LEGISLATIVE COUNCIL

Thursday 15 March 2001

The PRESIDENT (Hon. J.C. Irwin) took the chair at 11 a.m. and read prayers.

SITTINGS AND BUSINESS

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

That standing orders be so far suspended as to enable petitions, the tabling of papers and question time to be taken into consideration at 2.15 p.m.

Motion carried.

PROSTITUTION (REGULATION) BILL

In committee.

Clause 1.

The Hon. CAROLYN PICKLES: Since I was away sick and was paired when the bill went through the second reading stage, I wish to indicate my very strong support for the elements of this bill. This issue has been before the parliament in one form or another since 1978, and I think it is high time that we actually dealt with it. It passed the House of Assembly following a very lengthy debate in that chamber some months ago, and it is now back before us again. I can only hope that we will expedite it one way or the other.

Members will have had a long time to look at this legislation. Clearly, people have fixed views about it one way or the other. I must say that I introduced a bill in 1986, I think it was, to decriminalise prostitution, with some safeguards, and I am very pleased that the government has taken on board this very vexed issue. Even though we had a complication in the lower house with some four government bills and one private member's bill, quite an extraordinary way to deal with this, we are now left in the upper house with a quite complex bill. There are a number of amendments, and I indicate my very strong support for the passage of this bill through the Parliament.

The Hon. A.J. REDFORD: There has been no diminution in the number of emails and letters that I have received on this issue, and I have filed a number of amendments. I think that I should in general terms outline what the net effect of those amendments might be. First, in relation to the maximum number of rooms that might be appropriate for premises of this nature, I will be moving an amendment that it be reduced from eight.

I have also added some grounds in relation to the basis upon which a banning order for those premises might be sought. I will be moving to add a ground that it will be appropriate for an order to be granted if there is a breach of the occupational health and safety of the people involved or working in and about the premises. I will also seek to extend the class of people who might apply for a banning order. At the moment it is restricted to a very narrow class, and I will be seeking to extend that class from not only officers in the Attorney-General's Department but to the police and the community in general.

I will also be moving amendments that will reverse the onus in relation to the application for a banning order such that the onus will be on the occupiers, owners or proprietors of the enterprise to establish that they are not operating in a manner that might lead to a banning order. I will also seek to move an amendment to enable banning orders to be made in relation to customers. In that respect, it is my view that those who operate these businesses carry a very high onus, and I would like to see that there is general community involvement.

I will also be moving amendments retaining a number of offences or continuing a number of offences associated with prostitution, in particular the offence of procuring people to become prostitutes and that of living off the earnings of prostitution. I will be supporting amendments in relation to the banning of advertising: not just the banning of advertising in relation to procuring people to become prostitutes but also the advertising of the enterprise itself.

I must say it seems to me, in relation to the way in which this industry is conducted at the moment, although it is said that it is an illegal industry (which is a debatable point), that the biggest winner is the *Advertiser*. I have pointed out to numerous people whom I have seen over the past few months that, under the current system, on average, there is nearly a full page of classified advertisements in the *Advertiser* every day. This is anecdotal, and I am sure the *Advertiser* will write to me and correct me if I am wrong, but my understanding is that that is something in the order of $60 000 to $70 000 per week in revenue to Mr Murdoch.

That appears to me, on anecdotal evidence, to mean that the biggest winner from this perceived illegal enterprise is, in fact, Rupert Murdoch. I know that he has established very high moral standards, particularly in relation to areas of gambling, and I know—well, I suspect: I should not put words into his mouth—that he would be horrified to think that one of his enterprises here in little Adelaide would be making that sort of money out of this sort of activity. I hope—perhaps forlornly—that at some stage in the next week or so the *Advertiser* will welcome the fact that it has been drawn to its attention that it would be the single biggest beneficiary under the laws as they currently operate.

I also say that that, however, has been useful in relation to consideration of how this industry currently operates, in that it would appear to me that the business is thriving. As I said, one needs only look at those advertisements and the fact that Stormy Summers—everyone knows what she does, and she does not apologise for it or hide it—seems to operate today under the current law with complete impunity. With the greatest of respect to those who voted no at the second reading, there seems to me to be a complete absence on their part to at least endeavour to deal with some of the issues associated with the industry. Perhaps they will seek to participate in this process during the committee stage, and I hope that they do. At the end of the day, it is my view that whatever we do with this legislation should not seek to extend, encourage or expand this activity in any way, shape or form. Whether or not we achieve that remains to be seen.

The Hon. K.T. Griffin interjecting:

The Hon. A.J. REDFORD: The Attorney-General interjects. Perhaps I can clear that up at the outset. The fact of the matter—and the Attorney-General, I am sure, would acknowledge this—is that the very act of prostitution in this state, as it stands, is not illegal and has not been illegal for decades. The only activity that we seek to attack under the current law is associated activity, and I am sure that the Attorney-General has looked at my amendments—I know that he has, because he has discussed one of them with me—and he would be aware that I am moving an amendment which would seek to retain most of the offences which already exist and which are associated with the more heinous practices in relation to prostitution.

I confess to one weakness of my approach, and I am still grappling with that in my mind, and that is that currently in South Australia, as I said in my second reading contribution, we have a system which, if people are to engage in this activity, encourages the activity of escort agencies over and above the activity of brothels. It seems to me that the most heinous form of this activity is, in fact, the escort agency side of the business. I understand from police reports and police position papers that organised crime is clearly behind the operation of escort agencies in this state—and not even local.

The Hon. R.D. Lawson interjecting:

The Hon. A.J. REDFORD: Certainly, not to the same extent. I am happy to provide the honourable member with a copy of the reports if he has not had an opportunity to read them.

The Hon. Sandra Kanck: It still doesn't deal with this.

The Hon. A.J. REDFORD: Unfortunately, I think that is the weakness of this whole process, but in a lot of cases in politics we must deal with what is delivered as best we can, and I do not believe that it is appropriate for people to just turn their backs on it.

I close by making one observation and that is this: I freely and fully acknowledge all the concerns of those people who have written to me opposing voting in favour of this legislation. In the last two weeks I have endeavoured to take every call from everyone who has rung me to explain the position. Almost to a person, they have been encouraged by the various groups interested in this issue, whether it be churches or associated bodies. When I explain to them that the act of prostitution is not currently illegal in this state, they are not aware of that. So, we have been subjected, with the greatest of respect to those bodies, to a very intensive lobbying exercise from a position of ignorance. That is extremely disappointing. In fact, one would hope that in the future churches and other bodies would at least endeavour to explain to their constituents and members, whom I respect quite deeply, what the reality is.

The Hon. P. Holloway interjecting:

The Hon. A.J. REDFORD: Well, under my amendments they have a process through which they can get that shifted. In any event, it is disappointing that they have not endeavoured to confront the issues. As I said in my second reading speech, it is all well and good for us to play Pontius Pilate and walk away from this issue, with the existing law resulting in a page of advertisements, day in and day out, in the *Advertiser*, persistently giving money to the Rupert Murdoch coffers, and go home and pretend to look in the mirror and say, 'I've done good.' Quite frankly, I think that is the wrong approach and an abrogation of our responsibilities.

At the end of the day, we will go through this process and I hope at the end of the committee stage we can have a break and look to see what we have finished up with. I know that this is the approach I will be adopting: if we think that the law is better as proposed by this amended bill than the current law, I will vote for it at the third reading. If it is not, then I will not. I think that we should take this a step at a time and try, as much as we can, to keep an open mind.

The Hon. CARMEL ZOLLO: I indicate that I have some amendments in relation to the application of the Development Act and children on premises which will, no doubt, be dealt with at a later stage. I simply indicate, as I did at the second reading, that I do not agree with the legalisation of the business of prostitution and that I will be voting that way at the third reading. I will be voting against it. However, we do have some extensive filed amendments before us and I will be voting for or against, depending on whether I believe they are preferable to the clauses that are in the bill before us.

Clause passed.

Clause 2 passed.

Clause 3.

The Hon. P. HOLLOWAY: I move:

Page 4, lines 15 to 18—Leave out the definition of 'offence related to prostitution' and insert:

'offence related to prostitution' means—

(a) a serious offence related to prostitution; or

(b) any other offence against this act;

Page 5, after line 21—insert:

'senior police officer' means a police officer of or above the rank of inspector;

'serious offence related to prostitution' means—

(a) an offence against section 7 (1), 7 (2) or 12;

(b) an offence against section 66, 67 or 68 of the Criminal Law Consolidation Act 1935;

(c) an offence against the Development Act 1993 involving a brothel;

(d) a prescribed offence committed in a brothel;

If this amendment is successful—and I will use it as a test amendment for other clauses—I will move to insert a definition of serious offence related to prostitution, and I will move further amendments to clause 19, which would mean that, in connection with a serious offence as defined, a police officer would be able to enter premises without a warrant in relation to that particular matter. So that is the amendment that I am moving, with the related impact.

This bill was passed at the second reading so, in as much as the second reading vote was a reflection of the will of the Council, prostitution will be legalised in this state, if in fact that is the case when we come to the third reading. I guess time will tell whether that vote was a true reflection of the view of the Council. I opposed the bill at the second reading but, given that the Council passed it at the second reading stage and expressed, therefore, an in principle agreement to the legalisation of prostitution, during the committee stage I will approach all clauses with the attitude that I will do my best to try to make the bill as workable as possible, even though, in principle, I do not support the legislation.

My motive behind trying to create these offences is an attempt to increase the police powers in relation to dealing with prostitution, should this bill be successful and prostitution is legalised. My amendments have arisen from discussions that I have had with the Police Association and other officers who are greatly concerned about the problems that they will have in policing prostitution. After the Police Association had approached, I think, all members of parliament, I notice that the Attorney-General released some comments in relation to policing, and I thank him for his contribution to the debate. However, I would like to make a few comments in relation to that document because I think it underlines what I see as a fundamental flaw in this legislation. In part, the Attorney-General's paper states:

> Of course, under the bill acts of prostitution would not be unlawful in themselves. They would only be relevant if they needed to be proved to establish some offence connected with prostitution. There will therefore be much less need to prove an act of prostitution under the bill than there is under the present law.

Well, of course, the underlying assumption is that this bill will effectively get rid of illegal prostitution; that, once this bill is passed, presumably the only brothels that will be operating will be nice legal brothels and that all those people who have been involved in the illegal industry will suddenly go out of business.

During the second reading debate I expressed the view that I thought that that proposition was a nonsense. I think the experience in Victoria shows that it is a nonsense. Perhaps even more alarming is the fact that the police that I have spoken to recently indicate that already the number of brothels in this state is mushrooming in anticipation of this bill being passed. As I understand it, there is also evidence of increasing drug use within the brothels that are operating at the moment. To add further alarm, there is evidence that motorcycle gangs (the outlawed bikie gangs) are showing increasing activity in prostitution.

Quite clearly, under the guise of this bill if it is passed and legal brothels are permitted, we will get a whole layer of illegal brothels coming in, as they have in Victoria. If that is to be prevented—and I hope that that would be the objective of everybody in this Parliament (if the bill is carried we would all want to see illegal brothels minimised, if not wiped out)—then it is imperative that the police have the powers to do that job. Where is the underlying philosophy that the Attorney is talking about that there will be much less need to prove an act of prostitution and other matters? I do not think that is the case, because the evidence is there already that heavy organised crime is moving into this area. Why would they not, as it is the experience in the rest of the world?

To return to the amendments, this test amendment relates to creating a serious offence related to prostitution. If successful, I would later define that as an offence against clauses 7(1) and (2), which relate to banning orders, or to clause 12, which relates to multiple brothels. Given that there is this evidence of increased outlaw activity in relation to the establishment of brothels, that is particularly important. Inevitably, if this bill is successful, those groups, under the new community attitude that will be established by this bill and under the camouflage of legal brothels, will try to run a more down-market seedy version of the activity.

The Hon. Carolyn Pickles: And be prosecuted.

The Hon. P. HOLLOWAY: Well, they will be prosecuted if the police have adequate powers. I note that the Hon. Angus Redford has a series of amendments, some of which are identical to mine, and I will certainly be supporting those. I can see that the Hon. Angus Redford has—

Members interjecting:

The Hon. P. HOLLOWAY: I look forward to the debate from the Attorney when he does. I am sure that underlying this is this legalistic framework that the Attorney had: this is the 1970s, everyone is good and nice, and brothels are run by decent middleclass businessmen. They will be businessmen and women wearing suits and they will all be operating in a nice middleclass environment: only decent people will run brothels. Sadly, that is not the real world. The Attorney has so little credibility in terms of law and order at the moment because he is still labouring under that misapprehension. The amendments that will be moved later all relate to police powers in relation to the investigation of those offences.

I guess the key issue really is whether the police are able to go into places where there is evidence of serious offences, such as under-age people being involved and where people have been banned from taking part in the industry (and we are looking particularly at outlaw gangs and organised crime). Where they have suspicion they should be able to act immediately and not have to go and get a warrant. One of the problems we have had with policing in this area, I understand, is that the time these offences are most likely to occur is in the early hours of the morning and it is not always easy to get judicial warrants. That is the other matter that the amendments of the Hon. Angus Redford, and my similar amendments, seek to address. The reality is that in the early hours of the morning when it is most likely that evidence of these offences will occur is when quick decisions need to be made if we are to be effective in stamping out this illegal activity.

The Hon. K.T. Griffin interjecting:

The Hon. P. HOLLOWAY: I look forward to hearing the Attorney's insight into how the prostitution industry really works, because I think from the paper that has been put out it is a fairly unrealistic attitude towards the realities of what is happening and how it might be policed. At this stage, I will move the test amendment to create this new offence so that police officers, if they have evidence of serious crimes being committed, are able effectively to take action.

The Hon. T.G. CAMERON: Whilst I concur with some of the rhetoric used by the Hon. Paul Holloway, I would like him to explain the effect of his amendment.

The Hon. P. HOLLOWAY: The difficulty with—

The Hon. T.G. Cameron: I was no wiser at the end of it.

The Hon. P. HOLLOWAY: I will try again. The problem is that we have to cover a series of amendments, because this first test amendment is to create an offence related to prostitution. That is defined as follows:

(a) a serious offence related to prostitution; or
(b) any other offence against this act.

This creates this new offence.

The Hon. T.G. Cameron: What is an example of a serious offence related to prostitution?

The Hon. P. HOLLOWAY: That is defined later and I will go through it. This is done so that when we come to clause 19 of the bill, which relates to powers of police officers, we see in subclause (2) the following:

A police officer may exercise powers under subsection (1)—
(a) with the consent of the occupier;—

in other words, the owner of the premises or brothel—

(b) as authorised by a warrant issued under this part.

Later I would seek to add subclause (c), which provides:

(c) in connection with a serious offence related to prostitution—

at the discretion of the police officer.

In other words, if there was a serious offence being committed (which I will explain in a moment), the police officer would be able to exercise his powers of entering and searching premises. I understand that the police have these powers already in relation to the Controlled Substances Act, I believe under section 54. The police have similar powers, so if there is—

The Hon. T.G. Cameron: If there is reasonable cause.

The Hon. P. HOLLOWAY: There has to be reasonable cause.

The Hon. T.G. Cameron: What is reasonable for a police officer?

The Hon. P. HOLLOWAY: If it is an offence related to controlled substances, they have the capacity to enter those premises, whereas under the bill if it is passed in its present form a police officer would be able to enter and search premises only with the consent of the occupier or if they had a warrant. If some of these offences are being committed, by the time the warrant is issued in all probability that offence may be over.

The Hon. A.J. Redford: Why are your amendments better than mine?

The Hon. P. HOLLOWAY: You have a series of other amendments. You have not formally moved them yet.

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: I will address that later. At the moment I am just trying to answer the question of the Hon. Terry Cameron, so I will complete that first. The serious offence related to prostitution is defined in a later clause that I will move if this is successful.

The Hon. T.G. Cameron: Where is that?

The Hon. P. HOLLOWAY: It is in my listed amendments, as follows:

'serious offence related to prostitution' means—
(a) an offence against section 7(1), 7(2) or 12;

Clauses 7(1) and 7(2) relate to banning orders, in other words, people considered not to be fit persons to be involved in prostitution. If there was an alleged offence under those sections, it would be regarded as a serious offence. Also, under clause 12 of the bill, which relates to a limitation on sex business, the operator of a sex business must not have more than one place of business. In other words, if it was an offence regarding a second business, which could relate to a bikie gang having illegal premises and a back-door operation as well that it was using as a front, and if the police officers thought that there was some sort of offence in relation to that, they would be able to enter and search the premises without a warrant.

Under paragraph (b), a serious offence is also an offence under sections 66, 67 or 68 of the Criminal Law Consolidation Act. Section 66 relates to sexual servitude and related offences, section 67 concerns deceptive recruiting for commercial sexual services, and section 68 relates to the use of children in commercial sexual services.

The Hon. K.T. Griffin: That is already covered by the law.

The Hon. P. HOLLOWAY: That may be but this just clarifies the situation. In a bill like this, it does not hurt to make it quite clear in the law and to put it all together. The next set of offences relate to offences against the Development Act 1993 involving a brothel, and we will be discussing those measures later to determine what form they ultimately take. Paragraph (d) relates to a prescribed offence committed in a brothel, and that provides the possibility of other offences being prescribed if circumstances arise. Essentially that is what this amendment does. It creates an offence related to prostitution and, under those circumstances, a police officer may enter and search the premises.

The Hon. DIANA LAIDLAW: I oppose the amendment moved by the Hon. Mr Holloway. As the honourable member said, this is a test clause in relation to the extent to which this parliament would be prepared to entertain police powers and their application to a legal business in this state, on the basis that this bill goes through. If it does pass with this provision as moved by the Hon. Mr Holloway, it is on the basis that it is a test provision because it relates to the extent that we would entertain extending police powers to a legal business operating in this state.

Before discussing my reasons for opposing this amendment, I highlight that, in moving the amendment, the Hon. Mr Holloway talked about the Victorian situation. I repeat—as I have said before, but some do not wish to listen—that this is a very different model for legalisation of prostitution and we have learnt from the Victorian experience and others and we have modelled a provision for legalisation in South Australia that takes into account unsavoury practices elsewhere in terms of the planning law, police provisions, zoning and a whole range of other issues.

I highlight, too, that, if the honourable member indicates that police have evidence about drugs, motorcycle gangs and increased activity, I assume that the police may prosecute already. The police do not need increased powers through this bill to deal with those issues. The powers are in place today and if, as the honourable member said, the evidence is there, they will be prosecuted.

With respect to this amendment, the police would have increased authority to enter and search legal premises without a warrant. As I indicated, this is a test clause for clause 19, which makes provision for such power in connection with a serious offence related to prostitution at the discretion of the police officer. I say to the Hon. Mr Cameron, who is asking about this matter, that I know of no other current law in this state that gives the police such discretions as the Hon. Mr Holloway seeks through this amendment.

Members interjecting:

The Hon. DIANA LAIDLAW: I have indicated that I know of no current law that provides for police to have these powers. Certainly under the Controlled—

Members interjecting:

The CHAIRMAN: Order!

The Hon. DIANA LAIDLAW: The Hon. Mr Holloway suggested that, under the Controlled Substances Act, police have such powers. They do not. The police are required to have a warrant if they wish to enter and search premises for controlled substances. The only examples that I have been alerted to where the police have the same discretions that the Hon. Mr Holloway wants to introduce in this bill relate to some livestock and agricultural-based acts. They are very old acts that have not been updated for years and, if they were updated, given modern practice and sensitivities, I suspect that those provisions would also be addressed and modified from the vetted or unchecked approach that the police currently have with respect to fruit fly or livestock issues to enter a property without a warrant.

