilities services portfolio and, in particular, the fact that many young people—and it is usually young people—with intellectual disability find themselves in conflict with the provisions of the criminal law. These provisions, which were

introduced in 1995 and which came into force in March 1996, do impact very much upon that class of individual.

The original introduction of this legislation followed very wide consultation with the legal profession and the general community and brought our state into line with commonwealth legislative reforms and the international covenant on civil and political rights. It built upon the 1992 amendments which abolished the 'Governor's pleasure' system under which persons who were found not guilty by reason of insanity could be detained indefinitely. It also shifted the decision making to the courts with a requirement that a limiting term be set commensurate with the nature of the offence for which the person was convicted.

In his second reading explanation, the Attorney-General said:

> First, it did away with the old law which provided that a person found to be unfit to stand trial, or sufficiently mentally impaired so as not to be criminally responsible, should receive an indeterminate sentence of detention. . . Second, the new law separated the trial of the question of whether the accused was mentally impaired from the trial of the question of whether the accused committed the offence. The previous law had dealt with those questions together.

That process is separated by a very complex legislative mechanism. It is a complex question and it is not surprising that the measure itself is complex. I think it is still too early to say whether in the fullness of time the particular legislative measure we have adopted in this state-and as I say it has been adopted elsewhere-will ultimately be found to be the best way to go because a number of difficulties are arising, they have been recognised, and some of them are being eliminated in the amendments now proposed.

There are issues other than the strictly legislative issues that are worth placing on the record. I begin by commending the Attorney-General and his department for the production of the operational review of these provisions. The report produced by the Justice Strategy Unit is, I think, a first class piece of work, and it indicates widespread consultation and a deep understanding of the issues arising. Its authors also adopt something which is all too infrequent in this area, and that is a clear style and method of presentation.

One of the issues on which I wish to speak arises out of that report and deals with the provision of 24 hour responses and services for accused persons with a mental impairment who come into contact with the criminal justice system. This is a difficult area because when a police officer attends, perhaps at the scene of a crime or in response to a call from a member of the public, the question arises as to whether the person whom he wishes to apprehend or interview is, in fact, suffering from some mental impairment. We are not yet at the stage where all police officers are psychiatrists or psychologists or even trained in these disciplines. It is a very difficult issue.

The authors of the report begin by setting out an example which is, I imagine, typical of the sort of example which the police encounter in practice. The report states:

> Mr P is a well-educated European man in his thirties with little English. He had no criminal history. Mr P suffered an episode of acute paranoia during which he took an unusual item from a shop without paying. He was arrested late in the day and refused to speak at all to the police—he is married and has a stable address but he would not give that information through paranoia. He remained in the watch-house overnight and refused to speak to the magistrate to apply for bail next morning. He was remanded in custody and spent a weekend shackled to a bed in a hospital psychiatric unit with a police guard required to remain on duty throughout.

The question is: what do police do in these circumstances when the accused person is not cooperating with them? In that particular case they would suspect that a psychiatric institution is the appropriate place for him to be taken. However, there are very often cases where that is not as clear cut. The authors of the report go on to say:

> The challenge for the criminal justice, human services and disability sectors is to ensure that accused persons with a mental impairment who come into contact the criminal justice system: are identified quickly, have access to appropriate 24 hour emergency responses (including accommodation where necessary), and are granted bail where possible, with support if necessary from a range of institutions.
>
> The police are the gatekeepers to the criminal justice system. They can play a crucial role in identifying persons with a mental impairment, providing a conduit to treatment and services and employing mechanisms to ensure that restrictions on a person's freedom and autonomy are kept to the minimum necessary for the safety of the person and the community. Police often have to confront situations at night or on weekends that involve a person with a mental impairment. Service agency responses are limited or unavailable during these hours. The use of illicit drugs or alcohol may increase a person's already vulnerable mental state and compound their reaction to any situation.

The authors go on to say:

> How well the police are able to respond in these circumstances will depend on the quality of information available to them and the support and services available to the person. Police need information on services available to accused persons with a mental impairment and to understand the role that these services can play.

They go on:

> Experts—

even experts in the field—

> acknowledge the difficulty of correctly identifying mental impairment—especially where the nature of the impairment is borderline, the person does not display any obvious physical or emotional signs, or drugs and/or alcohol have been consumed. Police are given only basic training in recognising and dealing with persons with mental impairment. Cadet training comprises 14 lessons (less than one a week) and there is no compulsory training for established or senior officers. In a practical sense new police officers are more likely to gain knowledge in this area from senior colleagues.

The authors go on to suggest that we should be examining better ways of ensuring that our police are appropriately qualified to deal with this question of identifying a situation in which someone with mental impairment is involved.

It would be understood by everybody in this chamber that accused persons with mental impairment often have insufficient comprehension of the particular situation in which they find themselves and very often their conduct can exacerbate difficulties by reason of a behavioural problem that they might have. So the question of appropriate 24 hour responses is addressed in this operational review. I certainly think this is an issue that should be closely examined.

A second point from the operational review to which I would refer arises at the second recommendation, which provides:

> Mental health and disability service agencies should encourage and promote the concept of 'Ulysses Agreements' on a voluntary bases and assist clients to develop these agreements in conjunction with key support team members.

A Ulysses agreement is something which is adopted in several overseas jurisdictions. Under one of these agreements—and there is a sample of the agreement set out as an appendix to the operational review—clients are able to develop care, treatment and personal management agreements between themselves and key workers, and they are developed at a time when the person's mental state is stable. They provide clear guidelines for what actions should be taken if the person exhibits signs of psychiatric illness. With the consent of the person, police have access to this information,

and the provision of this information and this agreement of the patient, entered into at a time when the person concerned has the necessary mental capacity, is like an advance medical direction—one of those directions over which we laboured for so long in this chamber in terms of the palliative care legislation. It is like an advance direction. It is an enlightened suggestion of the review and as Minister for Disability Services I will be looking at to see whether, in the South Australian context, agreements of this kind would be practicable.

Although the report acknowledges that there is insufficient data yet available, it is worth noting that the number of persons who successfully used the new mental impairment provisions as a defence in criminal proceedings from when they came into force in March 1996 to August 1998—about 18 months—was 71, and by the time the report was compiled—another year later—it was understood that the number had risen to over 120, although it is acknowledged that the data collection was certainly not very sophisticated at that stage. The information was obtained through the justice information system and James Nash House.