It is very important to note that the serious offences related to prostitution that the Hon. Mr Holloway seeks to address in a later amendment are already matters where the police have power under section 67 of the Summary Offences Act to address these matters if they have a reasonable cause to suspect. Parliament long ago provided those powers to the police. Mr Holloway is saying that he wants further powers so that, without reasonable cause to suspect and without a warrant, police officers can simply enter a legal business and do what they wish.

I highlight, too, that, in terms of his further amendment on serious offences related to prostitution, the Hon. Mr Holloway is including an offence against the Development Act involving a brothel. As Minister for Urban Planning, I am staunchly opposed to seeing that an offence under the Development Act would allow the police unfettered powers to use their discretion to enter any property as they wish.

The bill already provides that, for offences against the Development Act, as is standard practice for any legal business in this state, those matters be dealt with through DAC or local government. In this instance, the bill provides that it specifically be DAC as the approving authority. I would not want to see prostitution become an exception to longstanding practice in terms of DAC's responsibility for policing offences against the Development Act where it provided the approvals. I note that the Hon. Mr Redford has some amendments also addressing police power issues and I indicate that I will be supporting those amendments.

The Hon. K.T. GRIFFIN: I am not going to rise to the bait that the Hon. Paul Holloway threw out about law and order issues. I am happy to have a debate about that any time.

The Hon. Sandra Kanck: Who is putting him up to that, I wonder?

The Hon. K.T. GRIFFIN: It is probably Mick Atkinson, I suggest, and Mike Rann, who want to keep ramping this up, believing that they will win a bit of popular support by that debate. That is for another day.

The Hon. T.G. Cameron: You had better be careful or he will be on the Bob Francis show tonight.

The Hon. K.T. GRIFFIN: Well, he probably will, but we will see what comes of that. The important thing in that area of the debate is to try to have a balanced view. We do not serve the public well by becoming hysterical about those sorts of issues. Putting that to one side—because that is a bigger debate for another day—I just want to say a few things about the bill. Everybody knows—it is on the public record—that I did not support the second reading, and I have a real concern about what is in the bill.

But, having got through the second reading, I have taken the view, as I have always taken in my time in this parliament, that if there is a way in which we can improve the bill during the second reading, even though ultimately we may decide to oppose the third reading, then we have an obligation to try to do so. My approach in relation to the bill is that, if a majority of the Council and then the parliament believe that the bill should pass, I will accept that.

However, in going down that path, I want to ensure that we have a piece of legislation that is workable. It may give some people some comfort to give police quite wide-ranging powers to deal with issues of prostitution in the expectation that the bill will go through, but I suggest that what we ought to do is to get this into some perspective.

If the bill goes through, for all practical purposes prostitution and businesses surrounding prostitution will be legal: they will be no different from any other business which is lawfully carried on. Therefore, it is wrong in principle to be looking at prostitution businesses in a way that is different from others.

The Hon. P. Holloway interjecting:

The Hon. K.T. GRIFFIN: The Hon. Paul Holloway said that I must have a view that everybody is very nice and will comply with the law and there will be nothing illegal in the area of prostitution. I do not accept that, and that is a gross misrepresentation of the basis upon which I have sought to provide some information which will help members to make up their minds about things like police powers. The fact of the matter is that there will be illegal prostitution: that has been the experience in other jurisdictions. So it is a question of how you deal with illegal prostitution.

Just because you have illegal prostitution does not mean you should visit upon legal prostitution all of the powers of police, for example, to enter those premises when, with other lawful businesses, those powers would not exist. I think we have got to look at a few of the principles in relation to this rather than just saying, 'Well, look, it is going to be easier to get the bill through'—and I am not suggesting any member has that point of view necessarily—or 'Let us put these tough powers in' or 'Let us not put these'—

The Hon. Diana Laidlaw interjecting:

The Hon. K.T. GRIFFIN: I know. So we ought to look at it in a balanced way. What the Hon. Paul Holloway's amendment seeks to do is to give some quite extraordinary powers to police in relation to both lawful and unlawful prostitution activities. I think, therefore, that there are some fundamental problems with what he is seeking to do. I am always anxious in relation to the powers of any government official, whether it is a police officer or otherwise, that there are controls over the potential abuse of the exercise of such powers.

So, it is not just in relation to police, who do a great job in enforcing the law: it is a question of what is the appropriate balance between the rights of a citizen carrying on a lawful business and the powers of the police to properly enforce the law in those areas of responsibility given to them by the legislature. There have been some interjections from the Hon. Terry Cameron in relation to water inspectors—and that is always the terribly difficult problem that we face that, over a long period—

The Hon. T.G. Cameron: They can enter your property at any time for any reason.

The Hon. K.T. GRIFFIN: I am going to make that point. Over a long period of time we have tended as a parliament to give broader powers to non-police officials than we have given to the police. That is not a justification for giving the powers to the police, but it is a justification for looking at those other authorities that have been given the power to enter property. When I first came into parliament I raised issues about forestry inspectors (at the time we had a forestry bill in front of us) because they were being given more power than the police. They had no training in the exercise of those powers, but the police do have extensive training and there are regimes in place like the Police Complaints Authority, the disciplinary processes of SA Police right up to the commissioner—

The Hon. T.G. Cameron: Have you ever lost a complaint with the Police Complaints Authority?

The Hon. K.T. GRIFFIN: No, but I have seen some that have been. The point I am making is that there are checks and balances in relation to police which are not in place in relation to other officers. That is a digression, I suppose, in some respects, but what I am seeking to do is to identify that, in the context of this bill, if prostitution businesses are subsequently to become legal as a result of this legislation, we have to look now at a proper balance between dealing with illegal prostitution on the one hand and lawful businesses on the other. I have taken a decision which I think is one of principle: that you should not be visiting upon legal businesses—and in this case prostitution businesses—powers other than those we would accept being imposed upon other lawfully run businesses.

If we deal with the Hon. Paul Holloway's first amendment, it is, as has already been indicated, connected with the police powers and the authority that the police have to enter and search premises. The police would have increased authority, if this and other amendments are passed, to enter and search premises without a warrant where it is suspected that particular offences have occurred. Those offences, the Hon. Mr Holloway has already indicated, include offences against the Prostitution Act. So they may be relatively minor: they may be one person more than might be appropriate on the premises at the time. Or, they could be major offences relating to the contravention of banning orders and ownership of more than one brothel, sexual servitude offences and offences relating to child prostitution under the Criminal Law Consolidation Act.

In relation to that, I have already indicated that substantial powers are already available to the police to deal with those sorts of offences whether as a reasonable suspicion that such

an offence is being committed or any offences against the Development Act involving brothels. The Minister for Transport and Urban Planning has already indicated her view in relation to the Development Act offences included in this series of amendments.

I would suggest that, if one looks at the current powers that are available, including general search warrant powers, what the Hon. Mr Holloway is seeking to do is unnecessary and certainly causes me concern where access is granted without a warrant. The second amendment talks about the senior police officer being of or above the rank of inspector. That means that under clause 19 and the consequential amendments which follow it, I think clauses 20, 21 and 22, a senior police officer can be responsible for self authorising warrants, and we will talk about those a bit later.

The present bill requires a magistrate to authorise the exercise of powers of search and entry by police, and that is consistent with the current requirements of the law. If, of course, we get to a later amendment and we substitute a senior police officer for a magistrate, then the police will be able to authorise their own access, possibly forcible access, to search and enter premises. I would suggest that there is no justification for that kind of unchecked exercise of power in a bill regulating prostitution.

I have already dealt with the series of offences related to prostitution amendment. In relation to clause 19, which is related to these definition amendments, I want to say a few things about powers of police officers. In most cases under this bill—because if it gets through there will be a substantial majority of sex businesses which operate legally—it will not be difficult to establish whether or not a business is a sex business. If it is acting lawfully, it will have no cause to disguise its legal status, and the identity of its operator will be known. Bigger businesses have to have planning approval, so to that extent they will be on the public record.

As the bill is drafted, the police role is to investigate and prosecute certain offences (including breaching of banning orders), to recommend banning proceedings in respect of people who are unsuitable to carry on or be involved in a sex business, to bring nuisance complaints on behalf of neighbours if requested to do so, and to provide evidence to the planning authorities in cases about breach of planning laws. I suggest that the police powers to enter and search premises need to be commensurate with that role.

So, under this bill, clause 19 requires the police, if they want to enter and search premises, first, to have a reasonable cause to suspect that an offence against the act or certain sections of the Criminal Law Consolidation Act is being committed or is about to be committed or that evidence of such an offence may be found on the premises or that evidence of proper grounds for a banning order may be found on the premises.

If we give powers to enter and search without that cause, we are quite significantly extending the powers of the police, and I suggest for no proper reason. Again, I reiterate that this is a decriminalising act. Therefore, one must question why you would want to give even broader powers to police than we give to police in other situations. The bill gives police powers to enter and search premises and seize evidence, and it gives them the ability to use reasonable force to do so.

Under clause 19, the police entry and search powers can be exercised only with the consent of the occupier or under a judicial warrant. In every other state, judicial authorisation is required before wider powers of search and entry are exercised. The basis of the authority is always a reasonable suspicion of the commission of a relevant offence or the presence of evidence of such an offence or something similar. So, the fundamental question that we must ask is: why do we—

The Hon. T.G. Cameron interjecting:

The Hon. K.T. GRIFFIN: I do not know why they leave them alone. That has surely got to be an operational issue rather than a fundamental question of principle: should there or should there not be a warrant required if consent is not given to enter? My fundamental position is that there should be a warrant and there must be reasonable suspicion that an offence is being committed or is about to be committed but, apart from that, if there are other serious criminal offences away from the prostitution bill, there are adequate powers available already. That is how the criminal law is enforced and how the police have gained evidence already.

So, you do not need to place a special emphasis on sexual servitude and so on. They are serious criminal offences under the Criminal Law Consolidation Act. They are already offences about which police can gain access to information by exercising the powers that they currently have. Those powers include, of course, telecommunications interception and listening devices interception, because they are serious indictable offences. So, I oppose both the first amendment and the package of amendments related to it proposed by the Hon. Mr Holloway.

The Hon. A.J. REDFORD: There are three options in relation to this issue of police powers: first, to except the amendments which have been moved by the Hon. Paul Holloway; secondly, to accept the amendments moved by me; and, thirdly, to leave the bill as it stands. I think I should explain to those avid readers of *Hansard* what the differences between those three are. The Attorney has adequately explained the effect of the Hon. Paul Holloway's amendments. They are quite extensive and radical in their outcomes.

My amendments extend police powers, particularly in relation to their function in a supervisory capacity of this industry and particularly in respect of the seeking and securing of banning orders. So, the police would have extensive powers insofar as my amendments are concerned when they are looking at this industry for the purpose of seeking a banning order or determining whether or not a banning order ought to be applied for.

One might say: why would we do that? The Attorney-General alluded to the concept of fisheries inspectors, water inspectors, fruit fly inspectors and a whole range of other inspectors who have extensive powers in relation to the functions that they exercise in relation to the industries with which they are associated.

There are possibly two or three ways in which we could have approached this legislation in terms of the bill that is before this place. One might have been to say: let us keep the police right out of it, let us establish another body (for example, Consumer Affairs) and allow it to have a supervisory and management function insofar as the regulatory functions and banning orders are concerned.

If I can read his body language, the Attorney seems to me to be indicating that it would be absurd to have Consumer Affairs officers involved in this. They have no experience, they have no corporate knowledge and they have had limited exposure to this industry over the years, whereas the police, essentially, have come into contact with this industry on a regular, persistent and consistent basis over a period of decades and have built up extensive corporate knowledge.

If you look at who is likely to be—I use this term in its loosest sense—the regulator of this business, it is likely to be the police. Then you look at the police and what they can and cannot do as far as this industry is concerned, particularly to the point of securing a banning order. One might say that they should have the same powers as a fisheries inspector, etc, particularly when one takes into account the fact that banning orders do not impose any criminal or other sanction. There are no fines and no terms of imprisonment associated directly with the obtaining and securing of a banning order.

So, it seems to me that, notwithstanding what the Attorneys says, it is entirely appropriate to enable the police to have the sorts of powers that a fisheries inspector or a fruit fly inspector might have when they are looking at regulatory functions in terms of what they do concerning their respective industries. I am sure that if Consumer Affairs administered this industry with the same sort of powers as fisheries inspectors and others have, the Attorney would have no objection. However, as I said earlier in my contribution, that would be absurd because they have no experience and no corporate knowledge, etc.

My amendments seek basically to incorporate the sort of fisheries/fruit fly inspector style of investigative powers in this legislation. It is unique in the sense that the police will have that sort of regulatory function, but my amendments do not go beyond that to seek to extend police powers where they might seek to prosecute someone for a breach of a banning order or other offences under the act. They would have the same powers as when they are investigating other serious offences such as murder, rape or incest.

In my respectful submission, that provides a sounder basis upon which we can look at and consider the use of police powers if this bill should become law. I accept that what the Hon. Paul Holloway has moved is a package, but I have extraordinary reservations about his proposed section 25A, which I see as part of his package. When one looks at the effect of that amendment, it has a significant intrusion on people's civil liberties and ordinary rights as we understand them to exist in this democratic country.

Finally, the Hon. Paul Holloway seeks to amend clauses 19 and 20 of the bill. Clause 19 talks about the powers of a police officer and clause 20 talks about the powers of a police officer insofar as the application for a search warrant is concerned. The net effect of his amendments would be: why would anyone bother to apply for a search warrant? They have all the power that they need under clause 19: they do not need a search warrant, if the honourable member's amendments are accepted. So, the whole protection of a senior police officer, as little as that might be insofar as the honourable member's amendments are concerned, is rendered nugatory, because an ordinary police officer can exercise those same powers, if the honourable member's amendments to clause 19 are accepted.

So, if you were an ordinary police officer, why would you bother to go to a senior police officer and say, 'Can you give me a warrant to enter these premises?' An ordinary police officer who was anxious to secure a conviction and obtain evidence would say, 'I already have that power: I've got it under clause 19; I don't have to talk to the boss.' In fact, one might imagine the situation whereby the boss might say, 'Why are you asking me for a warrant? You already have the power: go ahead and do it.'

In that context, the honourable member recognises that there is a need for a check and balance and yet, with the greatest of respect to his amendments, sets up the regime where, having recognised the need for a check and balance, he then allows the police officers another opportunity to totally and completely—and legally—ignore that check and balance. From that perspective, I think that his amendments are misconceived.

The Hon. CAROLYN PICKLES: I oppose the amendments of the Hon. Paul Holloway and will be supporting the later amendments to be moved by the Hon. Mr Redford. The Hon. Diana Laidlaw and the Attorney-General have already outlined the quite enormous powers of the police in this state, and I think that at some stage the other states may have changed the powers of the police but, certainly, they are probably more than in many other states.

What has been interesting in the past, when I and other members in this place and the other place have been dealing with this legislation, is how the police have taken a distinct interest in members who have been moving this legislation, which in my case was unwarranted, as it was in the case of the others, as far as I am aware. It is clear that for many years now the police have wanted to have more powers. The police already have adequate powers, as has been put by the Attorney-General, to carry out the law as it stands now and certainly once this is legalised. I fail to see why they should need more powers of entry.

I think that the amendments to be moved by the Hon. Mr Redford will, I am sure, satisfy the Police Association, which has raised these issues. It has not always been the Police Association, which has raised these issues in good faith, that I take quarrel with, but the actual carrying out of them under the instructions of the police department itself. I have not been convinced of the need for any further powers. I believe that the powers are adequate, especially if we are now looking at a legalised situation.

If there are still brothels or activities associated with prostitution that are carried out illegally, then under this legislation, if it passes, they will have the power to intervene. The Attorney-General has already pointed out the issue in relation to children, and we dealt with that under the Sexual Servitude Bill, which is now an act of Parliament and which covers many of those issues. I do not believe that these amendments are warranted. I oppose them quite vehemently and will be supporting those put by the Hon. Mr Redford.

The Hon. K.T. GRIFFIN: The Hon. Mr Redford spoke about his own amendments. I was not going to deal with those until we reached clause 19, but people need to ponder on what his amendment actually does. The honourable member's clause 19 provides:

> For the purposes of the administration or enforcement of this act, the Development Act 1993, in so far as that act applies to a development involving the establishment or use of premises as a brothel, or an offence related to prostitution, a police officer may—
>
> (a) if the officer has reasonable cause to suspect that premises are being, have been or are intended to be used for the purposes of a sex business—at any time, enter and search the premises;

Later, in clause 19(2) it is proposed that that will be exercised only with the consent of the occupier or on the authority of a warrant issued by a senior police officer. I will be opposing that, because there does not need to be any evidence of an offence or any reasonable suspicion of an offence: it is an authority to enter any place where there is a reasonable suspicion that a sex business is being carried on, lawful or unlawful. That is the breadth of that power, and it is a very broad power.

The Hon. T.G. Roberts interjecting:

The Hon. K.T. GRIFFIN: The Hon. Angus Redford's amendment to clause 19. I do not want to get bogged down on it, but I want to ensure that everybody understands that a very broad power is being proposed, and I will not be supporting it, either.

The Hon. T.G. CAMERON: In relation to the amendment that has been moved by the Hon. Angus Redford, I understand the Attorney-General to be saying that the police do not need reasonable cause. Will the Hon. Angus Redford outline what he envisages would trigger police entering a property if they believe that it is involved in an unlawful sex business?

The Hon. A.J. REDFORD: In simple terms, the police, if this legislation gets through, will be dealing with this industry—if I can use that term—in two contexts: first—and I use this term very loosely—in the form of a regulatory function, and that particularly becomes a focus when they are considering whether or not a banning order ought to be imposed. There is a banning order in clause 5 which covers a person acting unlawfully in the carrying on of a sex business or, alternatively, if they are not a suitable person to carry on or be involved in a sex business. That is specifically directed at the attraction of organised crime and the character of people who might become involved. Finally, if my amendment is accepted—and I am confident that this place will do so—and if the committee is of the view that there might be some breaches of occupational health and safety standards, in that context the police can enter the premises.

The Hon. T.G. Cameron: Are you suggesting that they might bash down a door over occupational health and safety issues?

The Hon. A.J. REDFORD: One might expect that in the context of—

The Hon. T.G. Cameron: If there are no hand towels in the bathroom—

The Hon. A.J. REDFORD: No, let us not get too excited about this. It is the same sort of power that one might expect an occupational health and safety officer or an industrial officer might have to enter workplace premises on the basis that they suspect or are of the view that workers' safety is in danger. It is not intended to be any different from that.

The Hon. T.G. Cameron: So you are going to give police the power to enter a building?

The Hon. A.J. REDFORD: Who else would you give that power to? As I said earlier—and, obviously, I did not explain very carefully—who would you give that power to, to ensure the protection of the public and to ensure that these laws are being complied with? Who else do you give it to? As I explained earlier, it is my view that you do not give it to Consumer Affairs and you do not give it to various other people because they have no corporate history dealing with this particular industry. If the honourable member can suggest a better group of people who might be responsible for this, I am all ears. I sat down and thought about it. You would not give it to local government, for argument's sake, and I am sure the honourable member would agree with me on that.

The Hon. T.G. Cameron: Wholeheartedly.

The Hon. A.J. REDFORD: I am pleased to hear that. The question is: who do you give it to? Who has the knowledge, who has the understanding, and who has the corporate history? For the purposes of using those powers, the most severe consequence of the use of those powers is for the police to apply for a banning order—no more, no less. No-one goes to gaol over it, no-one gets fined over it, and there are no criminal or penal sanctions. So, in that context, they are probably in a worse position than fishery inspectors and various other inspectors. If you go to the next step and you seek to prosecute someone and put them in gaol, then their powers are limited.

An honourable member interjecting:

The Hon. A.J. REDFORD: In the fact that under clause 19(3) these people have certain rights, and they can refuse, in that context, to disclose documents, etc. It is all set out there. So there is a distinction. One is that the powers are very broad—and I acknowledge that—when they are performing what, in loose terms, is a regulatory function but, when it goes to the next step, they are back to pretty much the same position as under the current law.

The Hon. SANDRA KANCK: The issue of police powers is one that I have been a bit frustrated about for quite some time, going back to the time when the Social Development Committee was addressing the issue of prostitution. For more than five years, both within that committee and out in the wider sphere, I have been battling to get people to understand the powers that we have. In my second reading speech I referred, in particular, to the general search warrants that are available under section 67 of the Summary Offences Act and was delighted to see the circular that the Attorney-General sent to members early in December that reinforced what I had to say about the powers that police have. It is very clear to me that enormous powers are already in existence outside of the bill, plus—as others have already pointed out—there are powers that have been given under the bill in the form that it came to us from the House of Assembly. Therefore, I will not be supporting the Hon. Paul Holloway's amendment.

I indicate that my colleague, the Hon. Ian Gilfillan, may not be able to get here for the vote on this when we get to it, but I put on record for him that he also opposes the amendment and he will be pairing out on that particular vote when we get to it.

The Hon. P. HOLLOWAY: I wish to make a few concluding remarks. Perhaps, first, I should put on the record part of the letter that was sent to us all from the Police Association, because I think it addresses some of these issues. I would like to read this into the record first and then make a few comments. The letter states:

> The bill introduces an unworkable process of obtaining a judicial warrant that impedes police acting swiftly in the investigation of illegal brothels and associated offences. Surely, this is not parliament's intent. The association firmly believes that members of parliament have not adequately considered the number of brothels that will operate illegally outside the proposed legislation. The current powers under section 32 of the Summary Offences Act should be replicated in the bill. The bill's consent provisions highlight a lack of desire to police illegal brothels. The association cannot envisage police being granted consent to enter a premises operating as an illegal brothel and, if consent was granted but subsequently withdrawn, police could become subject to litigation as trespassers.

I think we are all probably aware of a case that was given some publicity late last year involving a police inspector. The letter continues:

> The withdrawal of consent to remain would force police to leave the premises, obtain a judicial warrant and return to continue an investigation. That would be unacceptable to the South Australian community. In terms of the police prosecution of offences, the bill contains substantial evidentiary problems which significantly burden police in their investigation stage. Proving the existence of a brothel or, under the bill, a 'sex business' requires proof of systematic and prolonged activity for which payment for sexual services occurs. The importance of swift police action to curtail the operation of illegal brothels not registered under the bill cannot be underestimated.

The associated harm involved with illegal brothels has not been given sufficient consideration. The bill requires a deeming prima facie provision to assist police investigations and prosecutorial functions. Without such provisions, offences involving illegality, particularly offences relating to children in brothels, will continue unabated. The use of deeming prima facie provisions will assist the control of illegal brothels and offences under the bill. Police investigating vice offences must be afforded adequate protection from civil litigation and private criminal prosecutions. The current protection contained in the Police Act at section 65 is vague and not sufficiently particularised.

I end the quotation there, but I think one of the key elements of this clause is the question of speed, that if police, for example, saw someone who was banned, someone associated with organised crime, entering premises—perhaps legal or otherwise—where they suspected that prostitution was taking place, then, under the clause, if my amendments are carried, they would be able to enter and take the appropriate action. If they are not able to enter premises in those situations, they would have to get a warrant and, by the time that had happened, it is highly unlikely that they would be able to take any effective action. Perhaps that is the reason why the prostitution legislation in other states and under current laws does not work.

I have no argument with comments such as those made by Angus Redford. I think we have three alternatives before us in relation to policing prostitution. The status quo is not a particularly good one, of course: the current laws do not work and I do not think anyone is seriously suggesting that they do. However, I hope we would not want to make the situation worse. I think the question of time and speed of reaction is a key issue in this matter, and that is, essentially, the reason that I have moved these amendments. I accept that they increase police powers considerably, although, as others have pointed out, there are certainly other people in the community who are not sworn police officers who have the power to enter property for other purposes.

I certainly agree with the Attorney-General that this is all a matter of balance within our legal system. Of course, that is the case. I think the question is whether police are trampling on the rights of citizens in the year 2001 or, as I believe, has the balance shifted so that wealthy criminals who can afford top quality legal assistance are getting the benefit of that shifting balance in current society? There is no doubt whatsoever in my mind that that is where the balance has shifted, that there is not great evidence of police trampling on rights. In fact, I think it is interesting that in the document that the Attorney-General circulated, to which I referred earlier, the Attorney-General makes the point that, in fact, police are reluctant to use general search warrants.

The Attorney-General points out that a section 67 search warrant gives police sweeping powers not available in other states but the police are reluctant to use it. I think it is encouraging that our police force is reluctant to use a particularly general search warrant because I think, if police were perceived to be abusing their powers of using search warrants in ways that were perhaps not considered to be appropriate, the public would protest and the powers would be withdrawn. So, in the Attorney-General's own circular he is saying the police are very conservative in their use of warrants—and appropriately so, and we should be grateful for that. However, in relation to some of the activities that are taking place, prostitution is a particularly difficult offence to police: I think everyone accepts that—that is why the current laws do not work—and speed is of the essence.

An honourable member interjecting:

The Hon. P. HOLLOWAY: Prosecution is difficult: yes, of course it is difficult to collect evidence. There are many difficulties in it. I suggest that is why police need greater powers than in other areas, otherwise we should just throw up our hands and say it is not possible to police it.

There is one final point that I wish to make. The minister, in her response some time ago, ridiculed the idea that police would need to look at offences against the Development Act. One of the real problems we have at the moment, particularly relating to organised crime and bikie gangs, is the fact that these bikies are setting themselves up behind heavily fortified headquarters with railway sleepers, steel and concrete barriers, and so on, and these fortresses have become almost impenetrable. I know that some places in the world, and other states, are looking at means of addressing this. This is a broader issue than just dealing with prostitution.

Given that the evidence is that there is increased activity in prostitution by outlaw motorcycle gangs, if you want to deal with those sorts of fortresses and if there is a suspicion of prostitution being carried on there, I suggest that the local building inspector will have a lot of trouble getting into those sorts of operations and that maybe we need broader laws to deal with that sort of problem. Maybe we need, as I think New Zealand has done, to outlaw those sorts of fortresses. But, certainly, at the current stage, if you are dealing with highly organised crime and some pretty vicious and unpleasant people, I do not know that you would want to put your faith in the local building inspector to deal with it.

The point is that it is not just legal brothels that we are talking about here: it is legal and illegal brothels. I suspect that, if this bill is passed, police would not want to go and search legal brothels, unless there was some evidence that there was a breach.

An honourable member interjecting:

The Hon. P. HOLLOWAY: Exactly, they might want to do it on that basis—and appropriately so, and we hope that they would do that. But, in relation to illegal brothels, I suspect that that is where we need police to be active because, if they do not take action in relation to this, nobody else will. Therefore, I ask the committee to support my amendments.

The Hon. R.R. ROBERTS: I support the line of amendments proposed by the Hon. Paul Holloway. One should look at this as the first step in the process and remember that over many years we have seen glaring headlines in South Australia about prostitution and the failure of the police or their lack of attention or lack of ability to handle the business of prostitution.

We have seen quite detailed submissions from Police Commissioner Hunt on many occasions when he has pointed out to Attorneys-General and governments of the day the inability of the police to operate in a way the public expects them to operate within the framework of the tools provided to them. This line of amendment proposed by the Hon. Paul Holloway gives power to those people we charge—and these are not irresponsible people who run illegal brothels or anything else but dedicated police officers sworn to uphold the laws that this parliament makes on behalf of the community. They have clearly indicated to the parliament over many years that they lack the tools to do the job. If we look at the first amendment, it simply says that we will create an offence related to prostitution. It provides:

(a) a serious offence related to prostitution; or

(b) any other offence against this act.

If we look down and follow through the line of the amendment, we see that the powers being sought by the police are to enter any premises, whether it be a licensed brothel or an illegal brothel, where they believe that there is a serious offence taking place—not any offence. The Attorney-General has pointed out that when most of these offences take place there are tools to do that function, but when it comes to a serious offence the police are saying that they have trouble at times getting a magistrate to provide a warrant. I do not know that senior officers will be that thick on the ground at 3.30 a.m. either. This is the proposition that has been put to us and I believe it is a step in the right direction.

The minister has said that this will impose restrictions on legal businesses. No, it will not. It will provide to the legal businesses the same protections as any other legal business has, but if there is a serious consideration by an investigating officer that a serious crime is taking place on that premise, whether it be a licensed or an unlicensed brothel, those police probably for the first time will have the ability to do the job that the community expects them to do, and the community expects this parliament to give them the tools to do it with.

The minister made another point about the Development Act. If the minister feels strongly that an offence against the Development Act ought not to be deemed to be a serious offence related to prostitution, then she has the right to amend that and take it out. However, what the people who oppose this are really saying is, 'We do not want serious offences to take place but, if they do take place, we will give those people whom we charge to investigate those matters the minimum amount of tools to do the job.' That is a senseless proposition and we ought to look at this series of amendments, as proposed by the Hon. Paul Holloway, in the way in which it has been put forward. First, they say, 'Yes, we will determine that there will be two ranges of offence—a serious offence and any other offence against prostitution.' There is clear definition: we are talking about giving these powers in the cases where a serious offence takes place. I for one do not care whether that serious offence takes place in a licensed or an unlicensed brothel: it is still a serious offence and demands the attention of the police and this parliament.

If we look logically at this and go through it step by step, we see that it is step in the right direction to give, for the first time in this state, the police the tools to do the job, which the general community, as opposed to the parliament, expects them to do. I support the proposition and encourage all other members to support the line of amendment.

The Hon. NICK XENOPHON: My attitude to the amendments and the bill is similar as to that of the Carmel Zollo and the Attorney. Whilst I did not support the second reading, there ought to be constructive debate in relation to this bill, and I will not be supporting the third reading if it involves a regime of legalisation.

In terms of the Hon. Paul Holloway's amendments, the main reservation I have is that, whilst I support the thrust of his amendments, I have serious reservations about taking away the role of a magistrate or judicial officer to grant search warrants.

The Hon. A.J. Redford interjecting:

The Hon. NICK XENOPHON: Judicial officers ought to have a role in providing a decision on whether or not a search warrant is granted. That is an important principle in terms of the rule of law. I also look forward to the Hon. Angus Redford's amendments being dealt with, as I understand that they have a greater degree of support than these amendments in this chamber.

The Hon. T.G. CAMERON: I am having difficulty with both the bill and the two amendments at this stage, so I will probably be voting against all three.

The Hon. A.J. Redford: Are you going to vote against the third reading?

The Hon. T.G. CAMERON: I said I will vote against the three—the bill and the two amendments. We will see what happens: a few games are being played here. In relation to the Hon. Angus Redford's amendment, whilst I can accept the arguments he uses, I have some difficulty in coming to grips with why we would want police officers to be running around examining contravention of laws for the protection of occupational health, safety and welfare or the contravention of planning laws. People are concerned at the moment about wanting the police to investigate assaults, house breakings, robberies and so on. If one was to believe the Police Association and the Police Commissioner, they are short staffed. They do not have enough staff to perform the functions that society currently expects of them. I would be concerned about loading occupational health and safety matters and contravention of planning laws onto the police.

I cannot imagine—and if the honourable member can think of one, please let me know—any reasons in relation to occupational health and safety or planning law whereby the police would want to be breaking into a property at two or three o'clock in the morning. Sometimes the police get a rush of blood to the head and, acting on anonymous phone calls or on information that they have not properly checked out, come onto people's property waving around guns, threatening to shoot dogs, terrorising children and so on. They are acting on an anonymous phone call or, if they have a name and address for the complaint, they do not even bother to check to find out whether it is a real person or a real address or whether, in fact, there is any basis whatsoever for a legitimate complaint.

So, I would be loath to give the police the power to enter properties on occupational health and safety and planning matters. I would be concerned that they may seek to enter the property under point 1 or point 2 when in fact there is no need for them to do so. They could merely get a warrant: it is not urgent. What concerns me about this matter is under-age children being set up in brothels, whether they be legal or illegal brothels. I suppose it could happen but it would be unlikely that we would find under- age children working in a brothel that was licensed. However, it may well be that an operator who wanted to use under-age children in the brothel may act on the assumption that, 'I am licensed: the police never come around here. They know I run a pretty decent operation.' So they may feel tempted on the basis that the police do not ever call at a lawful brothel unless they are requested to by either the authorities or the owner.

You might normally expect that underage children would be used in an illegal brothel, and I would have thought that they would have more chance of being caught in an illegal brothel than in a legal brothel. I refer to a hypothetical example where the police receive a legitimate complaint and they are able to test the bona fides of the caller—that is, it is a real person living at that address. That person rings 000 at 2 o'clock in the morning and says that 13 and 14 year-old children are being used for the purposes of sex. Under each of these options, what powers do the police have?

Surely we are not contemplating giving the police powers to enter properties for minor offences. Apart from underage sex, and perhaps drugs, the property is not licensed to test whether or not sexual services are being offered on an

unlicensed property or in a prohibited area, so they do need some power. I have problems with both the Hon. Angus Redford's amendment (because of the extent that it offers in relation to planning and occupational health) and the amendments being moved by the Hon. Paul Holloway. So, at this stage, I indicate that I do not support either of them.

The Hon. R.K. SNEATH: I will be opposing the amendments of the Hon. Paul Holloway and supporting the amendments of the Hon. Angus Redford on the basis that I think that the amendments of the Hon. Angus Redford satisfy most of the concerns that the police raised with me, and also on the understanding that there is a two-year review. I am sure that if further amendments or changes are required to the legislation, and we find that certain aspects of it have not worked or have not, in fact, allowed the police to successfully prosecute, they can be revisited in two years. So I will be supporting the amendments of the Hon. Angus Redford.

The committee divided on the amendment:

AYES (4)

Holloway, P. (teller)	Roberts, R. R.
Schaefer, C. V.	Zollo, C.

NOES (14)

Cameron, T. G.	Crothers, T.
Davis, L. H.	Dawkins, J. S. L.
Elliott, M. J.	Kanck, S. M.
Laidlaw, D. V. (teller)	Lawson, R. D.
Lucas, R. I.	Pickles, C. A.
Redford, A. J.	Roberts, T. G.
Sneath, R. K.	Stefani, J. F.

PAIR(S)

Xenophon, N.	Gilfillan, I.

Majority of 10 for the noes.

Amendment thus negatived.

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

Page 5, after line 21—Insert:

'senior police officer' means a police officer of or above the rank of inspector;

During the course of the discussion on the last clause, I outlined the amendments that relate to the powers of police, particularly in relation to the regulatory function, and that was fully canvassed during the course of that debate. Unless members want me to go any further, I do not propose to say anything more.

The Hon. P. HOLLOWAY: I will defer to the Hon. Angus Redford's amendment and not proceed with mine.

The committee divided on the amendment:

AYES (14)

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

NOES (4)

Cameron, T. G.	Crothers, T.
Elliott, M. J.	Kanck, S. M. (teller)

PAIR(S)

Xenophon, N.	Gilfillan, I.

Majority of 10 for the ayes.

Amendment thus carried; clause as amended passed.

Progress reported; committee to sit again.

[Sitting suspended from 12.56 to 2.15 p.m.]

PROSTITUTION

A petition signed by 69 residents of South Australia concerning prostitution, and praying that this Council will strengthen the present law and ban all prostitution related advertising to enable police to suppress the prostitution trade more effectively, was presented by the Hon. Caroline Schaefer.

Petition received.

A petition signed by 22 residents of South Australia concerning prostitution, and praying that this Council will vote against the current Prostitution (Regulation) Bill thereby keeping such activity illegal, was presented by the Hon. Caroline Schaefer.

Petition received.

GLENELG CROQUET CLUB

A petition signed by 245 residents of South Australia concerning the proposed demolition of the Glenelg Croquet Club, and praying that this Council will:

1. Pass a resolution condemning the proposal of the City of Holdfast Bay;
2. Enact legislation to preserve the Glenelg Croquet Club at its current location:

was presented by the Hon. Nick Xenophon.

Petition received.

RADIOACTIVE WASTE

A petition signed by 107 residents of South Australia concerning transport and storage of radioactive waste in South Australia, and praying that this Council will do all in its power to ensure that South Australia does not become the dumping ground for Australia's or the world's nuclear waste, was presented by the Hon. Sandra Kanck.

Petition received.

PARKLANDS

A petition signed by 27 residents of South Australia concerning the City of Adelaide (Adelaide Parklands) Amendment Bill 2000, and praying that this Council will protect the parklands by stopping the erection of buildings and other structures on the parklands by rejecting the City of Adelaide (Adelaide Parklands) Amendment Bill 2000, was presented by the Hon. I. Gilfillan.

Petition received.

SOUTHERN O-BAHN

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I seek leave to make a ministerial statement regarding the southern O-Bahn proposal.

Leave granted.

The Hon. DIANA LAIDLAW: I advise today that the government will not be progressing a southern O-Bahn proposal from the city to Bedford Park. In October 1997, as part of the Liberal transport policy, the government promised to undertake a cost benefit study to assess all issues associated with the construction of a southern O-Bahn.

This commitment reflected the fact that the government had never been prepared to pursue the construction of a southern O-Bahn at any cost—financially, environmentally, socially or in terms of community amenity. Rather, we wanted to assess whether it was possible and at what cost to

provide for people living in the southern areas of Adelaide the same public transport benefits that the O-Bahn busway has delivered to people in Adelaide's north-east suburbs over the past 15 years.

Following some preliminary studies, the route identified for further investigation was a 12 kilometre corridor between the city and Mile End, utilising both the Noarlunga Centre and Tonsley rail corridors, and terminating at a new interchange located at Bedford Park. This route was selected because, in the absence of a naturally available corridor for a southern O-Bahn (as was the case for the North East O-Bahn), it maximised the use of available land, thereby minimising both land acquisition costs and all the associated social dislocations. The preliminary cost estimate for a southern O-Bahn along this route was $110 million.

Subsequently, on 9 April 2000 I announced that the government had approved the preparation of a detailed engineering investigation: first, to address specific engineering challenges including an underpass at Emerson Crossing (South and Cross Roads) and other major roads, plus the best means of negotiating the Goodwood rail junction and the Keswick bridge; and, secondly, to explore opportunities for private sector investment in the project. My media release of 9 April last year also highlighted the following:

> . . . by the end of the year, we will have solutions to the engineering challenges, a reliable cost estimate, and an insight into the prospects for private sector funding—information which is essential before final approvals can be considered by government.

Cabinet has now considered all these complex issues, including the engineering investigations which established that the costs would be substantially greater than the initial estimates; that an O-Bahn along the selected alignment with 11 overpasses and two underpasses would cost up to $182 million; a 'bare bones' busway, eliminating all unnecessary costs and contingencies, would cost $124 million; and every additional underpass, in place of an overpass, would cost about $8 million.

Meanwhile Transport SA considers that there are further significant uncertainties associated with the tunnel under the Emerson Crossing. In turn, I have explored every scenario—mixing and matching underpasses and overpasses with community amenity issues and private funding options within a framework that does not abandon the integrated fare structure—a prized and unique feature of Adelaide's public transport system. I have been forced to conclude that from a cost/benefit perspective there is no feasible option for advancing a southern O-Bahn—and cabinet has supported this reality.