The next series of recommendations from the operational report deal with a diversion from formal court processes. The authors say:

> Police, court personnel, the judiciary and legal practitioners all report the high number of persons in the criminal justice system who appear to have a mental impairment.

Once again there is a difficulty in the data. The authors note that there is no South Australian data to support those claims made by people in the system. However, New South Wales data reveals that 12 per cent of all prisoners have a previous psychiatric diagnosis; 21 per cent of males and 39 per cent of females have previously attempted suicide; 75 per cent of females in custody in New South Wales have a previous admission to a psychiatric unit or a mental health service; and 23 per cent of females are on psychiatric medication. In addition, amongst the prison population, depression is manifest at five times the community rate and schizophrenia is manifest at 10 times the community rate.

They are New South Wales figures, but there is really no reason to believe that the figures in our state would be markedly different. It is a startling fact that many people in our criminal justice system and also in the prison population have psychiatric conditions and/or some mental impairment. It is not the sort of mental impairment that would lead them to be acquitted or to be in a position where they could avail themselves of these provisions, but certainly they have some element of impairment. The report goes on to state:

> The South Australian mental impairment legislation makes no differentiation between the way summary, minor indictable or indictable charges are handled in the courts. Other Australian jurisdictions make various other arrangements with the result that the impact of their legislation is felt most highly in the higher courts.

The authors say, and I think this would be generally agreed:

> There is a need for all persons to receive fair and equitable treatment before the law and it is imperative that persons charged with summary or minor indictable offences continue to be able to use a part 8A defence.

They note that the cost of court ordered psychiatric reports has risen very substantially from 1995, when the costs were something under $70 000, to 1999, when they had risen to about $160 000, and of course the mechanisms mentioned in part 8 do require from time to time the provision of psychiatric reports. The bill that the Attorney has introduced endeavours to simplify that report making by reducing the number of reports required in certain circumstances. I am sure that is not a cost saving measure, because the justice system requires that an appropriate number of reports be provided so that there is a balance of reports, but I do not believe the bill has reduced the number of reports so markedly that the system could be compromised in any way.

The report notes the fact that, at the beginning of last year under the leadership of the Attorney, the government provided funding to establish a 12 month pilot diversion program in the Adelaide Magistrates Court, and I think that the first persons were appointed to that diversion program in June last year. It offers a transparent and structured process for dealing with minor offences without the heavy costs of using the part 8A defence. I am sure that all members look forward, as I do, to the report of the evaluation of that 12 month pilot program, which report will presumably be available later this year.

Yet another case study which caught my eye in the report is one which I believe would be familiar, not in the rather bizarre details of the case but familiar in its context with many of the court of cases that arise in this area. Mr X has a history of schizophrenia, which is normally managed under medication. While visiting Adelaide he had a psychotic episode. He was arrested by police for illegal use of a motor vehicle. He had been walking home when, as he said, 'God put a car in the paddock' for him to drive. He was also charged with offences under the National Parks and Wildlife Act; he had a number of dead snakes and lizards in his pockets which he was going to care for. He was unrepresented and pleaded guilty to the offences rather than face remand in custody. He did not wish to apply to have the conviction struck out once the machinery of mental impairment legislation was explained to him. So, in that sad case, somebody who was not a criminal allowed himself to go through the criminal justice system and was not interested, perhaps not capable and not prepared to avail himself of the mechanisms that this legislation provides.

Members will be glad to know that I will not go through all the recommendations of this report, but I do commend it to them. I would mention a couple of additional recommendations. The first is that consideration should be given to developing a pool of legal representatives with expertise in part 8A defences. This is a difficult area of the law. The cases which have been decided illustrate that even practised, experienced legal practitioners have difficulty in mastering all of it, and indeed some judges have been found to have erred in their application of the provisions. So, the authors are suggesting—and I think it is a sensible suggestion and I would be pleased to have the Law Society's view on it—that both the society and the Legal Services Commission establish a register of legal practitioners who have experience in the defence of these matters so that it is appropriate to allocate cases to those people who have developed an expertise. It is also suggested that prosecutors be selected for specialist expertise and training in this field.

One suggestion noted in the report is that the DPP should prosecute all part 8A cases. Obviously, the prosecutors within the Office of the Director of Public Prosecutions are experienced criminal practitioners, and many a police prosecutor in the Magistrates Court would not have anywhere near that level of exposure or experience.

An interesting development in overseas jurisdictions is noted under the heading 'Non-custodial responses'. A case management program developed in Lancaster County in Pennsylvania is described specifically in relation to offenders

with intellectual disability. It is worth reminding ourselves that these mental impairment provisions apply not only to people who have mental illnesses but also to those who have an intellectual disability. It is something which many people are born with, and some people also acquire intellectual disabilities in consequence of medical events or a level of developmental delay.

The Hon. T.G. Cameron interjecting:

The Hon. R.D. LAWSON: The honourable member interjects and asks, 'What do you mean by "intellectual disabilities"?' I mean people who have suffered from intellectual disability or developmental delay during childhood. One has often heard the expression that someone has a 'mental age' of, say, seven, at the age of 50. Many people in our community have that type of disability, and some of them come into contact with the—

The Hon. T.G. Cameron interjecting:

The Hon. R.D. LAWSON: Dyslexia is not ordinarily classified as an intellectual disability—people with high intelligence have dyslexia—but the tests in respect of intellectual disability are many and varied. Some of those suffering from autism, for example, are classed as having a disability. It is a disability, but not always an intellectual disability, because some people with autism and Asperger syndrome have very high levels of intelligence and are able to function effectively. Many people with intellectual disability are simply unable to function in situations which they are unused to.

The Hon. T.G. Cameron interjecting:

The Hon. R.D. LAWSON: For example, they may become excited, lost or frightened in a darkened situation or in a crowd situation and do irrational things and behave in a generally childlike fashion.

The Hon. T.G. Cameron interjecting:

The Hon. R.D. LAWSON: I do not wish to be detained by the honourable member, as I realise that there is much to be said on this point.