Therefore, today I also advise that I will now be devoting my full attention to progressing the other public transport investment and service delivery options which the government has been exploring concurrently over the period that the O-Bahn cost benefit investigations have been under way. Particular attention will be given to the government's goal to provide improved public transport services to the southern area of Adelaide—although the improvements will range across the metropolitan area and extend to regional South Australia. All these improvements—to be addressed in the budget context—will consolidate the increase in patronage that the public transport network has gained over the past 10 months, the first such sustained increase in decades.

QUESTION TIME

SOUTHERN O-BAHN

The Hon. CAROLYN PICKLES (Leader of the Opposition): I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning a question about the southern O-Bahn.

Leave granted.

The Hon. L.H. Davis interjecting:

The Hon. CAROLYN PICKLES: You just wait and see. Yesterday, during question time on page 1023 of *Hansard* I asked the following question:

> In the minister's confidential pre-election budget submission to the Treasurer and the Premier, which outlines her budget priorities for the financial year 2001-2, the minister reveals that several key transport projects remain unfunded. The submission shows that included in the list of projects are the overtaking lane strategy, the southern O-Bahn, the Bedford Park Interchange, and bus and tram replacement programs. All these projects are unfunded to date. Is the minister confident that these projects will be funded in the May state budget?

Her response was:

> I am in the process of negotiating with the Treasurer and my cabinet colleagues a range of funding opportunities for the government. Every other minister is undertaking the same discussion with the Treasurer and their colleagues. . . Well, I am quite relaxed. The honourable member has identified a number of projects that the government has indicated it would like to deliver in terms of taxpayer funds. If I do not deliver, the taxpayers and the opposition can have a real go at me. At this stage, they are still alive and in various stages of negotiation.

In her statement the minister also said that cabinet had now considered all these complex issues, including the engineering investigations, which establish that costs will be substantially greater than the initial estimate. My questions are:

1. When did the minister take the project to cabinet?
2. When was it rejected?
3. Did the minister know yesterday that the southern O-Bahn project would not go ahead?
4. In light of her statement to parliament yesterday that 'at this stage they are still alive and in various stages of negotiation', did the minister mislead parliament yesterday?

Members interjecting:

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): Of course I did not mislead parliament. Cabinet met today and discussed the project. It met on Monday and discussed the project, at which time I indicated that I wanted a decision deferred, and we discussed it again this morning. The honourable member has been caught out in trying to catch me out, but she cannot do so.

Members interjecting:

The Hon. DIANA LAIDLAW: I have never refused the honourable member a briefing, because I have never offered her one since the matter was yet to be—

Members interjecting:

The Hon. DIANA LAIDLAW: It was requested through one of the honourable member's officers and, as the paperwork had not then been considered and there was no formal proposal, there was no way I was going to brief the honourable member before I had briefed my cabinet colleagues on a cost benefit study that the cabinet had authorised. It would have been completely inappropriate for the honourable member to have been briefed.

Since the honourable member shows such an interest in this project, I will be very happy to provide her with a

briefing now that I have briefed my cabinet colleagues and have made the statement today. I should say that the project has never been rejected, as the honourable member suggests. She is so excited to have something to say on public transport in this place that she has not considered or thought through the statement that I made today. I suggest that she keep her cool and read the statement, and she will understand the context of the statement today in terms of the government's commitment to undertake this cost benefit study.

The Hon. P. HOLLOWAY: As a supplementary question, what was the total cost of the government's investigations into the feasibility of the southern O-Bahn proposal?

The Hon. DIANA LAIDLAW: As I previously advised publicly, the engineering study that I announced on 9 April was $1.1 million.

ELECTRICITY, SUPPLY

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

Leave granted.

The Hon. P. HOLLOWAY: In a speech to the Committee for the Economic Development of Australia on 1 March, the Independent Industry Regulator, Mr Lew Owens, stated the following:

> I believe the risks now facing the South Australian electricity market are similar to those that faced California before that state's power industry plunged into its current crisis.

He said:

> . . . the market risks to large industrial users particularly have emerged because of:
> tight supply and demand
> lack of construction of new capacity
> excessive dependence on gas as a fuel source for power generation
> lack of hedging contracts between retailers and generators
> limited interconnection capacity and
> high demand growth.

Mr Owens also said:

> Unless there are urgent changes, the situation from 1 July will be that numerous South Australian employers will have no contracted electricity supply, with no obligation on any party to supply them. Alternatively, these businesses will be forced to accept a supply contract based on significantly higher prices.

Mr Owens said that such an outcome would threaten the economic development of South Australia. In his supplementary report tabled yesterday in parliament, the Auditor-General also expressed concern about future continuity of electricity supplies to South Australia. The Auditor-General states:

> . . . the arrangements entered into with the successful bidders do not, in my opinion, seek to address or provide for any long-term certainty of continued supply in South Australia from the current generation sites. Reliance is in effect being placed on market forces (supply and demand pressures) and economic incentives to ensure that sufficient capacity will exist over the longer term.

I emphasise 'reliance on market forces'. On 18 February 1998 the Treasurer stated in this place, when justifying the government's decision to sell the Electricity Trust:

> The Auditor-General is fearlessly independent, as all will know from this chamber, and it is not in his particular interests to beat up a fever pitch about the risks in the national electricity market unless he genuinely believes them to be the case. . .

The Treasurer continued:

> . . . the wood is right on Mike Rann and the Labor Party in relation to this issue because the warnings are clear and explicit. The warnings come from no less an independent authority than the Auditor-General. . .

I quote *Hansard* of 18 February 1998, page 300. In view of these warnings, does the Treasurer still believe that the national electricity market is working satisfactorily, and will he give an assurance that market forces will constrain the price of electricity for industrial users beyond 1 July next when deregulation begins for those customers?

The Hon. R.I. LUCAS (Treasurer): The first point to make is that the national electricity market was entered into by the Bannon and Keating Labor governments in the early 1990s and has been subsequently—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: No. It has been subsequently supported—

An honourable member: Bannon had to agree to it.

The Hon. R.I. LUCAS: Bannon had to agree to it, and Lynn Arnold had to agree to it. The original discussions in relation to the national electricity market were entered into between John Bannon and Paul Keating, and the discussions with COAG—

Members interjecting:

The PRESIDENT: Order, the Hon. Ron Roberts and the Hon. Paul Holloway!

The Hon. R.I. LUCAS: —were entered into by both the state and federal Labor governments which signed off on the electricity market. The final agreements were signed off by the Liberal government, but the initial decisions taken by COAG, and the leaders—

Members interjecting:

The Hon. R.I. LUCAS: I am happy to get those. The initial decisions were taken by Labor governments and their leaders—Keating, Bannon and Arnold. The final agreements were not signed off until the state Liberal government was in power, and I am not sure whether it was a federal Labor government or a federal Liberal government.

An honourable member interjecting:

The Hon. R.I. LUCAS: It may well have been Keating and a state Liberal government led by Dean Brown. The Hon. Mr Holloway cannot run away from the issues of the national market—

An honourable member interjecting:

The Hon. R.I. LUCAS: You have just spent the past five minutes trying to deny the reality that since the early 1990s the national market has been supported by governments of both political persuasions. As I have indicated on a number of occasions, with any new market there are problems, and there have been problems with the implementation of the national market in the eastern states and also here in South Australia.

South Australia has been working with other jurisdictions on a number of working committees and groups that have been looking at aspects of the operation of the market to see how it might be improved. Indeed, today in another place the Premier has probably already announced that South Australia will establish its own task force to look at the implementation of the national electricity market.

We will work with the national regulatory authorities—NEMMCO and NECA—the Independent Regulator, the industry participants and representatives of consumer groups, in addition to the existing committees that have been looking at the national electricity market for the last 18 months. I think that the Premier will indicate that the key recommenda-

tions and the government response to those recommendations, as is consistent with this government's openness and accountability, will be tabled in this parliament.

The government is not running away from the issues. Clearly there are concerns about the implementation of the national market in its early days, particularly in South Australia. In particular we have heard the message about grace-period customers. The government is working with the Independent Regulator and others to see what can be done. The only concrete, sustainable solution to this issue is to have a more competitive electricity market in South Australia. The government hoped that the introduction of Pelican Point in and of itself would be sufficient but, although it has moved us down the path from a monopoly market to a more competitive market, it is not competitive enough to put downward pressure on prices.

If we are to be frank about this, we need even more generation options and more interconnection options, which the government has been working on. The government's record in the last two to three years compares very favourably with the record of the Labor government over 13 years in terms of adding to the supply of electricity in South Australia. In the last two to three years, CUBE has come on stream with just under 180 megawatts, Pelican Point with 500 megawatts, and Ladbroke Grove with two 40 megawatt generators, making a total capacity of 80 megawatts.

The Hon. L.H. Davis: Your solution was to combine power and water—WETSA.

The Hon. R.I. LUCAS: As the Hon. Mr Davis says, the Labor Party's solution was WETSA. More needs to be done and, yesterday, TransEnergie released a public statement saying it was on track for its 200 megawatt interconnector from the Eastern States through the Riverland. The SANI or Riverlink project is still trying to find its way through and it will not be ready by next summer.

The Hon. P. Holloway: You can't have both.

The Hon. R.I. LUCAS: The TransGrid people believe we can have both. There are technical issues for both proposals in terms of what needs to be done in the Eastern States to supplement the interconnection. The national working parties are sorting through those issues. AGL has just announced a 150 megawatt power plant for Victoria and, given that Victoria and South Australia are treated by NEMMCO as a combined market, that will have an impact on interconnector flows to South Australia in the short term. In Victoria, ENRON has announced that it is moving towards the final stages of making a decision on extra capacity, potentially up to 300 megawatts.

In addition, two companies are talking with the South Australian government and its departments at the moment and, if they come to satisfactory decisions as to non-financial facilitation, they hope to be able to announce further peaking capacity in South Australia prior to next summer. We are hopeful that at least one of those will be able to make an announcement within the next month so that there will be additional peaking capacity in this state by next summer.

In the medium term there is National Power at Pelican Point, the power station that Messrs Rann, Foley and Holloway tried to stop in terms of its location at that site. We have given National Power planning approval for 800 megawatts. We are hopeful that it will look sooner rather than later at increasing its 500 megawatts to 800 megawatts. Its big issue has been the one of alternative gas supply.

The Hon. P. Holloway: You are way behind on that, too.

The Hon. R.I. LUCAS: We did something and you did nothing in 11 years. We have always had one gas pipeline. Regarding the issue of monopoly supply of gas—

Members interjecting:

The Hon. R.I. LUCAS: It might not have been prepared to take on the issue, but this government has been prepared to take on the monopoly position in relation to gas.

Members interjecting:

The Hon. R.I. LUCAS: We are the ones who have taken it on. You were not prepared in 11 years to take on the issue of a uncompetitive gas market in South Australia and a reliance on only one gas pipeline.

The Hon. T.G. Cameron interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Cameron nails it: you were not prepared to. This government has been prepared to take on the position of a competitive gas market and say, 'We need competition and we will see what we can do to bring that competitive gas from somewhere else into South Australia.' If the Hon. Mr Holloway was ever prepared to acknowledge anything this government does as being correct, you would at least hope he would get up, rather than whingeing and whining as he always does, with Rann and Foley, and say, 'Good on the government for actually doing something that we weren't prepared to do for 11 years when we were in government between 1982 and 1993.'

The big issue for National Power is gas and we are taking the decisions that we hope will convince it that it is able to indicate that it is prepared to sign up for an additional capacity at Pelican Point. Australian National Power is one of the alliance partners working to bring this alternative gas proposal into South Australia from Victoria. It has joined with Origin and SAMAG as the three foundation alliance partners in that proposal. The other option is SAMAG, the magnesium producers, which are also talking, at around the same time of 2003-4, of a 300 megawatt power plant in the Mid North of South Australia in and around Port Pirie, associated with the development there.

All of those are indications of what this government in the last two to three years and continuing has been doing to add to either interconnection or generation here in South Australia. That is a record compared with all the other states: it is second to none in terms of additional capacity when one looks at the other states in terms of what is being added by the operation of the marketplace, without the government putting its hand in the taxpayers' pocket to follow through.

A thousand questions were raised. There are only two other issues that I need to respond to quickly. We certainly agree with some aspects of what the Independent Regulator is saying at the moment and we are working with him in that regard. We do not accept any suggestion that this state faces the situation of California, which for almost a decade because of environmental restrictions and over regulation has prevented the generation of extra power within that state. That is not a circumstance that exists in South Australia, and any suggestion in the quotes that the honourable member has cited in talking about lack of generation we do not believe to be accurate criticisms of what we have seen accomplished in just two or three years or what we are seeking to do over the coming years.

The final point in relation to the Auditor-General is that we have said on a number of occasions that we agree with many aspects of what the Auditor-General has said, but this issue yesterday in his report, where he raises the notion that someone would come into a state, spend hundreds of millions of dollars on an electricity business just to close it down

within a few years, defies commercial logic. If you own shares in a company—

Members interjecting:

The Hon. R.I. LUCAS: I hear the Hon. Mr Cameron's interjection but I will not take up the invitation to respond to it.

Members interjecting:

The Hon. R.I. LUCAS: But I did not respond to the interjection, *Hansard* will record. The reality is that, if you are a shareholder in a company that just spent hundreds of millions of dollars investing in a new power plant, why on earth would you, after a few years, close down the plant? This morning I asked the Auditor-General to consider the issue in terms of his having been the Auditor-General in Victoria and having looked at the privatisation in Victoria. Regarding the graph by the Auditor-General on page 25, which shows 2 000 megawatts of capacity going down to 400 or 200 megawatts as being contemplated, he says in his commentary that this is what was envisaged and contemplated.

I can say that that is just factually wrong. That was not envisaged in any way by the government. If the Auditor-General were the Auditor-General in Victoria he would have said that, after the sale of the assets in 1997, there was 8 000 megawatts of capacity, and then in the next bar graph for the next six years we have had nothing, because there were no restrictions on the people who bought the plant, meaning they could walk in on day one and close the whole lot down—

The Hon. L.H. Davis interjecting:

The Hon. R.I. LUCAS: Yes, Qantas could ground the planes after it was privatised, and the Commonwealth Bank could have closed down and gone somewhere else. It is commercial nonsense. I challenge anyone, including the Auditor-General, to speak to the people who have invested the money—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: —in new power generation in South Australia.

The Hon. A.J. Redford interjecting:

The PRESIDENT: Order, the Hon. Mr Redford!

The Hon. R.I. LUCAS: Why on earth would their shareholders let them close the place down after a few years and leave the place because they have wasted or lost the money, and then head off somewhere else to invest? It just makes no commercial sense at all.

SPRAY-ON PAVING

The Hon. T.G. ROBERTS: I seek leave to give a brief explanation before asking the Attorney-General a question about consumer protection.

Leave granted.

The Hon. K.T. Griffin: There's plenty of that.

The Hon. T.G. ROBERTS: The Attorney says that there's plenty of that, but unfortunately in some cases in some sections of some industries unscrupulous operators press the legislation to the limit and try to get around it. I am holding documents given to me by another member of parliament on behalf of consumers who have had a very difficult time with the company while it was operating in a very competitive market. It has now gone into liquidation.

The complaints that I had before the company was liquidated were a litany of poor workmanship and broken promises. Unfortunately, that has now extended to a whole new round of consumers being dudded, if you like, by the company going into liquidation, trading right up until the final day of liquidation, and accepting deposits and payments in a lot of cases from people who could not afford the service that they had contracted for because of the sales methods used by the company. These are accusations being made by these consumers, and this new round of consumers now find that they have paid money not for poorly done or bad workmanship but for no workmanship at all.

I guess the lesson that we need to learn as members of parliament is that, although we do have good legislation in this country and in this state in relation to consumer protection, there are always unscrupulous operators who will either go outside it or who will trade on the borders of fair and reasonable practices, and there will be some who will fall over the side of deceit to stay out of the red and, to maximise their returns, they make sure that consumers do not get what they paid for.

I am prepared to give the documentation to the Attorney-General in relation to this company, Spray-On Paving, which is going into liquidation. I will hand over the documentation if the Attorney seeks it. It comprises letters that have been written to members of parliament on both sides of the Council seeking some justice under the Consumer Protection Act. But, for the latest round of consumers, it is in respect of the Corporations Act, I suspect, in relation to liquidation. My question is: will Spray-On Paving be investigated to establish the facts relating to the allegations of unethical and now fraudulent behaviour relating to its operations and relationships with these consumers?

The Hon. K.T. GRIFFIN (Attorney-General): I am not familiar with the particular case. It may be that, if the correspondence has been circulated to all members of parliament, already my officers have intercepted it and sent it off for some report from the Office of Consumer and Business Affairs. If the honourable member is prepared to give me that information and the papers, I am happy to follow it up for him.

The honourable member has indicated that in his view there will always be some unscrupulous traders. The government, the Office of Consumer and Business Affairs and I are constantly endeavouring to detect unscrupulous traders and to deal with them appropriately on the basis that, the more we can diminish the numbers, the better it is for our community. It is also an attempt to try to set some standards by which business will operate. A huge percentage of business is concerned to ensure that proper service is provided to customers, recognising that, if there is not proper service, bad reputation will be communicated by word of mouth if in no other way, and customers will be reluctant to trade with that particular organisation.

So, our focus is on trying to enhance the standards applied by business and traders, but the law and the way in which the Office of Consumer and Business Affairs approaches issues of ethics and standards means that probably we will not be able to cover the field, but we will give it a very good shot.

The honourable member raised questions about a company that is in liquidation. It may be that the Corporations Law does apply to this rather than the Fair Trading Act but, as soon as I get the papers, I will ensure that they are looked at and I will then bring back a reply.

BEACHPORT BOAT RAMP

The Hon. A.J. REDFORD: I seek leave to make an explanation before asking the Minister for Transport,

representing the Minister for Environment and Heritage, a question about the Beachport boat ramp.

Leave granted.

The Hon. A.J. REDFORD: On Tuesday I asked a question of the Minister for Transport concerning the Beachport boat ramp, and in particular whether or not the Wattle Range Council had responded to a letter seeking assurances in relation to, first, the risk associated with construction, secondly, the risk to swimmers and, thirdly, an undertaking sought from the council that it would not seek funding from the state government for future sand management to keep the beach to its current standard.

The minister also offered to assist with the trialling of sand bag protection. Members may recall that the minister advised this place that the Wattle Range Council had not provided any assurances at all. Indeed, this morning I received copies of minutes of the council meeting in which the council voted not to give the assurances, merely to acknowledge the receipt of the letter. I understand that, despite the council's resolution not to give the assurances, the mayor on radio this morning indicated, first, that he would write and give the requisite assurances to executive government and, secondly, that the council would begin to dump rocks on the foreshore on 24 and 25 March, despite the fact that the tender process is not complete.

It has now come to my attention that the land on which the ramp is proposed to be constructed is owned by the Crown, under the control of the Minister for Environment under the Crown Lands Act, and that, by *Gazette* dated 10 August 1972, the land was dedicated for the purpose of a recreation reserve under the care and control of the Beachport, now Wattle Range, council. I assume this was done pursuant to section 5D(9) of the Crown Lands Act, which also enables the minister to resume the land by notice in the *Gazette* subject to any restrictions the minister thinks fit and can vary the notice pursuant to sections 5F(1) and 5F(2) of that act. In light of the above, my questions to the minister are:

1. What is meant by the term 'recreation reserve', and does it preclude the use of a boat ramp by professional fishermen for their business and the charging of boat ramp fees?