The Hon. T.G. Cameron interjecting:

The Hon. R.D. LAWSON: I know; this will protract things. With regard to the Pennsylvania example (and I am seeking to abbreviate this), I have already mentioned that some people within our criminal justice system and in the gaols have intellectual disabilities. The recidivism rate for offenders with intellectual disabilities in that state of the United States is estimated at about 60 per cent, which is about the national average in the United States. Programs can reduce the recidivism rate. By adopting appropriate non-custodial responses and diversionary programs they have managed to substantially reduce recidivism; indeed, they have reduced it from 60 per cent to between 3 per cent and 5 per cent. There is only a little titbit in the report about that program, and I will certainly be looking into it, because if we can reduce the degree of recidivism we will reduce the number of people in our gaols.

There are many recommendations in the report, and not all of them would find favour with all persons with an interest in this field. However, matters such as legislative rights to legal representation during police interviews where mental impairment is suspected is something that I think we should seriously examine. I strongly commend that operational review.

There was a recent decision of the Supreme Court of South Australia concerning a young Aboriginal man who had been charged with throwing stones at vehicles passing along the Eyre Highway east of Ceduna—a highly dangerous practice. This young man came before the court, and I think the way in which he was dealt with by the justice system highlights some of the difficulties that we are presently facing.

The accused person had suffered irreversible brain damage as a result of petrol sniffing. There was no evidence of a formal psychiatric disorder; the brain damage was significant and irreversible. There was serious doubt about his ability to function independently in the community. He was at risk of further offending due to his impulsive nature arising from brain damage. He was from Indulkana, and the judge found that petrol sniffing was a significant problem in that community. Few, if any, resources were available to the police and other community groups to deal with the problem there.

Under these provisions the judge was faced with the situation where the court finds that the person has committed the offence but is liable to a supervision order by reason of his mental impairment, and the court has to release the defendant unconditionally, make a supervision order committing him to detention or release the defendant on licence on conditions decided by the court and specified in the licence. Where a supervision order is made, the court must fix a limiting term so that the person is not under the form of supervision for a longer period than he would be if he were sentenced to imprisonment. That was one of the important reforms.

The judge in this case found that there really was no way that he could release the defendant unconditionally. He did not consider that it was appropriate to release him on licence to return to the community at Indulkana. The judge did not have available to him certain reports. He noted the fact that the defendant's father had recently died, and that meant that the logical person to provide supervision was no longer available. Therefore, the judge decided that he had to make a supervision order committing the defendant to imprisonment and sentenced him to a limiting term of three years and six months, which would mean that this young man was in gaol for that length of time with little prospect of his problems being addressed. Justice Bleby, who was the sentencing judge, made a very powerful judgment, to which I invite the Attorney's attention. He said:

> Nor can I permit the continuing damage to the community by anti-social behaviour that is induced by petrol sniffing and alcohol abuse. Not only are there no resources being devoted to the overcoming of the problem but there are simply no institutional resources available to deal with the difficulties that this defendant now obviously faces. He does not suffer a psychiatric disorder, so mental health areas offer no assistance. He suffers from irreversible brain damage. Neither James Nash House nor other custodial institutions can offer any form of appropriate long-term care. There is nowhere suitable for him to go.

We simply do not have institutions here or anywhere for persons of this type, and I think that is something that we, as a community and a government, have to address.

The court in this case (The Queen v. T, reported in 1999, 205 Law Society Judgment Scheme, page 213) went on to describe a number of the difficulties that were encountered in applying these provisions. Incidentally, one of them was that the lawyer who was acting for the accused person had not made the election to have the question of fitness to stand trial dealt with separately from the issue of whether or not the offence had been committed. That was an easy enough mistake to make, and there were a number of other irregularities and difficulties described by the court.

The issues which I have described and which the operational review addressed were issues apart from the legisla-

tion itself. I believe that the measures that the Attorney has introduced are positive measures that will improve the operation of this legislation, which, as I say, I welcome but which is still being bedded down. I support the second reading of the bill.

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

NATIONAL PARKS AND WILDLIFE (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 23 May. Page 1077.)

The Hon. CAROLINE SCHAEFER: I support this bill. Its purpose is to establish and manage reserves for public benefit and enjoyment and, at the same time, to provide for the conservation of wildlife in a natural environment. Part of this management must be by local and voluntary groups. We can no longer hope to have the resources to sufficiently manage our parks and conservation areas by government help alone. It is obvious that we do not have sufficient resources to manage some of these areas without public access and without the assistance that comes with that.

Therefore, we must legislate for public use of reserves in a way that will not conflict with stated conservation objectives for the preservation of our flora and fauna. The role of government is to maximise public benefit while minimising the impact of human activity on our natural assets, and this bill seeks to further that objective. The environment policy document of this government prior to the 1997 election states:

> A Liberal government will review the legislation and administration of wildlife licensing to improve equity and streamline processes and support the development of private sector enterprises which are based on sustainable utilisation of native fauna.

As a result of that policy document, a fauna permit review group was established, and much of this bill relates to the recommendations of that group. Its role was to improve access to information, to explore options to promote the appreciation of wildlife, to minimise bureaucratic processes and delays, to ensure that fauna permit systems deliver the services required by the government and the public, and to maintain the conservation imperative of protecting at risk wild populations. This bill seeks to balance the views of the various groups involved with the preservation of wildlife and, indeed, their commercial use as well.

As members would be well aware, in some cases the various groups have diametrically opposing views. Some would have a blanket prohibition of access to wildlife where others would want unfettered access at any price. We would seek to have a reasonable compromise between those two views. The current act allows for the payment of royalties for an animal taken from the wild if the Governor proclaims that species. In fact, there are thousands of species for which people can already apply to take from the wild via a permit. However, at this stage the Governor rarely proclaims species. As the act stands at the moment everyone must be nominated by proclamation for a royalty to be imposed. The amendments in this bill allow for the level of royalty to be set by regulation and to be dependent on the conservation status of the species. The act specifies that the director may issue hunting permits for up to a year and that a fauna permit review has recommended that keep and sell, fauna dealers, kangaroo shooters and processors, hunters and emu farmers may have up to five year permits.

There is no current provision to take blood, DNA, video or audio evidence, but this new bill provides for those powers for a warden, and that allows scientific establishment of source, lineage and living conditions of animals. The amendments require that a permit be produced as soon as practicable after request by a warden, and they allow for a person who is seeking a permit to apply by e-mail and fax, which is not allowed under the current act.

Perhaps one of the most contentious changes under this bill is the replacement of section 51A. Section 51A allows for the control of nuisance birds, for instance sulphur-crested cockatoos in the Southern Vales and rainbow lorikeets in the Adelaide Hills. These flocks, it is argued, should not be culled. I would not agree with that. I think that under agricultural practices such as they are we have in fact provided conditions for some of these birds to breed way beyond that which they would have under natural scrub conditions and as such they must be culled to reasonable levels both for the preservation of the species and, indeed, for the commercial production of horticulture in particular.

The amendment recommends a provision stating that individuals directly affected may ask the National Parks and Wildlife Council to review a ministerial decision about whether or not a 'take from the wild' permit may be issued. So there is a right of appeal under the new act. New section 45BA is to be inserted that the General Reserves Trust will be taken to have been established in relation to all reserves except those to which another has been proclaimed, and that the money taken by those trusts will be used for the development of the park where that permit is issued. An advisory council will be established.

The bill makes provision for interest accrued to be paid into the fund. Animals seized under the act currently may be sold through the Monarto Fauna Complex. However, at the moment animals which are handed into the Monarto Fauna Complex because they have been orphaned or found may not be sold. Under the new act that will be allowed. Commercial operators which use park facilities, for instance those at Seal Bay, Flinders Chase and Wilpena Pound will have enforceable licences.

Generally, one of the things that has come from this review has been a reassessment of those species which are considered to be endangered, and a number of those have been rescheduled. It has been found that we, in fact, do have more of a number of species than we had believed was the case, and a number of extra species, particularly herbaceous species, have been found. In fact, another 120 new plant species have been recognised since 1991 and will be listed under this act. Some of the animals to be downlisted from 'vulnerable' to 'rare' are the eastern grey kangaroo, the brush-tailed bettong and the mallee fowl, not to mention Cape Barren geese, which are considered to be very rare in some areas of the state; in other areas there are considered to be more than enough of them. I have endeavoured to briefly outline why I think this is a necessary and in fact a quite urgent bill to go through. I support the second reading.

The Hon. M.J. ELLIOTT secured the adjournment of the debate.

DAIRY INDUSTRY (DEREGULATION OF PRICES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 May. Page 1108.)

The Hon. P. HOLLOWAY: I rise to reluctantly support the dairy deregulation bill. I say reluctantly because there is really little alternative for the Council but to pass this bill. The commonwealth and the states have reached an agreement to put together a compensation package for the dairy industry. That package will come into force from 30 June this year and unless the states agree to repeal the price support structures they have within their states that package will not be available. So there is really little alternative for this Council but to pass this bill as soon as possible so that the package is available for dairy farmers.

I would like first to go through the background of this bill, and perhaps give some details on the structure of the dairy industry in this state as it exists at the moment. The most recent Dairy Authority of South Australia Annual Report gives us some basic statistics on the industry as it exists here. From the 30 June 1999 figures, there are 714 dairy farms in the state, of which 291 are in the Adelaide Hills and Fleurieu Peninsula, 185 are in the South-East, 169 are in the Lower Murray swamps and lakes, 66 are in the Mid North and three are in the Riverland. There are 108 013 cows, and some 63 000 of those are in the South-East and the Lower Murray swamps and lakes regions. One can see that, although the farms in those areas might be fewer, some 60 per cent or more of the cows are concentrated in the South-East and Upper South-East regions.

If we want to see what has happened in relation to change it is interesting to look at the statistics on the total number of licensed dairy farmers. In 1998 there were 749. The number has dropped to 714, a 4.7 per cent fall. The total number of licensed processors has fallen over those 12 months by 2.8 per cent. The total number of licensed milk vendors has fallen by 4.1 per cent. Those results from 30 June 1998 to 30 June 1999 are indicative of what has happened over many years.

However, against that fall in producers, processors and vendors, it is interesting to look at the production statistics. The annual production of milk (in litres) in this state over that same 12 month period rose by 11.3 per cent; the annual production of butter fat rose by 11.6 per cent; and the annual production of milk measured in protein rose by 11.9 per cent. The annual production statistics per farm (in litres) grew by 15.4 per cent, and the average annual production per cow (in litres) also increased by 5.3 per cent, which obviously suggests that better breeds and fodder were available for those production statistics. That indicates a significant annual increase in production from an ever smaller number of dairy farms. Of course, this is typical of what has happened in the past.

If we look at the picture Australia-wide—and I think it is important to see where the South Australian industry fits—we can see that Australia accounts for less than 2 per cent of world milk production but that it ranks third in terms of world dairy trade, accounting for 13 per cent of dairy product exports. So, Australia is a significant exporter on a world scale. It is interesting to note that the USA accounts for only 4 per cent, while New Zealand accounts for 31 per cent.

If one looks at where our dairy industry is concentrated around the country, the most significant fact—and I will come to the importance of this later—is that about 60 per cent of production in Australia takes places in Victoria. The Australian dairy industry has produced some statistics which show more starkly than those annual statistics how things have changed. The number of registered dairy farms in 1975 was 30 630 Australia-wide; it is now only 13 156. As I mentioned, in South Australia it is now 714; in 1975, the figure was 3 064. In Victoria, there were 14 920 registered dairy farms in 1975; now there are 7 926. So, you can see that over half the number of dairy farms are in Victoria.

I think it is important to put on the record those facts relating to the industry to see which way it has been moving—and I will refer to the importance of that later. The dairy industry has been operating under state regulated schemes which were introduced to cover both the health and quality aspects of milk as well as to regulate price. It has been estimated that the value of those state regulated schemes, which essentially will be deregulated throughout Australia before 30 June, is $500 million a year. In South Australia, the state regulatory scheme works in such a way as to pool market milk. Anyone who has looked at the dairy industry would know that the industry is divided between market milk or milk that is produced for drinking purposes (including UHT and flavoured milk) and manufacturing milk. In South Australia, market milk accounts for about 20 per cent of the total production—

The Hon. M.J. Elliott interjecting:

The Hon. P. HOLLOWAY: UHT is classified as market milk as far as the dairy packages are concerned. That is an issue about which I will say a little more later. The point is that 20 per cent of this state's production is market milk and the other 80 per cent is manufacturing milk or milk that is processed into products such as yoghurt and cheese, etc.

In other states the system is different. In South Australia, that 20 per cent market proportion is pooled. In other words, in terms of remuneration, all dairy producers within the state—with one complication which I will mention later—receive the equivalent of 20 per cent of their production which is classified as market milk. Of course, because it is regulated, it receives a significantly higher price than that which is received for the bulk of the milk which is used for manufacturing.