2. Has the Wattle Range Council sought permission from the minister in relation to the proposed construction?

3. Has the minister given permission for rocks to be dumped on his land and, if not, will the minister take steps to prevent the proposed dumping?

4. What steps will be taken by the minister to ensure that the assurances of the council are legally binding, thereby ensuring that the taxpayers of South Australia are not left with an undefined sand replenishment cost?

5. In the light of concerns expressed by the EPA and the Coast Protection Board, and given that the ownership of the relevant land is vested in the minister, will the minister exercise his power under sections 5(f)(1) and 5(f)(2) of the Crown Lands Act to ensure that the environment is properly protected and the concerns of the EPA and the CPA are addressed?

6. In the absence of any advice from the Wattle Range Council, is the minister able to provide the ratepayers of the Wattle Range Council with some estimate of the range of cost to the ratepayer of sand replenishment should this project proceed?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): The project does have planning approval, as the honourable member would be aware. He asks in a series of questions to the Minister for Environment and Heritage—and I will refer all of these questions to the minister—whether the minister is confident that assurances to be provided by the council will be legally binding. From my perspective, I am still seeking those assurances, and that would be a refreshing first step. Whether they are legally binding is a matter that we can pursue with the council if or when it does provide the assurances that I have sought before I am prepared to release a funding contribution for this ramp. I hope that they will be provided promptly and that they will be respected by this council legally and in the future.

I highlight, too, that I have written to the mayor pointing out to him that I consider that it would be advantageous if the council would expeditiously address my letter of 20 December and provide the assurances that I seek or advice that the council is not prepared to give those assurances. Such an admission would mean that the money would not be extended. Either way, I want an answer to the questions I have asked. The honourable member has raised a number of further issues in this web of intrigue and controversy that surrounds the Beachport boat ramp, and I am very pleased that all of those questions have been asked of the Minister for the Environment and that I can refer them on.

COUNTRY FIRE SERVICE

The Hon. IAN GILFILLAN:I seek leave to make an explanation before asking the Attorney-General, representing the Minister for Police, Correctional Services and Emergency Services, a question about the cost of CFS administration.

Leave granted.

The Hon. IAN GILFILLAN: In the 1999-2000 CFS annual report, the first key achievement is identified as the establishment of a new State Operations Centre at 60 Waymouth Street Adelaide. I have been approached by several CFS volunteers on several matters. It is rather unfortunate that most of them are reluctant to be identified or to speak out themselves about the management of emergency services in this state. They say to me that they are reluctant because they would be easily identified by their unit and branded as troublemakers. I indicate that this Council has shown support for people who are prepared to come forward with material information that they regard as constructive. They are quite frequently called whistleblowers.

I think that this is within the ambit of the minister to address, so that serving members will be encouraged and feel free to make their criticisms public so that they can be acted on and debated publicly by fellow volunteers. The questions that I am about to ask cover several areas, although they are particularly related to the funding of that new State Operations Centre at 60 Waymouth Street, the delivery of the new pagers, the pager system, and the very detailed and pedantic requirement of signing off for every requirement at unit level, which is taxing the patience and time of the volunteers of the service. My questions are:

1. Were the funds for relocation expenses of the State Operations Centre for ESAU, SES and CFS to 60 Waymouth Street taken entirely from the CFS budget, which was the implication that was given to me?

2. What was the cost of that relocation?

3. Was this payment from CFS funds to ESAU authorised by the CFS?

4. Can we have the number of CFS groups there are in South Australia and, of that number, how many have signed

off by completing and returning the paperwork on delivery of their new pager systems?

5. Why in November last year were units notified that consultants will be employed to, amongst other things, provide advice on implementing the 2000-2001 budget for capital works for the CFS?

6. Does the minister realise that requiring each and every item of expenditure at individual unit level, from small building or vehicle repairs to a mop and bucket, to be approved by regional officers is severely damaging the morale of the volunteers of the service?

The Hon. K.T. GRIFFIN (Attorney-General): My understanding is that procedures in relation to accounting have actually been very much streamlined, but I do not have the detail in respect of all those questions at my fingertips. I will have some inquiries made and bring back a reply.

ADELAIDE TO CRAFERS ROAD

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning a question about the Adelaide to Crafers freeway.

Leave granted.

The Hon. CAROLINE SCHAEFER: It is about a year since the opening of the new Adelaide to Crafers freeway, and am sure that most people have been delighted with the improvement in the traffic flow in the Adelaide Hills. However, there have been some examples of brakes failing on heavy vehicles which, needless to say, cause quite a bit of alarm amongst other road users. Of at least equal concern are examples that have been mentioned to me of heavy vehicles straddling two or three lanes as they make an effort to pass another slow and heavy vehicle. This has forced every other motorist to slow down and channel into one lane, or has blocked the freeway altogether at times. My questions to the minister are:

1. Has the government considered making truck only lanes or a better system of signage that would advise drivers to use the left-hand lane unless overtaking?

2. Has the government considered putting more signs on the freeway? In fact, has it considered anything to stop this practice?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): In line with the first anniversary of the new freeway (built by the federal government), I asked representatives of the trucking industry in South Australia to meet with representatives of Transport SA and South Australia Police to assess the Adelaide to Crafers road. The general conclusion from the trucking industry is that it is an excellent road but it is a hard road.

Certainly, the group that did convene has come up with a number of proposals. The signs that ask heavy vehicles to use low gears when negotiating the down track will be given greater prominence. They are currently on a white background: the advice will be placed on a red background. I am also advised that across the width of the Crafers interchange new, prominent signs will be placed. This signage will, in fact, be electronic and highly visible. I think that will also help to reinforce to truck drivers who are not familiar with using the road the absolute critical need that they negotiate the road in a low gear and avoid using their brakes as much as possible.

Coincidentally to the honourable member asking her question today, the Hon. Bob Sneath did raise the same issues with me and has, in fact, invited me to go trucking with him and—

Members interjecting:

The Hon. DIANA LAIDLAW: Well, the advice from your colleagues, the Hon. Mr Sneath, is that I should not take up this invitation to go trucking with you. I should put this into context: apparently, the Hon. Mr Sneath's brother does own trucks and he has raised some issues with the honourable member, and the Hon. Mr Sneath would like me to check out these issues. But I will go with his brother only if I am chaperoned. The Hon. Mr Sneath has offered to chaperone me, and appropriate arrangements will be made.

The issue of a truck-only left lane was discussed at the officers meeting with the Trucking Association, and the general view was that it is not an appropriate measure to take at this time. However, we will be immediately placing extra signs along the length of the freeway urging vehicles to use the left lane unless overtaking, and that continues to be an issue when driving on the freeway. It does make for unsafe practices because it forces other vehicles to weave in and out of slower vehicles that are not using that left lane.

I have some concerns about all trucks on the down track being required at all times to use the left lane. It is not the view of the Hon. Mr Sneath, and we will discuss this further. I do not believe that there is an enormous advantage in having big backlogs of heavy vehicles tailgating each other down the freeway. However, I am open-minded and, because it is a national highway and part of the federal transport network, I will canvass such issues with the federal government.

I highlight that some modifications have to be made to the ramps upstream of the Heysen tunnels. Honourable members who have used this road would appreciate that there is a safety ramp just before entering the Heysen tunnels from Crafers, but the end of the ramp (particularly if you are high up in the cab of a prime mover) is a rather forbidding experience because there is no visual barrier to going straight over the cliff. A visual barrier will be installed promptly.

One problem that must be overcome, and we will try to do this through education of the trucking industry, is that it is not a reflection on poor driving practices or on the trucking industry for truck drivers to use those safety ramps if in doubt. I get feedback time and again that drivers who take the precaution of using a safety ramp think it will then become folklore throughout the trucking industry and not reflect well on them or their company. Secondly, they are unsure about the depth of the gravel in the beds of stone in the safety ramps and, therefore, they are unsure what will happen to the chassis of their vehicle when they enter those ramps. We have to do more in educating the trucking industry about those issues.

Overall, I think all members would agree that it has been an outstanding investment in road infrastructure and road safety in South Australia and across Australia, and we need to keep the issues in perspective. I highlight that there have been 11 million vehicle movements on that highway since it was opened a year ago. Of those 11 million movements, approximately 900 000 have been truck movements and only two of those 900 000 truck movements have been involved in any serious incidents. That is a far superior road safety record than was the case before this new infrastructure was opened one year ago.

TOBACCO SMOKE

The Hon. NICK XENOPHON: I seek leave to make a brief explanation before asking the Minister for Workplace

Relations a question about environmental tobacco smoke in gaming rooms in the Adelaide Casino.

Leave granted.

The Hon. NICK XENOPHON: Gaming room attendants in 585 venues in this state and gaming floor staff at the Adelaide Casino are subjected to environmental tobacco smoke on a virtually constant basis at a time when many enclosed public places, government offices and hotel and restaurant dining rooms are smoke free. My questions are:

1. What studies and/or research has the minister's department undertaken or have in its possession on the potential health impact of environmental tobacco smoke on workers in enclosed places in gaming rooms and the Adelaide Casino?

2. Has the minister's office undertaken any checks and studies as to the level of environmental tobacco smoke that gaming room attendants are subjected to and, if so, how many checks have been undertaken and what were the levels of environmental tobacco smoke that employees were subjected to?

3. What resources and equipment does the minister's department have to measure environmental tobacco smoke in gaming rooms and the Adelaide Casino or in any other enclosed space?

4. If no study or research as to the impact of environmental tobacco smoke on gaming room employees has yet been carried out, will the minister indicate whether he is prepared to instigate such a study in the near future, given the clear links between passive environmental tobacco smoke and a number of health related conditions, including lung cancer?

The Hon. R.D. LAWSON (Minister for Workplace Relations): This question relates in part to the Occupational Health, Safety and Welfare Act, which is committed to me, and I also imagine that it relates to the statutory responsibilities and interests of WorkCover, which has a responsibility in relation to compensation for any injuries or ill health suffered in consequence of the ingestion of environmental tobacco smoke. I am not entirely sure what WorkCover has done in relation to this matter other than its extensive publicity campaigns about occupational health and safety. I will certainly make inquiries of my colleague the Minister for Government Enterprises in relation to that.

Insofar as the occupational health and safety inspectorate is concerned, it is the statutory duty of every employer to ensure that a safe workplace is provided for employees, and a breach of any such duty can lead to a series of consequences—improvement notices, prohibition notices and prosecution in the case of a significant breach of that obligation.

An honourable member: How many have there been of the latter?

The Hon. R.D. LAWSON: I am not aware of any prosecutions of any gaming room operator in South Australia in relation to environmental tobacco smoke, but I will certainly take that question on notice and look at whether any improvement or prohibition notices have been issued at any time in relation to such venues. Nor am I specifically aware of any studies having been undertaken and will be pleased to take that question on notice. If the honourable member is aware of any such studies, I invite him to provide me with particulars of them. I will seek further information and bring back a detailed response to the balance of the questions enumerated by the honourable member.

RANN, Hon. M.D.

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Treasurer a question about Mr Mike Rann.

Leave granted.

The Hon. L.H. DAVIS: It was little more than 12 months ago that the Premier, John Olsen, went to Hong Kong to sign off on the deal which saw the ETSA distribution assets being leased to Hong Kong Electric CKI. Cheung Kong Infrastructure, through its subsidy Hong Kong Electric CKI, had leased ETSA from the state government in a $3.5 billion deal. At the time Mr Rann, the Leader of the Opposition, was quoted as saying:

> I guess what people want to know is if they flick on their switch to their power would the Red Guards be rejoicing. When you pay your power bill there will presumably be rejoicing between the Red Guards.

It was an extraordinary comment and at the time he was indeed attacked by Labor people such as frontbencher Senator Nick Bolkus who said:

> I just think the statements are unfortunate and ill-considered. Unfortunately, it plays into the One Nation agenda. It's not a constructive contribution to the debate.

The foreign affairs minister Alexander Downer at the time said that Mr Rann was an embarrassment to his state and that he was playing the politics of Hansonism for the most expedient and base of political reasons. He said that he should immediately withdraw and apologise for his gratuitous slur against an investor in his own state. Other people made the obvious comment that Mitsubishi and General Motors are in South Australia and that there are a host of companies which have foreign interests and which contribute to the employment pool in South Australia and the economic prosperity of this state. Of course, it goes without saying that there are companies in South Australia which have investments and, indeed, have taken over companies in other countries, which Mr Rann perhaps may also criticise if he is to be consistent.

I raise this matter because just earlier this week the Premier, John Olsen, came back from Hong Kong having secured a $26.5 million loan from that same group—the Hong Kong giant CKI—to ensure that the rail link between Alice Springs and Darwin would go ahead and so delivered that gap created by the recent withdrawal of one of the major investors to that project. Of course, it has also been confirmed that the rail consortium has welcomed the arrangements with CKI and believes that it will now allow financial closure on that project, which has been promised since 1911, by 23 March.

In view of the fact that CKI has continued to show confidence in the South Australian economy by this contribution of a $26.5 million loan (which incidentally is underwritten only by the South Australian government, which has no immediate liability), is the Treasurer aware whether the Leader of the Opposition and the alternative Premier of South Australia, Mr Rann, has apologised directly or indirectly to CKI and its principal, Mr Li, for the extraordinary, unfortunate and intemperate remarks that were made about that company and its investment in South Australia some 12 months ago?

The Hon. R.I. LUCAS (Treasurer): Given the time, I do not want to take up the rest of question time even though it is only 3½ minutes. I have to say quickly that those comments of Mike Rann were the most disgraceful comments I have ever heard from a political leader in my 20 years in politics in South Australia. I was ashamed to be a South

Australian when I heard Mike Rann—a person who purports to be an alternative Premier—make those statements about a person and try to raise the spectre of the old 'reds under the beds' fear campaign of decades ago. Frankly, it was shameful. I know that Nick Bolkus spoke publicly about it, but I also know that frontbenchers like Pat Conlon and others were openly critical of Mike Rann's statement and his leadership in relation to that and disowned themselves from the statements that Mike Rann had made. I join with the Hon. Mr Davis—

The Hon. T.G. Cameron interjecting:

The Hon. R.I. LUCAS: Exactly. There are some stories about where Mr Conlon might be heading, but there are no hidden secrets about what Mr Conlon thinks of Mike Rann generally. In relation to that statement, he, too, was appalled, as was Senator Nick Bolkus—and I would have hoped many other frontbenchers were appalled at their leader raising the spectre of 'reds under the beds' and attacking, because of race and ethnic origin, an investor in South Australia who has continued to show a willingness to invest and employ South Australians in South Australia.

Many members of the ethnic communities have spoken to me about the issue and they have been appalled to know of the statements that Mike Rann has made. I hope that other representatives of ethnic communities in this parliament will join with me and the government in denouncing the statements that Mike Rann has made, particularly when, in over 12 months, he has not taken up the opportunity of making a public apology and withdrawing the comments that he made about a significant investor in South Australia.

DISABILITY SERVICES

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Minister for Disability Services a question about future levels of funding for disability services.

Leave granted.

The Hon. CARMEL ZOLLO: Yesterday the minister defended his government's record in relation to disability services and in particular for taking seven years to produce seven reports and finally develop a framework for disability services—a framework that has no action plan and no funding commitments. Yesterday the opposition asked a number of questions in the other place about pre-election budget submissions by ministers for additional funding.

Confidential documents leaked to the opposition show that the Minister for Human Services is seeking an extra $486 million over four years for health and hospitals; the Minister for Employment and Training wants an extra $290 million for employment skills and youth empowerment; and the Minister for Education and Children's Services wants $109 million over four years for information technology, including a computer for every teacher. By comparison, these documents show that the Minister for Disability Services has not requested one cent, even though the funding gap to meet unmet needs in South Australia will be $18 million as at 1 July 2001. My questions are:

1. Why has the minister failed to seek additional funding to meet unmet needs?

2. Is it true that the minister has been told by the Treasurer not to bother asking for additional funding because he received $6 million last year and, if so, how will this impact on his action plan yet to be developed?

The Hon. R.D. LAWSON (Minister for Disability Services): I think the honourable member's question contains within itself the warning not to believe all that you read. You should wait until the budget, and I think the honourable member and the disability communities in South Australia will be well satisfied with the continued commitment of this government to additional funding for disability services.

The honourable member mentioned the figure of $6 million last year. In fact, the additional moneys into the South Australian disabilities sector this year in consequence of my activities, not only in this state but also federally, were an additional $10 million, and those funds have been well used. The assumption in the first part of the honourable member's question is that I failed to seek additional funds. As I say, when the results of the budget are announced, I think she will be surprised—and I hope pleasantly surprised—by our continued commitment. It is not always safe, the honourable member should know, to rely solely on documents that are leaked to you.

It is certainly not true that I have asked the Treasurer for additional funds, and he has told me not to bother. Indeed, I have always found the Treasurer to be most responsive to requests for additional funding for disability services and for the support of older people in our community.

Finally, in her explanation, the honourable member mentioned the fact that allegedly it has taken seven years to develop a disability services framework, as if some such framework were a necessary outcome of the Disability Services Act which was passed in 1993. Whilst it is true that the disability services framework is built upon the foundations laid by the Disability Services Act and the principles and objectives laid down in that act, the framework itself is in no part dependent upon the existence of that legislation.

This framework is the first occasion this or any previous government has sought to examine and resolve in an overall way, and to provide a blueprint, for overall services for people with disabilities. Too often in the past the individual needs of particular disability groups have been addressed—by both sides of politics—without having regard to the overall requirements of the sector. Too often a particular disability group has managed to secure funding and then, once having secured it, continued to receive it, notwithstanding the demands of other sectors.

The one thing that the framework seeks to do is to provide equity and certainty in disability services. I am proud of the framework. I am delighted with the fact that so many people within the disability sector have supported it. I regret that members of the opposition have been churlish about the framework into which they have not chosen to avail themselves of the opportunity to have any input.

WILSON, Mr G.

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I seek leave to table a ministerial statement on the appointment of Mr Garnet Wilson delivered today by the Hon. Dorothy Kotz, Minister for Aboriginal Affairs.

Leave granted.

CITIZENS' RIGHT OF REPLY

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

That, during the present session, the Council make available to any person who believes that he or she has been adversely referred to during proceedings of the Legislative Council the following procedure for seeking to have a response incorporated into *Hansard*—

I. Any person who has been referred to in the Legislative Council by name, or in another way so as to be readily identified, may make a submission in writing to the President—
   (a) claiming that he or she has been adversely affected in reputation or in respect of dealings or associations with others, or injured in profession, occupation or trade or in the holding of an office, or in respect of any financial credit or other status or that his or her privacy has been unreasonably invaded; and
   (b) requesting that his or her response be incorporated in to *Hansard*.

II. The President shall consider the submission as soon as practicable.

III. The President shall reject any submission that is not made within a reasonable time.

IV. If the President has not rejected the submission under clause III, the President shall give notice of the submission to the Member who referred in the Council to the person who has made the submission.

V. In considering the submission, the President—
   (a) may confer with the person who made the submission;
   (b) may confer with any Member;
   (c) must confer with the Member who referred in the Council to the person who has made the submission if it is possible to do so;
   but
   (d) may not take any evidence;
   (e) may not judge the truth of any statement made in the Council or the submission.

VI. If the President is of the opinion that—
   (a) the submission is trivial, frivolous, vexatious or offensive in character; or
   (b) the submission is not made in good faith; or
   (c) the submission has not been made within a reasonable time; or
   (d) the submission misrepresents the statements made by the Member; or
   (e) there is some other good reason not to grant the request to incorporate a response in to *Hansard*,
   the President shall refuse the request and inform the person who made it of the President's decision.