In other states, quota systems apply. Naturally, these quotas are highly sought after. If one has a quota with a high proportion of market milk, that is a very valuable commodity. That is why deregulation of the dairy industry, which is dismantling those quota schemes in states such as Queensland and New South Wales, has caused so much pain. Dairy farmers who had the advantage of a high quota of market milk obviously will suffer considerably under the changes before us which will remove all those regulated pricing schemes. Of course, this will mean that all milk, market or manufacturing, will be treated the same as far as the processors are concerned, and the price will therefore fall to the previous low level.

The Hon. R.R. Roberts interjecting:

The Hon. P. HOLLOWAY: That's right. I mentioned that 20 per cent of the milk produced in this state is market milk. In Victoria, only 6 per cent of the milk is market milk and 94 per cent is for manufacturing. As I mentioned, Victoria produces over 60 per cent of the total milk produced in this country. In New South Wales and Queensland, the proportion of market milk is much higher (between 50 and 60 per cent). So, it is clear that deregulation, which removes

those price support schemes for market milk, will have a much greater impact in those states.

The Hon. T. Crothers interjecting:

The Hon. P. HOLLOWAY: Yes, that's right. The Hon. Trevor Crothers makes an important point that Victoria has a considerable advantage in that it is the biggest producer in Australia and it is also the lowest cost producer. Of course, that is what has been driving, to some extent, the changes that are before us.

Politically, there has been a move for some time now for the Victorian dairy industry to deregulate. The statistics that I have presented so far indicate that Victoria has a dominant position in the industry. Clearly, any action by Victoria to deregulate its milk market would have the capacity to flood the markets of Australia. Given the constraints of, I think, section 92 of our constitution which deals with trade across borders, any action by Victoria to deregulate its milk industry would have a severe impact on dairy farmers in other states.

As a result of pressure, particularly from within Victoria, for some time now, the dairy industry has seen that deregulation is inevitable. There have been negotiations within the dairy industry and at state and commonwealth level to try to bring some order into this deregulation process. What emerged from that was the commonwealth Dairy Industry Adjustment Bill (passed through the federal parliament earlier this year) which set about producing an orderly scheme for the deregulation of the dairy industry.

Under the provisions of this commonwealth legislation, a compensation package of $1.8 billion will be paid over the next eight years. This compensation package, which the commonwealth has offered to the industry, will be funded by an 11¢ a litre levy on market milk for consumption. As I said, that will raise about $1.8 billion over the next eight years which will be paid to dairy farmers on the basis of their production of milk as at, I think, September last year.

At the commonwealth-state meeting on 3 March this year, the agriculture ministers issued a communique on dairy adjustment. I would like to put on the record the key parts of this package, because some of them I would like to pursue later and I would seek some answers from the government in relation to them. Basically, the communique stated that the Australian agriculture ministers recognised that deregulation is inevitable because of commercial pressures.

The ministers agreed in principle to proceed rapidly to introduce the necessary legislation to deregulate market milk arrangements on a best-endeavours basis. The ministers agreed that the farm level dairy assistance package, which is this package that was funded by the 11¢ a litre levy, was fundamental to managing change and minimising the impact of deregulation. They agreed to maintain a close oversight on the impact of deregulation in rural and regional communities, including the effects on dairy industry workers, recognising that there could be significant off-farm consequences.

They agreed to establish a high level task force to monitor and evaluate the impact of dairy deregulation on regional Australia. They noted existing regional assistance programs and they agreed that further consideration will be given to the establishment of uncomplicated, efficient and low cost systems for funding state food safety programs. The ministers agreed to consider the establishment of a working group to assess a consistent national approach to funding food safety activities, a system which should not result in any impost or restriction on interstate trade and which should meet the principles of competitive neutrality and the importance of mutual recognition of certification standards for both package and bulk milk delivered from interstate suppliers.

Of course, as I noted earlier, part of the agreement was that the states would agree to use their best endeavours to dismantle the marketing schemes that exist in the states, which is essentially what is before us in this bill today. I would like to comment on the commonwealth bill, because that is the centrepiece around which the dairy restructuring program is based. This proposal was announced on 28 September 1999, so the arrangements actually apply to what was in place within the dairy industry on that day.

The package was estimated to cost up to $1.8 billion. It provides eligible dairy farmers with quarterly adjustment payments over eight years or the option of an up to $45 000 tax free exit payment in the first two years of the program, where a farmer wishes to leave farming. An important point was that a prerequisite for receiving any payments under this scheme is that farmers must prepare a farm business assessment.

Even though the payments are unconditional to eligible dairy farmers, nevertheless, there is a prerequisite that they should prepare a farm business assessment, presumably so that farmers will use the money they receive under this scheme either to exit the industry or to invest to make themselves competitive under the new scheme.

I noted that the value of the state regulation schemes had been estimated at about $500 million per annum. If one looks at the compensation package funded by the 11¢ a litre levy at a total cost of $1.8 billion, one can see that if you divide that by eight the compensation package will provide to dairy farmers around $220 million a year. This compares with the $500 million that was the value of support under the existing scheme. One can see that the net effect of the deregulation before us plus the new scheme will be a halving in the effective support for the industry. So, many dairy farmers will need to make some tough adjustment decisions.

I will make some other comments from the federal legislation. The benefits from deregulation are likely to be significant, as those operators remaining in the industry gain through increased economies of scale and increased demand for dairy products, which should be generated through the lower prices that will result.

However, of the 13 000 dairy farmers in Australia, the vast majority are expected to experience a fall in income upon deregulation as they will no longer receive either the premium on market milk generated through the state arrangements, which we are deregulating, or a market support payment on manufacturing milk under the DMS scheme.

According to the commonwealth legislation, the extent to which the producer price for market milk will fall upon deregulation is a matter for conjecture. Projections of the price falls vary from 10¢ per litre, which is around 19 per cent of the current producer price for market milk, up to 25¢ a litre, or 48 per cent of the current price. Taking the mid-range between these projections, at 15¢ per litre, ABARE estimates that the impact of deregulation would be an average annual per farm fall in income of $28 350. Of course, the new support scheme funded by levy will put back some of that money.

For consumers, the commonwealth and state regulatory arrangements currently generate monetary transfers of over $500 million annually from Australian consumers, and deregulation will return half of that. The commonwealth legislation gave some indicative estimates of adjustment payments, and it was estimated that the average current farm

income for South Australian dairy farms was $55 520; the annual fall in income is estimated at $31 550 in South Australia; and the average adjustment payment over the eight years would be $160 159.

The adjustment package, as I said, is to be financed through a levy of 11¢ a litre on sales of liquid milk products. In terms of levy imposition, consideration has been given to an appropriate point of imposition to ensure that the burden is not passed back to the producer, whilst ensuring efficient levy collection. The levy is to be on cows milk and will broadly cover whole milk, modified milk, UHT and flavoured milk. It is interesting to note as an aside that the commonwealth bill provides:

> The levy will be applied on a cents per litre basis at the retail level. However, the collection would be at the processor level for convenience, efficiency and security. As there are far fewer processors than retailers, collecting the levy from processors minimises the number of collection points.

It is interesting that the commonwealth has a rather different attitude towards the collection of goods and services taxes generally, because the commonwealth in that case has gone for the much larger number of tax collectors rather than the lesser number in this case. As to the impact on consumers, which is an important part to be considered in the bill given that the 11¢ a litre levy will be imposed on milk, it was estimated that the size of the consumer transfer based on an 11¢ a litre levy will be $1.74 billion, or an average of around $218 million annually.

However, consumers are still expected to be better off under the package than under the current situation, where commonwealth and state regulatory arrangements provide for monetary transfers of over $500 million annually from consumers. It remains to be seen whether that estimated 4¢ per litre reduction in the price of milk passes through the supermarkets to the consumers.

The Hon. R.R. Roberts interjecting:

The Hon. P. HOLLOWAY: I think I share the views of my colleague on that matter, but I guess we can only hope. As I said, the scheme is conditional upon state repeal of its marketing arrangements, and that is in the bill before us. What will be the impact on South Australian dairy farmers? There are, as I said, 714 at the moment. We can expect that anywhere from 100 to 200 farmers may leave the dairy industry in this state.

The South-East might be particularly affected, and there are some issues in respect of that area that I will place on the record during this debate. Over the past few days, a number of farmers from the South-East have contacted me with particular concerns. The first concern relates to the release of information from dairy processors to the dairy authority that is handling this scheme. I understand that the major dairy processors in this country were responsible for supplying information on their client dairy farmers to the authority, and complaints have been made that some of the information released was improper.

In one case, a dairy farmer received a letter addressed to their post box but the letter was addressed to the bank that held his mortgage. Naturally, the dairy farmer was upset that that information had been posted out by the dairy authority and, obviously, that information was supplied by the processor. The point of this scheme is that the moneys are to be used by the dairy farmer to either exit the industry or to make investments. No conditions stipulate that it must be used to pay off mortgages, or anything else. Naturally, there has been concern about the release of that information.

In the South-East, a large number of dairy farmers are concerned about an anomaly in the system. A number of dairy farmers in the South-East supply their milk to three Victorian producers—De Cicco Industries, Warrnambool Cheese and Butter and Murray-Goulburn. None of those processors produce UHT or flavoured milk. It transpires that, under this package, dairy farmers who supply National Foods or Dairy Farmers (who do produce UHT and flavoured milk) will receive something like $40 000 greater compensation than those who supply the three Victorian producers. Because it is under a pooling system, a higher proportion of market milk is produced by National Foods and Dairy Farmers and other producers, so I gather the logic behind this is that, because of the high proportion of market milk, they will receive a higher level of compensation. Given that the average compensation in this state will be $160 000, a number of dairy farmers in the South-East who are supplying the three Victorian producers will receive somewhat less than that.

That is significant for the future of the dairy industry in this state because the South-East is our most productive area. Like Victoria, it has a similar low cost structure and, in theory, in a deregulated environment the dairy farmers in the South-East should be expected to prosper the most. However, these farmers—by some quirk in the way the commonwealth has defined market milk for the purposes of this compensation scheme—will be relatively disadvantaged compared to producers in other regions. That means that the farmers in the most productive area in the state will not have as much money to invest to improve their productivity as those in other areas.

In some ways, that would be the reverse of what might be expected, and I would like the Minister for Primary Industries to examine this issue. As I have said, a number of dairy farmers have contacted me about this matter—some were clients of National Dairies and Dairy Farmers up until several years ago. They have since swapped processors; they obviously had no idea of the consequences of their action, because of this definition of market milk for compensation payments.

The Hon. R.R. Roberts interjecting:

The Hon. P. HOLLOWAY: I recently attended a meeting in the South- East with the Hon. Ron Roberts, where Murray Goulburn was offering farmers various enticements to join that processor. I know my colleague made his views known that he thought they should be patient. He said it much more effectively than that but he warned them that they should not jump in. Unfortunately, some of them did jump in. However, the point I want to make here is that the advantage those producers might have gained from swapping processors several years ago would be far more than outweighed by the cost they will now face in terms of this compensation package. Given the importance of this industry to the state and given the importance of the South-East as a production area, I would ask the minister to take up with his federal colleague this matter with some urgency to see whether that can be revisited.

I think it is going to be rather late at this stage to change the federal legislation—it has already gone through the parliament—and that sets the definition of milk to be used in the compensation scheme. However, one part of this package which I announced earlier related to regional assistance. One thing the minister might consider is that perhaps a large part of South Australia's share of this regional package—and from memory it was some $40 million or $50 million Australia

wide—could go to the South-East given this problem which I have highlighted. I will seek the minister's response on that matter.

At this stage I also want to refer to some comments that I had made under a barley marketing bill 12 months ago. I referred then to the Productivity Commission report, which had looked at the impact of national competition policy throughout Australia. I made the following point:

> . . . what is more interesting is the distribution of benefits under national competition policy reforms,and I am talking about all the NCP reforms. Indeed, the report—

—this was the report of the productivity commission—

> assumes that the implementation of the NCP reforms is estimated to make output higher than it otherwise would be in all statistical divisions across Australia except for Gippsland. If one looks at the table of results, we can see that regions likely to benefit most tend to be Queensland and Western Australia. On the other hand, regions benefiting least tend to be in Victoria, South Australia and the southern parts of New South Wales, which, the report says, is where the impact of water reforms and dairy industry reforms is likely to limit regional growth.
>
> As an aside comment, I find it interesting, given that Victoria is the state that is pushing most for dairy reform that, according to this report, Victoria will suffer the least benefits from competition policy reform as a result of the dairy industry reforms and the water reforms.