VII. The President shall not be obliged to inform the Council or any person of the reasons for any decision made pursuant to this resolution. The President's decision shall be final and no debate, reflection or vote shall be permitted in relation to the President's decision.

VIII. Unless the President refuses the request on one or more of the grounds set out in paragraph V of this resolution, the President shall report to the Council that in the President's opinion the response in terms agreed between him and the person making the request should be incorporated in to *Hansard* and the response shall thereupon be incorporated in to *Hansard*.

IX. A response—
   (a) must be succinct and strictly relevant to the question in issue;
   (b) must not contain anything offensive in character;
   (c) must not contain any matter the publication of which would have the effect of—
      (i) unreasonably adversely affecting or injuring a person, or unreasonably invading a person's privacy in the manner referred to in paragraph I of this resolution, or
      (ii) unreasonably aggravating any adverse effect, injury or invasion of privacy suffered by any person, or
      (iii) unreasonably aggravating any situation or circumstance,
   and
   (d) must not contain any matter the publication of which might prejudice—
      (i) the investigation of any alleged criminal offence,
      (ii) the fair trial of any current or pending criminal proceedings, or
      (iii) any civil proceedings in any court or tribunal.

X. In this resolution—
   (a) "person" includes a corporation of any type and an unincorporated association;
   (b) "Member" includes a former Member of the Legislative Council.

In the last two parliamentary sessions, I have moved a motion for a sessional order which would enable persons who believe that they have been adversely referred to during proceedings of the Legislative Council to request that a response be incorporated into *Hansard*. Such a request would be made to the President. These motions were passed on 25 March 1999 and 26 October 1999, respectively.

As far as I am aware there have been two requests for publication of a reply since the sessional orders were made. In one case, the President recommended against the incorporation of a reply, while in the other case the President saw fit to permit a response to be incorporated in *Hansard*. Whilst this measure has not been used frequently, it is an important mechanism for providing those who feel that they have been adversely reflected upon during the course of proceedings in this Council with an opportunity to tell their side of the story, as it were.

The motion that I move today is similar to that passed on two previous occasions, subject to five changes. The first change will prevent any debate, reflection or vote in relation to any decision of the President made pursuant to the sessional order. The President's role in relation to a request for incorporation of a statement in *Hansard* is a very sensitive and difficult one. A debate, reflection or vote in relation to a decision of the President pursuant to the order has the potential to reflect on the judgment of the President in a manner which is inappropriate.

Members would also be aware that the incorporation of a statement in *Hansard* is not the only measure available to a member of the public who feels that he or she has been wrongly reflected on during proceedings. For example, a person could approach a member who could raise the relevant issue in Matters of Interest.

The second change will clarify the meaning of 'member' in the order and make it clear that 'member' includes a former member of the Council. If the President interprets 'member' in sub-paragraph III of the order as meaning current members only, then he will have to refuse requests in relation to things said by members who have resigned or lost their seats even though it was said very recently and even though it may have been entirely inaccurate, unfair and damaging. For this reason, the motion clarifies the meaning of the word 'member' by defining it to include 'a former member'.

The third change will enable the President to reject a submission if it is not made within a reasonable time. While it is appropriate to extend the application of the order to statements made by former members for the reasons outlined above, it is not considered appropriate that this right should continue indefinitely. Similarly, it is considered inappropriate that statements made by longstanding members could be the subject of a submission for an unlimited period of time.

It is therefore appropriate that submissions should be required to be made within a reasonable time of the relevant statement being made. The order provides two points at which timing must be considered. On receipt of a submission, the President is required to reject a submission if it has not been made within a reasonable time. It is envisaged that the majority of cases where a submission is rejected as being out of time will be rejected at this point. Where a submission is rejected at this point, there is no requirement that the President consult with the member concerned.

However, there may be situations where circumstances which are beyond the knowledge of the President mean that the submission has not been made within a reasonable time. Alternatively, the President may subsequently become aware of factors which point to a submission not having been made within a reasonable time (for example, upon consultation with the relevant member). The order will therefore provide that the President may consider whether a submission has been made within a reasonable time during the consideration of the various discretionary factors in clause VI and may reject a submission on that basis at that point.

The fourth change inserts a new ground upon which the President may reject a submission. It provides that the President may reject a submission which misrepresents the statements made by the member. The order was never intended to permit submissions to be made which misrepresent what the member has said. To make this clear, this ground for rejection of a submission has been incorporated into the revised order.

The first change is a very minor one and merely replaces three instances of gender exclusive language with gender inclusive language. I commend the proposed sessional order to members. I hope that it can be supported in the near future and again become an appropriate sessional order for the Council during the current session of this parliament.

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

EXPIATION OF OFFENCES (TRIFLING OFFENCES) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a bill for an act to amend the Expiation of Offences Act 1996. Read a first time.

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

That this bill be now read a second time.

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

Leave granted.

The expiation system is a convenient and simple way of dealing with minor regulatory offences. In most cases, the process is a matter of great convenience to the general community as a way of avoiding the time and expense of a court hearing. More offences in quantitative terms are dealt with by the expiation system than are dealt with by the traditional court system.

However, there is certainly a perception, both in this State and in other jurisdictions, that the ease with which enforcing officers may issue an expiation notice has had a net widening effect in that there is a lessening of the use of cautions or warnings instead of formal action. This in turn may lead the public to believe that the expiation system is unjust or is a revenue raising exercise—or both.

There are no formal mechanisms in place in the relevant legislation for dealing with this problem. Indeed, it is a difficult problem to solve completely. But that does not mean that an attempt should not be made. This Bill proposes a series of amendments to the umbrella legislation—the *Expiation of Offences Act*—which are designed to achieve the following objectives:

An expiation notice should not be issued for an offence that is trifling; and

The issuing authority must, on the application of a person to whom an expiation notice has been issued, at any time before the expiation notice becomes an enforcement order, review the circumstances under which it is alleged that the offence the subject of the expiation notice was committed in order to determine whether the allegation, if established, would constitute a trifling offence; and

The decision whether or not an offence is trifling at these levels is not reviewable by any court, but, of course, the person concerned may choose to take the matter of trifling or not to the Magistrates Court by electing to be prosecuted in the normal way; and

If the issuing authority determines that the allegation, if established, would constitute a trifling offence, it must withdraw the notice.

The meaning of 'trifling' is well established in law. It should be emphasised that the decision by a court of whether a matter is trifling or not is not susceptible of flat specific rules, but depends on the particular offence concerned, the interpretation of the statute concerned and a proper balancing of social interest. By way of an indication, a summary of the law has been stated in a sequence of decisions of the Supreme Court (notably *Mancini v Vallelonga* (1981) 28 SASR 236, *Hills v Warner* (1990) 155 LSJS 397 at 401 and *Daniels v Cleland* (1991) 55 SASR 350 at 353) as follows:

An offence is not trifling if it is a typical offence of the class prescribed;

Where the breach is deliberate it can rarely be characterised as trifling;

An offence may be trifling where it is merely technical, casual or inadvertent and there was no deliberate intention to commit a breach of the statute;

An offence may be held trifling where there were compelling humanitarian or safety reasons for doing what was in fact done;

It is not appropriate, in determining the question whether an offence is trifling, to take into account factors other than the immediate circumstances of the offence itself, as opposed, for example, to circumstances personal to the offender.

Consultation on the first draft of the Bill produced a significant consensus that there was a need to give some guidance to issuing authorities and authorised officers as to the meaning of 'trifling' in the context of this Bill so as to promote as much uniformity and consistency as possible and so as to minimise conflict between members of the public on the one hand and issuing authorities and authorised officers on the other hand if and when the question arises between them. There was also a general view that the law set out above was not wholly appropriate to the very limited question of whether an expiation notice should have been issued instead of the alleged offender being given a warning or caution. It was therefore necessary to adapt and codify the general law about what is 'trifling' and what is not for the guidance of authorities and members of the community alike. In addition, it was necessary to make the list as exhaustive as possible for the sake of certainty. The result is the principles listed in what is proposed to become s 4(2) of the Act. The definition is only for the purposes of this Act, and only for the purpose of determining whether or not an expiation notice should have been issued in the first place. It does not bind any court before which a matter may be argued as having been 'trifling' in character.

Some consideration was given to the question whether it was therefore necessary to replace the word 'trifling' with some other word—such as 'minor'. In the end, it was decided not to do so. First, the word means what the statute says it means—no more and no less—as the definition is intended to be exclusive. Second, insofar as there is discretionary room within the definition, it already uses the words 'petty', 'trivial' and 'technical'. The word 'minor' seems not only superfluous, but also gives a flavour which would seem to detract from the narrow compass of the word employed.

The Bill makes it quite clear that none of the decisions contemplated by this amendment may be the subject of any appeal, judicial review or court proceedings whatsoever. This measure is not intended to give everyone who receives an expiation notice another opportunity to litigate a grievance all of the way. The issuing authority or the issuing officer do not have to conduct a hearing or provide the rights, procedural or otherwise, that go with any more formal administrative hearing. This additional right to request consideration is not intended to become another formal and costly burden on authorities. However, it should be noted that the rights of

the person who receives the expiation notice are fully preserved. If an application for this new form of review fails, the recipient retains the right under s 14(3)(a) of the Act to argue before a court that the expiation notice should not have been given in the first place. So the right to judicial review of the decision, which exists at present, is retained unaffected by this additional proposed system of review.

I commend the Bill to the House.

Explanation of clauses

Clause 1: Short title

This clause is formal.

Clause 1: Commencement

This clause provides for commencement by proclamation.

Clause 3: Amendment of s. 3—Application of Act

This clause allows the regulations to exclude a class of offences from the application of the provisions of the Act relating to trifling offences.

Clause 4: Amendment of s. 4—Interpretation

This clause defines what is a trifling offence for the purposes of the Act. An offence will not be regarded as trifling unless it falls within one of three categories, namely, the offender committed the offence for compelling humanitarian safety reasons, the offender could not have reasonably averted committing the offence or the offender's breach was merely a technical, trivial or petty breach.

Clause 5: Amendment of s. 6—Expiation notices

This clause provides that a person authorised to issue expiation notices on behalf of an authority should not issue a notice for an offence that is trifling.

Clause 6: Insertion of s. 8A

This clause provides a mechanism for review of an expiation notice by the relevant issuing authority if the alleged offender believes that an offence to which the notice relates was trifling. Such an application can only be made up to the point at which the issuing authority issues its certificate for enforcement in respect of the offence. An alleged offender who pays any sum or applies for relief on an expiation notice in respect of a particular offence cannot subsequently make an application for review under this section in relation to that offence. If the issuing authority is satisfied that the offence is trifling, it must withdraw the notice and no further expiation notice may be issued in respect of the offence.

Clause 7: Insertion of s. 18B

This clause provides that decisions made by issuing officers or authorities as to whether an offence was trifling are final and not subject to any form of review (but this will not remove a person's right under section 14 to have an enforcement order reviewed on the basis that the relevant offence was trifling and that the expiation notice should therefore not have been issued in the first place).

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

ELECTORAL (MISCELLANEOUS) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a bill for an act to amend the Electoral Act 1985. Read a first time.

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

That this bill be now read a second time.

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

Leave granted.

This bill proposes a number of amendments to the Electoral Act. The bill incorporates a number of recommendations made by the Electoral Commissioner. Most of the amendments are of a technical nature and seek to streamline existing electoral pro-cesses.

Requiring all public sector agencies to provide information to the Electoral Commissioner

The Act will be amended to require all public sectors agencies to provide information to the Electoral Commissioner

Section 27(1)*(a)* provides that the Electoral Commissioner may require any officer of the public service of the State to provide information in connection with the preparation, maintenance or revision of electoral rolls.

The Electoral Commissioner would like to be able to obtain material from certain Government agencies and instrumentalities, whose officers are not officers of the public service (under the Public Sector Management Act) but which are public sector agencies. Being able to obtain such information would be useful in maintaining the electoral roll, to ensure greater accuracy of the roll.

The bill will therefore broaden section 27(1)*(a)* to encompass all public sector employees and agencies.

Penalties

The Commissioner has raised concerns that some of the penalties contained in the Act do not act as a sufficient deterrent. The Commissioner proposes that those penalties be increased.

Section 27A was inserted into the Act in 1997. This section empowers the Electoral Commissioner to provide information about electors to prescribed persons and authorities. The Commissioner is able to impose conditions (for example, confidentiality requirements) when providing that material. Failure to comply with such a condition is an offence (section 27A(5)), with a maximum penalty of $1 250.

The Electoral Commissioner is concerned that the current penalty does not act as a sufficient deterrent to the misuse of information obtained under this section. Given the potential commercial benefits of such information, the Electoral Commissioner's concern is understandable. While it would be hoped that the bodies and persons given access to this information would not use it inappropriately, there is always a risk that a person may use the information for personal or commercial advantage. A penalty of $10 000 would be consistent with the penalty for similar offences under other Acts. The bill will therefore prescribe a penalty of $10 000 for failure to comply with a condition set by the Electoral Commissioner under section 27.

Section 113 of the Electoral Act prohibits misleading statements in electoral advertising. The penalty for this offence is $1 250 for a natural person and $10 000 for a body corporate. Again, the penalties contained in this Act are lenient in comparison with similar penalties contained in other Acts. The Electoral Commissioner has expressed concern that the current penalties do not act as a sufficient deterrent and that as a result people may be prepared to risk payment of a fine rather than withdraw the advertisement.

Following the last election, there were at least three cases where people were found guilty of an offence against section 113. The penalties imposed were $1 000 each on two counts (the same person was given no penalty on three counts) for one person, $500 on one count for another person and $400 total for two counts for a third person.

Given the experience of the Electoral Commissioner and the undesirability of misleading electoral material being distributed, the bill will raise the penalties for misleading advertising to $5 000 for a natural person and $25 000 for a body corporate.

Enrolment as an elector

The bill will amend section 30 to ensure consistency with the *Commonwealth Electoral Act* to facilitate the joint roll arrangements.

The Commonwealth has amended its Act in a way that could impact on the joint roll arrangements. The Commonwealth amendments are contained in the *Electoral and Referendum Amendment Act (No. 1) 1999*.

The Commonwealth amendments were introduced as a way of preventing fraud and improving the integrity of the electoral system. The Government agrees that it is important to maintain the confidence of all Australians in the integrity of the electoral system and is supportive of efforts to reduce electoral fraud, including the 1999 amendments to the Commonwealth *Electoral Act* dealing with verification of identity and citizenship.

Arrangements exist between the Commonwealth and South Australia for the maintenance of joint rolls. If Commonwealth and State requirements for enrolment become inconsistent, then the maintenance of joint rolls will become difficult. Furthermore, in view of the desirability of reducing electoral fraud and maintaining the integrity of the electoral system, the Government is of the view that it is desirable to introduce similar provisions in the South Australian Act. The bill will therefore make two amendments to the South Australian *Electoral Act* to make it consistent with the Commonwealth Act. It will:

- introduce a statutory requirement that a person could not be enrolled unless he or she supplied prescribed proof of his or her identity and citizenship, ie the State Act would mirror the new Commonwealth scheme; and
- provide that an application may be lodged by hand with a prescribed person. A regulation could then be made prescribing the same classes of person as those identified in the Commonwealth Regulations.

Registration of Political Parties

The bill will also make a number of changes to the requirements for registration of political parties.

Currently, a party seeking registration must either have 150 members or have a member who is a member of the House of Assembly or the Legislative Council.

All jurisdictions other than Tasmania have a higher membership requirement than South Australia. New South Wales recently increased its membership requirement to 750 members, while Western Australia recently increased its membership requirement to 500.

Concerns have been raised by the Electoral Commissioner regarding the registration of multiple political parties with very low membership and its potential effect on voting patterns, particularly in the Legislative Council. The 1999 New South Wales election saw 81 parties vying for election in the Upper House. Following that election, there were allegations of sham parties; that is, parties which had been established purely for the purpose of directing preferences towards or away from particular candidates. One of the things which made this possible was the then low membership requirement for registration of political parties in New South Wales, which was 200 at the time.

The Electoral Commissioner is concerned that there is potential for a similar situation to arise here.

It would seem appropriate that a political party must be able to demonstrate a reasonable level of support from within the electorate.

The level of disadvantage suffered by persons who are unable to gain registration as a political party in South Australia is not as great as in other jurisdictions. This is because in South Australia independent candidates can be described in a manner which indicates to the electorate the platform upon which that candidate stands. These candidates can also be grouped together, and can form a ticket for the purposes of above the line voting. Therefore there is nothing to prevent genuine candidates standing as Independents.

As South Australia is a smaller jurisdiction than most other States, it is not considered appropriate to raise the membership requirement to the same level as that of other States. It is considered that an increase to 300 members will strike an appropriate balance between the need to ensure a reasonable level of community support for registered political parties and the need to ensure that minority voices within the community are able to form political parties to raise their concerns.

A further issue arises in relation to the members used in obtaining registration. Concerns have been raised that parties are seeking registration using what appear to be very similar lists of names on a number of occasions. In other words, there is a concern that there may be a number of parties with different names but the same or similar membership lists.

It is therefore proposed that a party be prevented from relying on a member for the purpose of satisfying the eligibility requirements where that member is also a member of another political party (including a related political party). The proposed amendment will not prevent a person being a member of more than one political party for any purpose other than registration. It will simply prevent more than one party relying on that person's membership for the purposes of satisfying eligibility requirements.

To enable the Commissioner to monitor the ongoing eligibility of parties to be registered, the bill will add a requirement that the registered officer of a party must provide an annual return to the Commissioner. A party which ceases to have the requisite number of members (or an appropriate member in the case of a Parliamentary party) will be deregistered.

Description of Independent Candidates

The bill will also provide the Commissioner with protection in relation to decisions made regarding the description of Independent candidates.

Section 62(1)*(d)* enables a candidate to have a description consisting of the word 'Independent' followed by not more than 5 additional words printed adjacent to the candidate's name on the ballot papers for use in the election. The Electoral Commissioner may reject an application to have such a description printed if the Commissioner is of the opinion that the description is obscene or frivolous (section 62(3)).

The Commissioner is concerned that if a political party objects to the use of its name as a description for an independent candidate, the party may seek to prevent the printing, distribution or even use of the ballot papers, for example by way of injunction.

If successful, this could cause serious problems. Ballot papers are printed over the weekend following the close of nominations. If a challenge were successful following the printing of the ballot papers, then the ballot papers as printed may need to be destroyed and reprinted, which would be very expensive. Further, if some ballot papers had already been distributed, then those papers may need to be recalled, which would be highly impractical and also very expensive. It is therefore undesirable that there be the potential for a successful application for an injunction at this stage.

The bill will therefore amend the Act to provide that no injunction may be brought in relation to a decision made by the Electoral Commissioner under section 62(3).

Appointment of scrutineers

The bill will simplify the process of appointing scrutineers.

Section 67(1) of the Act currently requires a candidate to give notice of the appointment of a scrutineer to the returning officer. In practice, this has proved impractical. The current practice of the Electoral Commissioner is that forms presented on Election night are accepted by the electoral officer in charge of proceedings and the forms are not received by the Returning Officers until after polling day. This practice does not appear to have caused problems. The requirement that a candidate give notice to the returning officer of the appointment of scrutineers will therefore be removed. A candidate will still be required to sign a form of appointment which would be presented to the electoral officer in charge of proceedings.