It is interesting that, although dairy industry de-regulation will undoubtedly be a good thing for those dairy farmers who can survive and increase their production and those who have the capacity to invest in the modern rotating dairies one has nowadays, whereas undoubtedly some will gain, the losses to communities as a whole will be considerable because, although payments will be made to dairy farmers to exit the industry and while there will be a temporary injection of funds, the overall impact of this deregulation will be to take several hundred million dollars a year out of the industry Australia wide, which will have a substantial impact on regions.

I think it was important that the agriculture ministers throughout Australia, at their meeting in March, were able to persuade the commonwealth to put extra money into regional assistance, because those statistics I have given essentially provide the justification why that assistance should go to those regions. Competition policy will bring benefits to many parts of Australia but, in relation to those areas that are heavily dependent on the dairy industry, the Productivity Commission's conclusions were that those regions would suffer. So if there is to be some sharing of the benefits of national competition policy, it should go to those regions that suffer the most—and I think the South East is one region in particular that the government would need to look at.

In conclusion, if this Parliament were not to support the bill before us it would lead to a breakdown in the compensation package. This compensation package is the largest compensation package the commonwealth government has ever considered. In spite of what reservations we might have about deregulation, they might be expressed in the predictions which I and the Productivity Commission have made about the impact on some regions of our country. In spite of those reservations and in spite of the anomalies in the package, such as those I have mentioned in the South-East, the alternative of doing nothing would undoubtedly be worse for the dairy industry. It is better to have a significant amount of compensation than none at all. In that situation we have little option but to support the measure.

However, in giving my support to this bill I ask the government to urgently approach the commonwealth regarding that compensation anomaly in the South-East. I would like to see progress on the communiques issued by the ministers (and I read them out earlier), particularly in respect of a number of working groups that have been set up to advance the various issues such as food safety and regional compensation. I would like the minister in his response to report on what progress has been made on those issues. Beyond that all we can do is hope that this package will work fairly smoothly.

One matter that I omitted to mention earlier is that I understand that some of the contracts that are being offered to dairy farmers to apply after the scheme comes in are offering very low prices, much lower than had been predicted under the scheme projections that I mentioned earlier. If this is the case, it could lead to quite considerable dislocation after 30 June as obviously dairy farmers will have a very difficult choice to make. Do they take the money and exit the industry or should they invest very heavily in the techniques that will be necessary to be competitive in the future?

There are difficult decisions for the industry. I certainly do not envy the choice those individuals will have to make, but we can only hope that this scheme and the price structures will settle down to a fair and reasonable situation as soon as possible so that the industry can move forward. After all, the whole purpose of the bill was to try to introduce a scheme of orderly adjustment to deregulation. Let us hope that it does that job. We support the bill.

The Hon. CAROLINE SCHAEFER: I support the bill. The Hon. Paul Holloway has spoken at length on the bill and on the necessity for South Australia to deregulate in order to take advantage of the extraordinarily generous compensation package that is being offered to dairy farmers via the levy on consumers. Anyone who has been involved in any rural industry in Australia and South Australia knows that from time to time we have to suffer reconstruction within our industries. The dairy industry is no orphan in this. In fact, I remember a reconstruction of the dairy industry in, I think, the early 1960s when no such compensation package was offered.

There is a necessity for South Australia to deregulate due to the decision of the Victorian dairy industry to deregulate, which was taken last year. It is interesting, however, that on the election of a Labor government in Victoria a poll of dairy farmers was held within Victoria and, in spite of heavy lobbying, something like 85 per cent of Victorian dairy farmers voted to deregulate. I know very little about the dairy industry but would just like to note that I know considerably more now than I did about three weeks ago because I had the pleasure of participating in judging the Dairy Farm of the Year Award in South Australia.

The Hon. R.R. Roberts interjecting:

The Hon. CAROLINE SCHAEFER: Having gone to some of the best dairy farms in the state, I had to admit to those dairy farmers that I knew very little about dairy farming. However, I probably knew considerably more than most of my other female and, indeed, male colleagues in this place, as I have at least a knowledge of basic pasture management and farming. I mention those people who certainly are at the top of their industry. I was astounded at the professionalism and at how well managed those farms were, and I have no doubt that those people will not only survive but continue to flourish in a deregulated atmosphere, which is not to say that there will not be some very difficult decisions for some people to take.

I repeat that this is the only rural industry I know of that has had the assistance of a very generous reconstruction package, should they decide to take that package and leave the industry. I reiterate that, without the passage of this bill, that reconstruction package would not be available to them via the commonwealth government. It is also worth noting, when all this consternation is raised, that the following organisations were consulted in South Australia and all wholeheartedly support this bill: the Australian Dairy Industry Council; the Australian Dairy Farmers Federation; the state Dairy Farmers Federation; the South Australian Dairy Farmers Association; and milk processors, vendors and milk hauliers. It seems that the main opposition comes from the ALP. I support the bill.

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

SOUTH AUSTRALIAN MOTOR SPORT (MISCELLANEOUS) AMENDMENT 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 proposes to amend the *South Australian Motor Sport Act* to facilitate the expanding importance and growth opportunities for motor sport in our State.

The *South Australian Motor Sport Act* was first passed by this Parliament as the *Australian Formula One Grand Prix Act* in 1984. At that time the then Labor Government had secured a new and exciting event for our State.

Since the establishment of the Festival of Arts, South Australia had been developing a reputation as a prime events location and something of a 'party' tourism destination. The coming of Grand Prix racing to Adelaide marked a new level of maturity and professionalism for South Australia's reputation as a major events destination.

After eleven Grand Prix's, from 1985 to 1995, Adelaide had firmly established a reputation amongst drivers, officials and spectators as one of, if not, the best races on the Formula One calendar. The loss of the Grand Prix, coming as it did after the State Bank fiasco, was a devastating blow to our State – both symbolically and in reality.

But out of that loss new opportunities have emerged. This Government formed a review committee into major events in our State. Ultimately, we recommended the establishment of a new arm within Government, now well known as the immensely successful Australian Major Events (AME) group.

AME have been responsible for establishing a series of hallmark events for our State and attracting a number of high profile one-off events. Their names and achievements are now well known – the Jacob's Creek Tour Down Under, the Adelaide International Horse Trials, the Australian Masters Games, Wagners Ring Cycle, Tasting Australia and the Golden Oldies World Rugby Tournament.