Registration as a declaration voter

The bill will expand the category of persons who can be registered as declaration voters

Section 74(3) of the Act provides for the registration of declaration voters. Once a voter is on the register, that voter must be issued postal voting papers pursuant to section 74(1). If a voter who is not on the register wishes to make a postal vote, that person must apply by letter for postal voting papers.

To be placed on the register, a person must either:

- have an address which is suppressed from publication under Part 4 Division 2; or
- be precluded from attending at polling booths to vote because of—
  - (i) physical disability; or
  - (ii) membership of a religious order or religious beliefs; or
  - (iii) the remoteness of his or her place of residence.

If not on the register, then an eligible person is required to make an application for a declaration vote at each election. The criteria for being placed on the register are stricter than those for declaration voting generally. Generally the other grounds for declaration voting are grounds which may be described as temporary (eg absence from the jurisdiction on election day). However, the ground of "caring for a person who is seriously ill or infirm" is a ground which may be longer term in nature in some cases.

Before the last election, a number of people approached the Electoral Commissioner wanting to know why it was necessary to apply for a postal vote for each election, as they were involved in the long term care of another person. The Electoral Office currently sends out applications to such people anyway, recognising that in many cases caring responsibilities can be long term.

The Act will be amended to enable such people to be added to the list of declaration voters, so that at every election, they would automatically be sent postal ballots without needing to apply for them. Such voters will still be required to declare the reason that they were entitled to a declaration vote when returning the ballot papers.

Forwarding of postal vote applications

The bill will insert a requirement that persons acting as an intermediary between an applicant for a postal vote and the Electoral Commissioner must forward the application as soon as possible after its receipt.

In his report on the 1997 election, the Electoral Commissioner noted:

> *The practice of parties and candidates extensively letterboxing postal vote applications to households is on the increase Australia wide. Applications are then collected by volunteers or find their way by post to campaign headquarters and are forwarded to the SEO. . .*
>
> *Whilst there was no evidence at the last election, a major concern relates to applications not being put into the hands of the electoral administration in a timely manner.*

The Act will be amended to provide that a person acting as an intermediary between an applicant for a postal vote and the Electoral Commissioner must forward the application as soon as possible after its receipt. This provision will be exhortary only, but should be of assistance to the Electoral Commissioner in encouraging the parties to forward applications with appropriate diligence.

Informality of votes above the line for candidates/groups who fail to lodge a voting ticket

The bill will also provide for the informality of votes above the line for candidates who fail to lodge a voting ticket.

Section 63 of the Electoral Act provides for the lodgement of voting tickets. The section provides that notice must be given to the Electoral Commissioner of an intention to lodge a voting ticket at or before the hour of nomination (section 63(2)*(a)* and the ticket itself must be lodged within 72 hours after the close of nominations (section 63(2)*(b)*). This ticket then becomes the basis for distributing preferences for votes which are cast 'above the line'. In the absence of a voting ticket, there is no way for the Electoral Commissioner to determine how to distribute the preferences.

The Electoral Commissioner is concerned that some candidates or groups may indicate an intention to lodge a voting ticket but fail to do so. As ballot papers are printed over the weekend immediately following the close of nominations, the ballot paper would include a box above the line for every candidate who had indicated an intention to lodge a voting ticket. Should a candidate then fail to lodge a voting ticket, the Electoral Commissioner will be confronted with a situation where votes have been validly cast according to the ballot paper but, as there is no voting ticket, there is no way to distribute preferences.

The Act will therefore be amended to provide that votes above the line for candidates who have indicated an intention to lodge a voting ticket and fail to do so will be rendered informal.

'Bogus" how-to-vote cards

The bill will address the use of 'bogus' how to vote cards.

The Electoral Commissioner is concerned at the potential for 'bogus' how-to-vote cards to be used at the next and subsequent State Elections.

The main type of 'bogus' how-to-vote card that has caused problems in other States is the 'second preference' card, which is targeted at persons who intend to vote for one party and aims to solicit the second preference of such voters.

While there is nothing wrong with attempting to solicit the second preference of voters, problems arise where the card has the potential to mislead voters as to who is responsible for authorising it. For example, a card authorised by a major party which solicits the second preference votes of voters for a minor party may have been constructed in such a way as to appear to be an authorised card for the minor party. Hence a voter who wished to vote for the minor party and to follow that party's instructions as to how to distribute preferences may be misled into voting another way.

While the minor party would still get the first preference in this situation, other parties to which the voter may have given the second preference, were it not for the bogus card, could miss out. It is of particular concern that a person could believe that he or she is voting for a particular party by obeying a how-to-vote card where the effect is not that intended by the party.

At worst, where the election is decided on preferences, the use of bogus how-to-vote cards could affect the outcome of an election.

Even if the outcome of an election is not affected, the use of such cards has the potential to bring the electoral system into disrepute.

Thus the primary concern with bogus how-to-vote cards is their potential to mislead voters in the casting of their votes, and, in turn, the impact that this could have on the outcome of an election and on voter confidence in the electoral process.

It is considered that the best balance between the need for voters to be sufficiently informed and the need to avoid undue limitations on freedom of speech is to include a requirement to include the name of the party or candidate on whose behalf how-to-vote cards are authorised. This approach is therefore proposed to be adopted in the bill.

Protection of the Electoral Commissioner from liability

The bill will increase the protection of the Electoral Commissioner from liability.

There is currently no provision in the Act which protects the Electoral Commissioner from liability for any loss suffered as a result of the acts of the Commissioner. Most other Acts of a similar nature provide indemnity for persons working in the administration of the relevant Act, and instead provide that any liability will lie against the Crown. It is desirable to protect the Electoral Commissioner and other persons working in the administration of the Act (such as the Deputy Commissioner) from a risk of personal liability. The Act will be amended to provide immunity from liability for all persons involved in the administration of the Act for any act or omission in good faith in the exercise or purported exercise of powers or functions under the Act. Any such liability will instead lie against the Crown.

The bill will also make minor technical amendments to the Act relating to the application of heading requirements, the format of the Legislative Council Ballot Paper, the form of the notice sent to electors who fail to vote and the descriptions of the means used to send declaration voting papers and storing electoral material.

I commend this bill to honourable members.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The measure will be brought into operation by proclamation.

Clause 3: Amendment of s. 4—Interpretation

This amendment alters the definition of 'voting ticket square' to reflect the fact that a voting ticket may not have been registered in accordance with the scheme under the Act.

Clause 4: Amendment of s. 27—Power to require information

Section 27(1)*(a)* of the Act provides that the Electoral Commissioner may require any officer of the Public Service to provide information required for the purposes of a roll. This amendment will replace that paragraph so as to allow the Electoral Commissioner to require such information from any agency or instrumentality of the Crown, any other prescribed authority, or any public sector employee.

Clause 5: Amendment of s. 27A—Provision of certain information

This amendment will increase the penalty for breaching a condition under which the Electoral Commissioner provides information about an elector under section 27A of the Act.

Clause 6: Amendment of s. 30—Claims for enrolment

It is intended to require that the identity of a person making a claim for enrolment be verified in the manner prescribed by the regulations. A claim based on the grant of a certificate of Australian citizenship will also have to be verified. It will also be possible to lodge claims with persons of a prescribed class (in addition to electoral registrars).

Clause 7: Amendment of s. 36—Definitions and related provisions

This clause makes a series of amendments to section 36 of the Act. The number of electors that a political party (other than a parliamentary party) will need as members in order to qualify as an 'eligible political party' is to be increased from 150 to 300 (subject to the transitional provisions). Another amendment is based on the proposal that the same member should not be relied on by two or more political parties in order to qualify under the membership requirements for registration. (The amendment will not prevent a person being a member of more than one political party for any purpose other than registration.)

Clause 8: Amendment of s. 39—Application for registration

This amendment will require a party applying for registration to provide information concerning the members or member (as the case may be) on whom the party is relying in order to qualify as an eligible political party.

Clause 9: Insertion of s. 43A

The registered officer of a registered political party will be required to submit an annual return as to the continued eligibility for registration of the party. The Electoral Commissioner will also be able from time to time to require the provision of information relating to eligibility.

Clause 10: Amendment of s. 45—De-registration of political party

This amendment is consequential on the change of membership requirements to 300 electors (and also makes it clear that a parliamentary party will be subject to de-registration if it ceases to have an appropriate member).

Clause 11: Insertion of ss. 46A and 46B

New section 46A will make it an offence to make a statement that is false or misleading in a material particular in providing information for the purposes of Part 6 of the Act. Section 46B will protect the confidentiality of the names and addresses of electors contained in material provided to the Electoral Commissioner for the purposes of Part 6 of the Act.

Clause 12: Amendment of s. 59—Printing of Legislative Council ballot papers

Subsection (1) is to be amended to cater for situations where the names of groups and candidates must be continued on to a second (or subsequent) row on the ballot paper. Section 59(2) of the Act is to be recast to reflect the fact that a voting ticket may not be registered in accordance with the scheme under the Act.

Clause 13: Amendment of s. 62—Printing of descriptive information on ballot papers

This amendment will provide that a decision of the Electoral Commissioner to accept or reject an application under section 62(1)*(d)* of the Act is final and conclusive and not subject to review or appeal. (Section 62(1)*(d)* relates to an application to have the word 'Independent' followed by not more than 5 words printed on a ballot paper.)

Clause 14: Amendment of s. 63—Voting tickets

This amendment relates to the lodging of voting tickets. If in relation to a Legislative Council election a voting ticket is not lodged in accordance with the requirements of the Act after notice of an intention to do so has been given to the Electoral Commissioner, the Electoral Commissioner will be required to take reasonable steps to inform the relevant candidate or candidates of the failure (but it will be made clear that the Electoral Commissioner is not required to take any other action in relation to the matter).

Clause 15: Amendment of s. 67—Appointment of scrutineers

The formal arrangements for scrutineers are to be altered to the extent that notice of appointment will now be given to the electoral officer presiding at a place where the scrutineer is to act.

Clause 16: Amendment of s. 74—Issue of declaration voting papers by post or other means

Declaration voting papers will be able to be dispatched by post (as is currently the case), or in some other manner prescribed by the regulations. A person who is caring for a person who is seriously ill, infirm or disabled will now be able to register as a declaration voter. It will also be the case that a person who is given an application by an elector for the issue of declaration voting papers will be required to deliver that application to the appropriate officer expeditiously.

Clause 17: Amendment of s. 82—Declaration vote, how made

Clause 18: Amendment of s. 84—Security of facilities

These amendments reflect the fact that the Electoral Commissioner may use secure facilities other than ballot boxes for the storage of declaration votes cast in advance.

Clause 19: Amendment of s. 85—Compulsory voting

This amendment corrects a technical matter. Section 85(5) of the Act requires a person completing a declaration in a notice under that section to complete the form *at the foot of the notice*. In fact, the declaration has been printed on the second page of the notice.

Clause 20: Amendment of s. 87—Ballot boxes or other facilities to be kept secure

This amendment is consistent with the use of secure facilities other than ballot boxes for the storage of declaration votes cast in advance.

Clause 21: Amendment of s. 94—Informal ballot papers

This amendment clarifies the status of a vote cast 'above the line' if a voting ticket is not in fact lodged in accordance with the requirements of the Act.

Clause 22: Insertion of s. 112A

New section 112A will require that how-to-vote cards distributed during the election period for an election must include both the name and address of the person who authorised the card and the name of the relevant political party or, for a candidate who is not endorsed by a registered political party, the name of the candidate.

Clause 23: Amendment of s. 113—Misleading advertising

This amendment increases the penalty under section 113(2) of the Act.

Clause 24: Amendment of s. 114—Heading to electoral advertisements

Section 114 of the Act currently requires the printing of the word 'advertisement' above electoral matter published in a newspaper after the payment of consideration. The provision will now apply in relation to any such publication in a 'journal', which is to be defined as a newspaper, magazine or other periodical, whether published for sale or distributed free of charge. (The requirement for payment for the publication of the electoral matter will still apply.)

Clause 25: Insertion of s. 137

New section 137 will provide express indemnity for officers acting under the Act.

Clause 26: Transitional provisions

This clause sets out transitional provisions connected with the new membership requirements for political parties registered, or seeking registration, under the Act.

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

COMMUNITY TITLES (MISCELLANEOUS) AMENDMENT BILL

In committee.

Clause 1.

The Hon. IAN GILFILLAN: Committee members will realise that the Democrats indicated support for the second reading of this bill, and that does not alter. However, I have had brought to my notice that this is an opportunity to canvass a slightly wider scope than that specifically identified in the bill, although it is germane to the debate. I am looking to have some response from the Attorney on some areas that I want to raise with him in committee.

We have had informal conversations about it, and the Attorney has agreed that he is happy to address this and has an adviser down to take part in this today. I would first like to read to the committee an extract from *Choice* magazine of December 1994. It may appear to be some time ago. However, I am advised by people in the industry that the points raised in this article are still relevant and, from what they have said to me, can require some specific attention from our government, our departments and this parliament. The article states:

> The 1991 National Census tells us that 7.7 per cent of Australians live in a flat or apartment, and this is predicted to increase rapidly in our cities as governments and developers push the idea of medium-density housing. Are you ready for corporate living? What do you know about the rules of life in a strata title building, or about keeping the collective business side under some sort of control?
>
> We'll take you through the basics here, and raise some of our concerns about the strata managers' profession as established throughout most of Australia.
>
> Only in New South Wales and the Northern Territory are there comprehensive systems of regulation for this industry. Yet strata managers are handling the regular financial contributions (levies) of thousands of unit owners. There's money to be made out of managing strata blocks: recently Alliance Strata Management, perhaps Australia's largest strata management group, was sold reputedly for $3.8 million following a scandal involving licensing irregularities and alleged undisclosed commissions on placement of body corporate insurances worth millions of dollars.
>
> And though Alliance is subject to New South Wales laws requiring managers to be licensed and to have undertaken special studies, in most of the rest of Australia there are no such controls and the rules and responsibilities are left up to the players to decide. Anyone can set up in the strata management business, and that leaves consumers vulnerable to the quick-buck merchants
>
> Really, it's amazing there hasn't been a major sting yet.

I do not intend to read the rest of that article, although I will take a couple of extracts from it because it sets the scene for some of the questions that I want to ask the Attorney. Recognising that this is a 1994 article and I have not had time to do detailed research into how much substantial change there has been, we may find that some of the things I am referring to have been attended to. That is what I am hoping the Attorney in his response will be able to cover. The brief list of responsibilities of a strata managing agent are these:

> The body corporate can pass all or some of its functions and responsibilities on to a managing agent (though in South Australia the agent can only 'assist' you to make your own decisions). Examples include:
>
> · arranging insurance such as fire, public liability, workers' compensation, common contents—including hall carpets, doors, shared laundry facilities;
> · keeping and maintaining the strata roll records;
> · handling requests for information by prospective unit buyers and sellers;
> · notifying unit owners of meetings;
> · preparing agenda for meetings;
> · chairing meetings;
> · arranging repairs and maintenance of common property;

- collecting levies;
- preparing a budget and any necessary tax return.

Mr Graham Knight, the then General Manager of the Real Estate Services Council in New South Wales, is quoted in this same article as follows:

> Bodies corporate and their councils should satisfy themselves regularly about the financial transactions required to be entered into on their behalf by the agent. They should also regularly satisfy themselves as to the currency of the managing agent's professional indemnity insurance cover.
>
> Contracting strata managing services to an agent is not an opportunity for the council of the body corporate to abrogate its responsibilities regarding the strata plan. Individuals accepting such office would be well advised to take an active interest, as a principal, in the activities of the strata manager. It seems strata owners, bodies corporate and councils are well able to focus on the physical issues (maintenance, grounds care etc.) but would benefit from being just as diligent about the financial issues.
>
> In New South Wales in 1993-94 the Real Estate Services Council received 83 complaints about strata managers. This represented nearly 9 per cent of total complaints.

At the top of page 32, the article talks about getting professional help, and states:

> Officially, complaints seem to be few. Industry leaders talk about personality clashes with unit owners and delays in getting tasks done. The big messes and cases of financial misappropriation have come to light in New South Wales—and we think this may have something to do with there being a government watchdog in that state.

I intend to ask the Attorney what he sees as the watchdog structure in South Australia to fulfil this role. It is important that I cover all the matters I am concerned about first, then we can come back to it, rather than doing it piecemeal. There are then in this article some tips as to how to keep some control. It states:

> How can you keep an eye on what the managing agent is (or isn't) doing? Here are some tactics to consider:

I focus on this one, which states:

> Inspect the insurance policies each year on renewal. Have premiums being paid?

Under 'Room for reform', they make the following point:

> Professional indemnity insurance should be a mandatory requirement for all strata managers. It should not be possible to trade without a satisfactory level of cover.

And, emphatically, this one:

> There should be full disclosure of all commissions received by managers from placement of insurance and maintenance work.

That is one that I would like to dwell on for a moment, because that essentially identifies the areas in which I personally have had complaints. It boils down to the fact that there are unit owners who have had cause to believe that the actual arrangement for insurance has been done on a buddy-buddy basis, rather than diligently searching for the best deal for the unit owner, and that the agent has enjoyed a commission and a cosy arrangement that has been to the agent's advantage rather than that of the strata unit holder. And secondly, in the same context, the maintenance work, it has been alleged to me, has not been given to the most appropriate operator who tenders: competitive application for the work had not been sought and, once again, there are grounds to suspect that it is a cosy arrangement between the manager, the agent and the actual maintenance operator.

I will indicate the questions which I would like the Attorney-General to help us with answers. In South Australia there are now, according to my advice, 90 000 residents living in 70 000 strata and community title units. More than 20 000 of those residents in those units are over 65 years of age. I think that that item of data is significant in that some of those over 65 are less able to negotiate hard-nosed deals with people who wish to exploit them in some circumstances. The questions are:

- Where can unit owners and residents seek independent advice?
- Is it true that no government department provides advice to unit owners over the phone or in writing?
- Is it true that the Attorney-General's department used to provide phone advice but has stopped doing so?
- What resources if any does the government devote to this substantial percentage of our population, many of whom are elderly and vulnerable?
- How are unit owners informed of their rights and responsibilities upon purchase of a unit?

Furthermore, as a consequence of what has been put to me as being improperly managed arrangements, I cite the following:

- Why are we are clogging the magistrates courts with disputes over cats and airconditioners? Is this not an expensive and wasteful use of our court system?
- Other states including Western Australia and New South Wales have expanded their residential tenancy tribunals to include strata and community title advice and dispute resolution. Has the tribunal [here] been asked to look at expanding its role?

I apologise for not being able to provide this in written form to the Attorney-General but I am happy to provide it. That concludes my broad ranging observations and I leave it to the Attorney-General, but I have asked for a photocopy of these questions so that the Attorney-General can have them in hand.

The Hon. K.T. GRIFFIN: When I get a copy of the questions I will be able to deal with them more specifically. But let me make a start. Regarding the question whether the Attorney-General's Department used to provide advice to unit holders and whether that has now stopped, while I have been Attorney-General no legal or other advice has been given to strata title holders (and now community title holders) that I am aware of. It may be, of course, that someone would call and they get some information about the structure of the act and where they could go to access information.

As a matter of policy—and it was also a policy during the Labor administration—we cannot give legal advice. Public servants cannot give legal advice. They can only direct people to appropriate points where advice might be sought. Officers can give outlines of the structure of the act and point people in the right direction but, ultimately, they have to take their own advice. I know that for a long time there has been a push to have a strata titles commissioner appointed in South Australia, but I have always resisted that move because I do not see what the role of that officer could be within government.