Together they have now generated more than $250 million in economic activity and highlighted our State to a worldwide viewing audience of nearly 1 billion people. Major events are now an integral facet of our State's rapidly growing tourism industry.

And that's why, nearly two years ago, the Premier initiated and successfully negotiated the return of motor sport to the streets of Adelaide. The agreement with AVESCO to host the Sensational Adelaide 500 (now Clipsal 500) endurance car race for up to ten years on Adelaide's world famous street circuit has now resulted in two extraordinarily successful events.

It also resulted in significant amendments to the *Australian Formula One Grand Prix Act*, which became known as the *South Australian Motor Sport Act*. The amended Act provided a legal and administrative framework for the staging of any style of motor sport within a declared area of our State.

Last year, South Australia's reputation for staging high quality, professional motor sport events with the ultimate enthusiasm brought another exciting opportunity our way – Le Mans.

Le Mans is one of the three most recognised names in world motor sport and American entrepreneur, Don Panoz, is building a world series out of it. After many months of negotiations the Government has settled on an agreement with Mr Panoz's Australian company, Panoz Motorsport Australia (PMA), for the staging of a one-off Le Mans style sportscar race on Adelaide's street circuit this New Years Eve.

Our agreement gives South Australia a right over future Le Mans events in Australia; in fact Mr Panoz has publicly stated that the Australian Le Mans event will be in Adelaide as long as we want it here.

The agreement also requires PMA to provide a high standard of starting grid, to attain certain levels of media coverage (including coverage on major global television networks such as NBC, Eurosport and Asia's Star TV) and to meet numerous other safety, quality, legal and marketing criteria.

Importantly, the agreement also caps the State Government's contribution to this event to specified fees and activities. With both the Grand Prix and the Clipsal 500 the Government, as promoter, has accepted all risk associated with these events. That is, if they lost money due to bad weather or the like, the Government had to pick up the tab.

PMA effectively acts as the promoter for the Le Mans 'Race of a Thousand Years' and has agreed to accept all commercial financial risks associated with the event's staging. This step, in itself, is a significant positive step for major events administration in our State.

This Bill provides for the staging of this new and exciting event, deals with issues surrounding the changing responsibility of the Government and certain issues relating to the planned staging of this new event over the New Year period.

The majority of amendments relate to removing the requirement of the current Act that such events must be promoted by the South Australian Motor Sport Board. This does not in any way diminish the Government's control, through the powers of the Board, over the conduct of races or responsibility for issues relating to the parklands, roads and other community concerns.

The importance of these amendments is that they facilitate arrangements that will allow the Government to pass the financial risk for this event to a private company. Presently, the requirements of the Act make it practically impossible to achieve this position.

This Bill also provides for two motor sport events to be staged under its provisions per financial year. This will allow the staging of the one-off Le Mans event in December 2000, as well as the scheduled Clipsal 500 in early April 2001. It will also provide certainty for the Government in negotiating any further Le Mans events under the terms of our current agreement.

The other amendments proposed in this Bill deal with liquor licensing laws. They allow the Minister to suspend, or to restrict to specified areas, the unregulated trading hours that presently apply during the prescribed period of the event. These new provisions have been developed after extensive consultation with the Liquor and Gaming Commissioner and the South Australian Police.

Ultimately, this Bill will provide the framework for one of the most exciting major events in our State's history and I commend it to the House.

I commend this bill to honourable members.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Amendment of s. 3—Interpretation

Subsection (3) of section 3 provides that a motor sport event means a motor racing or other motor sport event and includes an event or activity promoted by the board in association with the motor sport event. This amendment strikes out the phrase 'promoted by the Board in association with' so that the subsection will provide that a motor sport event means a motor racing or other motor sport event and includes an event or activity associated with a motor sport event.

Clause 3: Amendment of s. 10—Functions and powers of Board

The amendment proposed to subsection (1)*(a)* will make it clear that the Board may negotiate and enter into agreements on behalf of the State relating to motor sport events to be held in the State whether the Board is to be the promoter of the event or some other person is to be the promoter of the event.

The minor change to subsection (1)*(d)* will provide that one of the Board's functions is to provide advisory, consultative, management or other services to promoters or other persons associated

with the conduct of sporting, entertainment or other special events or projects.

The proposed amendments to subsection (2) remove the words 'promoted by the Board' wherever they appear in paragraphs *(d)* to *(f)*. Subsection (2) sets out what the Board may do in order to be able to carry out its functions as set out in subsection (1).

Clause 4: Amendment of s. 20—Minister may declare area and period

The amendments proposed to subsections (1) and (2) will enable the Minister, after consultation with the Board, to make a declaration in respect of a motor sport event whether promoted by the Board or by some other promoter.

Section 20(3) currently provides that the Minister may make a declaration in respect of only one motor sport event each financial year. The proposed amendment to subsection (3) would enable the Minister to make such a declaration in respect of two motor sport events each financial year.

Clause 5: Amendment of s. 27A—Interpretation

The definition of commissioned officer is removed and a definition of a senior police officer substituted. A senior police officer is the modern equivalent of a commissioned officer and means a police officer of or above the rank of inspector.

Clause 6: Insertion of new section

27AB. Application of ss. 27B and 27C

New section 27AB provides that the Minister may, by notice in the *Gazette*, declare that sections 27B and 27C of the principal Act—

(a) do not apply in relation to a motor sport event specified in the notice; or

(b) apply in relation to a motor sport event specified in the notice but only—

- with respect to licensed premises within the area, or areas, specified in the notice; or
- during the part, or parts, of the prescribed period specified in the notice,

and any such notice will have effect according to its terms.

The Minister may, by notice in the *Gazette*, vary or revoke a notice under new section 27AB.

The Minister will be required to consult with the Board, the Commissioner of Police and the Liquor and Gaming Commissioner before he or she makes or varies a notice under new section 27AB.

Clause 7: Amendment of s. 27B—Removal of certain restrictions relating to sale and consumption of liquor

Clause 8: Amendment of s. 27C—Control of noise, etc., during prescribed period

These amendments are consequential on the insertion of new section 27AB.

Clause 9: Further amendments of principal Act

The schedule contains a number of amendments of a statute law revision nature.

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

ADJOURNMENT

At 10.13 p.m. the Council adjourned until Wednesday 3 May at 2.15 p.m.