In relation to information to which unit holders might have access, the Strata Titles Act and now the Community Titles Act are both very clear that information, for example, about the association and the structure is information that is on the public record and is accessible. I am not sure whether there is a specific provision in the act identifying where that must be, but that information has to be available. As far as I can recollect, when someone buys into a community title they are required to be provided with some basic information, and their agent/solicitor/conveyancer would always check to find out what a person's entitlements and obligations might be, both financially and otherwise. Section 44 of the Community Titles Act provides:

> (1) A community corporation must make up-to-date copies of the by-laws available for inspection or purchase by—
>
> (a) owners and occupiers of lots and (where applicable) of secondary and tertiary lots; and

(b) persons considering purchasing a lot referred to in paragraph (a) or entering into any other transaction in relation to such a lot.

(2) The inspection of by-laws must be free of charge and a fee charged for the purchase of by-laws must not exceed the fee prescribed by regulation.

(3) The Registrar-General must make copies of by-laws filed with plans of community division available for purchase by members of the public at the fee prescribed by regulation. The Registrar-General's Office is publicly accessible and all the documentation in his custody is, and must be, available for public inspection.

There is one question about why we are clogging the Magistrates Court with disputes over cats and air-conditioners—is this not an expensive and wasteful use of our court system? I do not think it is. We have a minor claims jurisdiction in the Magistrates Court, and it has a very strong emphasis on mediation, and that has developed over the past four or five years, at least. I can think of no better place for some of these issues to be resolved than in the minor claims division in the Magistrates Court where legal practitioners are not permitted to participate unless the court allows it, or the parties agree.

It is all very well to say, 'Well, what about a tribunal?' Tribunals cost money and they have their own processes and, sometimes, they do not necessarily find themselves in contact with mainstream community views or with the experience that necessarily develops from having a wide range of disputes on which to adjudicate. In any event, I do not believe we are clogging the Magistrates Court. Invariably, of course, with a separate tribunal there will be a tribunal member who is either full-time or part-time and there may even be assessors with an infrastructure to support that.

The sort of disputes under the Community Titles Act and the Strata Titles Act are not disputes between landlord and tenant but are generally disputes between owners of property. Certainly, they can be disputes between tenants and landlord, but that is the owner of the strata unit (or the community title unit) and the occupier. If there is a dispute between owners, in my view it is not appropriate for it to be determined by a body such as the Residential Tenancies Tribunal, which is primarily responsible for dealing with disputes between landlords and tenants.

Where can unit owners and residents seek independent advice? They can certainly get some advice about the general framework of the law from within government, but normally they would either go to their own owners association—

The CHAIRMAN: Order! I warn the photographer in the gallery that photographs cannot be taken except of members who are on their feet.

The Hon. K.T. GRIFFIN: So, where can they seek independent advice? Ultimately, they can go either to the manager of their own strata association or, in the event of some dispute, seek their own independent legal advice.

The honourable member asked what resources, if any, the government devotes to this substantial percentage of our population, many of whom are elderly and vulnerable. We have to distinguish between community title holders and strata title holders on the one hand and those who are licensees in retirement villages, because there is a significant difference between the two. The Retirement Villages Act deals specifically with those in retirement villages, and the Minister for the Ageing has the responsibility for providing advice and support to those within that body of residential premises within our community. That should not be confused with strata title holders or community title holders.

Community title holders are owners of property. They do not have a licence to occupy, they have a right to occupy. In retirement villages, many of the so-called residents have licences which confer a right to occupy but do not confer ownership of a definable unit within the body of the retirement village. The two have to be distinguished. The other thing we have to remember with community titles is that this can apply to penthouses of $1 million, $2 million or $3 million and it can also apply to small units that might be worth only $150 000 or even less.

As a government, we do not provide anything more than initial advice to property owners. Property owners protect their own investment and their own assets and they do it in a number of ways, but rarely does a government give advice to the owner of a freehold title about what they can and cannot do with that title. There may be advice about disputes with neighbours, and that can range from a community legal service providing the advice through the legal assistance scheme through the Legal Services Commission to the Law Society providing its telephone advisory service and the Legal Services Commission. Ultimately, if it is a question about the title, that is usually provided by some independent legal source if the advice cannot be obtained from those other bodies.

I note that the honourable member said that other states, including Western Australia and New South Wales, have expanded their residential tenancy tribunals to include strata and community title advice and dispute resolution. He asked whether the tribunal had been asked to look at expanding its role. The answer to that is no, in the context to which I have already referred. If there are other questions that the honourable member wishes to raise I will try to deal with them as we go through the committee.

The Hon. IAN GILFILLAN: We can probably deal with them expeditiously now. I thank the Attorney for covering the matters raised. There are two points that I would like to re-emphasise so he can respond to them specifically. To a certain extent the Attorney identified that there is a substantial difference between Western Australia, New South Wales and South Australia and he explained how he believes the system is working satisfactorily here. I quoted from an article which stated:

The big messes and cases of financial misappropriation have come to light in New South Wales and we think this may have something to do with there being a governmental watchdog in that state.

I believe that is a reasonable observation to make and I would like the Attorney to restate, if he has stated already, why he does not believe that a government watchdog would ensure that cases of financial misappropriation would come to light more readily.

In the same context, the practical impact on strata owners is the allegation that they are paying excessive amounts in excessive commissions and excessively priced tenders for both insurance and maintenance. Can the Attorney indicate whether those issues could be or should be resolved in the Magistrates Court? If not, to whom does he believe a unit owner who has such suspicions should turn for some satisfaction?

The Hon. K.T. GRIFFIN: Ultimately there are provisions in the articles of association of community title structures enabling members to question the role of the strata or community title manager. There is provision for annual meetings and at those meetings audited accounts have to be presented. Within this sort of property holding structure, that

questioning at annual meetings is the way in which accountability can be sought. There are provisions in the Community Titles Act that require the keeping by an agent of a trust account to have the accounts properly audited. An auditor has very wide powers to require production of accounts and relevant information.

A deposit-taking institution or other financial institution with which a trust account has been established must as soon as practicable and in any event within 14 days after becoming aware of a deficiency in that account report the deficiency to the minister. As far as I can recollect, there are requirements for presentation of those accounts to general meetings. The Community Titles Act is very specific about the voting procedure at meetings, and that is contained in section 83. There is a provision for convening general meetings.

Some community title holders may be somewhat timid about challenging the manager of a corporation but ultimately I do not see how the government is able to address that issue. If there is any financial misappropriation, one would presume that an auditor doing his or her job properly would be able to identify that. If there are suspicions of misappropriation, and those suspicions are held by a unit holder, one would expect the unit holder then to draw those to the attention of the auditor. If there is misappropriation, that is a criminal offence, and the police are the appropriate authorities to whom to direct a complaint relating to financial misappropriation.

The Hon. Ian Gilfillan interjecting:

The Hon. K.T. GRIFFIN: I am not familiar with the New South Wales watchdog and the watchdog's role. I am not sure whether it has random inspection powers or how it goes about undertaking whatever functions it might have. It may be that it is the focal point for complaint and then investigation, but there is a fundamental question about whether or not it is the role of government presumably to establish it, then to fund it and then to find remedies in relation to property holding—as I said earlier, not just for those who might be at the lower end of the scale but even at the upper end.

The whole object of the community titles legislation is to so structure it so that there are checks and balances, and that owners of property will have rights to enable them to pursue the sorts of issues raised by the Hon. Mr Gilfillan. I suppose that is one of the difficulties sometimes in buying into a community title or a strata title project—that is, you live in much closer proximity to your neighbours than you do in a stand-alone or semi-detached house, where you do not have to worry so much about day-to-day administration of a group of units. You have to worry about your own, and you have to get on with the people or at least accommodate those who might be owners of similar property. That is part of the difficulty. Maybe there needs to be a bit more education about what is involved in buying into a community title unit.

The honourable member asked a question about the New South Wales government watchdog. As I say, I am not familiar with the detail of that, but it may be that it does provide a focal point for complaint rather than members of community title schemes working through the structure which has been established for a particular development.

The other question raised by the honourable member relates to the payment of excessive amounts for commission and contracting with mates. Again, if there is any suspicion of that, it may well be that it is a criminal offence, perhaps under the secret commission's act if the commission being paid by the insurer, for example, to the agent has not been disclosed. If it is excessive, then the remedy is really in the hands of the unit holders at a general meeting. If there has been some nice little deal done with a contractor who is a mate of the agent, then it may be that that is a corrupt arrangement and a criminal offence is committed, and in that event it ought to be reported to the police.

The Hon. Ian Gilfillan interjecting:

The Hon. K.T. GRIFFIN: If there is evidence of breach of contract, for example, they are issues which can be dealt with in the magistrates court but, if there is evidence of corruption, that can be dealt with only by the police, in my view. There may be some civil consequences attached to it, but I would need to have some more detail before I could give a more definitive response.

Clause passed.

New clause 1A.

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

Page 3, after line 3—Insert new clause as follows:

Amendment s.3—Interpretation

1A. Section 3 of the principal act is amended by inserting the following subsection after subsection (12):

(13) If—

(a) a licensed surveyor is uncertain about the location of a part of the service infrastructure; and

(b) identifies the part that he or she is uncertain about in a certificate that a plan has been correctly prepared in accordance with this act,

the following provisions apply:

(c) the certificate is not invalid for the purposes of this act because of the surveyor's uncertainty as to the location of that part of the service infrastructure; and

(d) no civil liability attaches to the surveyor because the location of that part of the service infrastructure is shown on the plan incorrectly.

In its submission to the Community Titles Act review, the Association of Consulting Surveyors (South Australia) Incorporated, which I will refer to subsequently as 'the association', submitted that the Community Titles Act requires amendment to clarify the obligations of surveyors with respect to delineating service infrastructure on plans of community division. Section 14(5)(e) of the Community Titles Act provides that a plan of community division must, as far as practicable, delineate the service infrastructure. A surveyor's certificate is required certifying that the plan has been correctly prepared in accordance with the act, and that is contained in section 14(4)(h).

The amendment inserts a new subsection into section 3 of the principal act to clarify the interpretation of the responsibility of surveyors in relation to certifying the correctness of plans delineating service infrastructure. In some situations a community parcel is surveyed at an early stage of a development when the service infrastructure is not in place. However, by the time plans for community division are lodged, often some months after the survey, a substantial portion of the service infrastructure is in place. In other situations developers or contractors are not arranging for surveyors to be present when service infrastructure is installed and by the time the surveyor is on site the service infrastructure is buried and its exact location cannot be plotted.

Surveyors are concerned about any liability that may arise as a result of not delineating service infrastructure accurately. Currently, following consultation with the Lands Titles Office, surveyors are including disclaimers on plans to the effect that the location of the stated service infrastructure cannot be verified. However, surveyors are concerned that such disclaimers may not provide indemnity against liability if the plans are subsequently found to be inaccurate.

The association has advised that it has obtained legal advice on members' liability in such cases. One view is that it is doubtful whether the Community Titles Act would actually require surveyors to express opinions contrary to the limits of their physical and deduced observations. Another view is that there is scope for judicial interpretation of the act which would be broad enough for the court to find the surveyor liable. Therefore, the association has made further representations on this issue.

The government considers that this issue should be clarified. The amendment seeks to resolve the issue of surveyor liability by providing that, if the surveyor, after making all reasonable inquiries, is uncertain about the location of a part of the service infrastructure and identifies the part that he or she is uncertain about in a certificate endorsed on the plan certifying that the plan has been correctly prepared, then the certificate is not invalid because of the uncertainty and no civil liability attaches to the surveyor because the service infrastructure is not shown correctly on the plan.

New clause inserted.

Remaining clauses (2 to 6) and title passed.

Bill read a third time and passed.

LEGAL ASSISTANCE (RESTRAINED PROPERTY) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 March. Page 1021.)

The Hon. IAN GILFILLAN: I indicate the Democrats' support for the second reading of the bill. The bill aims to put accused criminals, whose tainted assets or restrained property have been frozen, on the same financial footing as applicants for legal aid: that is, it aims to prevent accused criminals expending all their frozen assets on high priced legal services. At present, the Criminal Assets Confiscation Act allows the assets of an accused to be frozen where there is a suspicion that the assets have been gained through the commission of crime or used in the commission of crime. If an accused is convicted, any assets are forfeited.

However, in the past, the courts have permitted frozen assets to be used to fund an accused's legal defence. This has created a situation in which the frozen assets are sometimes totally expended by an accused on unmeritorious arguments at committal, leaving no funds for the subsequent trial and nothing to be confiscated by the state.

My concern with this bill revolves around the Legal Services Commission. In his second reading explanation, the Attorney-General states:

> It should be assumed that the Legal Services Commission does provide an adequate level of legal representation for the type of case it is called upon to handle. The scheme should call upon the Legal Services Commission to fund a proper defence in the normal way without a statutory assumption that, in other cases, the defence that it provides is in some respect inadequate.

It is not, however, the fault of the Legal Services Commission that its funding usually does not permit it to fund a proper defence on behalf of most people whom it must represent. The Legal Services Commission's duty solicitors are usually young and inexperienced. They are often overworked and certainly underpaid. They are under constant pressure to plea bargain and therefore settle cases quickly. Many do a marvellous job given the pressure they are under. Most of them spend a year or so in the job and then go on to what are quite easily obtained better paying jobs in the private sector.

Therefore, most people charged with a criminal offence would presumably prefer to obtain better, that is, more expensive, legal representation, assuming that they could afford it. Like it or not, this scheme will bring most or many accused down to the lowest common denominator, to the lowest level of legal representation. However, the scheme does have the virtue of consistency. It denies to rich accused the advantage that they currently enjoy over poor accused. The question must be asked: does that advance the course of justice?

On the whole, I must say that I would feel happier supporting this bill if I believed that the Legal Services Commission was properly funded, both from federal and state sources, so that it could guarantee adequate defence to every person accused of crime that it is called on to represent. I indicate support for the seconding reading.

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

PROSTITUTION (REGULATION) BILL

In committee (resumed on motion).

(Continued from page 1063.)

Clause 4.

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

Page 7, line 6—Leave out '$20 000' and insert:
$50 000

This amendment is fairly self-explanatory. I seek to increase from $20 000 to $50 000 the penalties for certain offences for which I am sure we need very strong penalties.

The Hon. DIANA LAIDLAW: I support the amendment. While I had accepted that $20 000 was an appropriate maximum penalty, on reflection I tend to agree with the Hon. Mr Cameron about the nature of some of the issues that we have addressed in terms of the exclusions and sex businesses, and I think it is appropriate, in the circumstances, that the maximum penalty be increased to $50 000.

Amendment carried.

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

Page 7, line 10—Leave out '$20 000' and insert:

I make the same explanation.

The Hon. DIANA LAIDLAW: I support the amendment.

Amendment carried; clause as amended passed.

Clause 5.

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

Page 7, lines 18 and 19—Leave out paragraph (a) and insert:

(a) the person, or any other person, has acted unlawfully in the course of carrying on, or being involved in, the sex business—
  (i) by contravention of laws for the protection of occupational health, safety or welfare of prostitutes; or
  (ii) by contravention of planning laws; or
  (iii) in any other way; or

I will explain briefly what I am seeking to achieve. Under the bill, as it has come from the other place, it provides that there are proper grounds for a banning order, as it is called, if, first, the person or any other person has acted unlawfully in the course of carrying on or being involved in a sex business; or, secondly, if the person is not in some other respect a suitable person to carry on or be involved in a sex business, whatever that might mean.

I have sought to extend that by adding a term that there be appropriate grounds for a banning order if, first, there is

contravention of the laws for the protection of occupational health, safety or welfare of prostitutes and, secondly, if there is contravention of planning laws. In relation to the former, it is very important, given the nature of this sort of activity, to which I have referred in my second reading speech; and in relation to the latter, the planning laws in relation to this are particularly sensitive and are liable to cause a great deal of problems if they are not strongly enforced and policed. The sanctions, in my view, ought to be significant. It is for those reasons that I propose these amendments.

The Hon. DIANA LAIDLAW: I will briefly explain the reason why the government has placed in this bill the banning order provision. The clause provides that a person may be prohibited from carrying on or being involved in a sex business by a court banning order. Grounds for a banning order are that the person has acted unlawfully in carrying on or being involved in a sex business. This assessment must take into account the character and reputation of the person and their known associates. As this is a negative licensing model, there is no approval process to exclude undesirable persons from the lawful business. It is intended that the banning order provisions will remove from the sex industry those people whose conduct may compromise the safety of workers and/or clients, or those whose previous criminal conduct indicates a propensity to endanger others in the business or who use the sex business as a vehicle for conducting unlawful activities.

For the purpose of banning orders only, this clause extends the definition of a person involved in a sex business to include anyone employed by it; for example, a driver, receptionist, security guard or a prostitute. The Hon. Mr Redford's amendment expands the grounds for a banning order for persons carrying on or being involved in a sex business and extends them to the contravention of occupational health and safety laws, protecting prostitutes, and the contravention of planning laws. I accept the amendment.

Amendment carried; clause as amended passed.

New clause 5A.

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

After clause 5—insert:

Grounds for prohibiting person from being client

5A. If—

(a) a person acts unlawfully as a client of a sex business; and

(b) the nature of the unlawful act leads to a reasonable apprehension for the health, safety or welfare of any prostitute who might be asked in the future to provide sexual services for that person,

then proper grounds exist for an order under this Division prohibiting the person from obtaining, or seeking to obtain, sexual services as a client.

The fact is that one of the gaping holes in the existing laws is that they are quite discriminatory. Anyone who looks at the existing laws would know that we have a system where we prosecute the prostitute (who, in my view, is the victim in the whole scheme) and the customer gets off scot-free. This brings some sense of equality into the regime. More importantly, people who are going to be involved in this sort of activity, generally, will still be victims. They will be vulnerable, whatever regime we come up with. It seems to me that in those circumstances there needs to be some basis upon which people can be banned if they misbehave on a regular basis in relation to this sort of activity.

The Hon. T.G. CAMERON: I have a question for the Hon. Angus Redford, and I am not sure about the clause we have just passed. Who would be prohibiting the person? Who would be the body that would prohibit the person, being the client? Who would actually prohibit the client from re-entering the brothel?

The Hon. A.J. REDFORD: The prohibition would be an order made by the court consequent upon a complaint made by those entitled to make a complaint, subject to future amendments that are before this place. If my amendments are successful, just about anyone could. In the bill as presented to the lower house, it would be by someone from the Attorney-General's Department. It would be just the same process as applying for a normal banning order, that is, someone would make a complaint to the court.

The Hon. T.G. Cameron: How does someone make a complaint about the client? Can anyone do it?

The Hon. A.J. REDFORD: Yes.

The Hon. T.G. Cameron: Can I seek an order against someone I do not know?

The Hon. A.J. REDFORD: Yes.

The Hon. T.G. Cameron interjecting:

The CHAIRMAN: Order! If the Hon. Mr Cameron wants to ask a question he should rise.

The Hon. DIANA LAIDLAW: I support the amendment. It does provide greater protection for sex workers and, as the honourable member said in moving this amendment, there is a great deal of discrimination in the way in which the system works at present, and that is what many of us are seeking to address. I believe this is one further positive measure in addressing that discrimination and, I add, hypocrisy.

The Hon. T.G. CAMERON: Can the Hon. Angus Redford assist me by telling me what the penalties might be for ignoring a banning order imposed by the courts?

The Hon. A.J. REDFORD: I draw the honourable member's attention to clause 7 of the bill.

The Hon. K.T. GRIFFIN: I wonder about the practicality of this. I think there are some problems with it. It is most likely to be impractical, because one has to question whether operators, particularly when there is an unlawful sex business or even a lawful escort agency, are likely to set up identification procedures. That is an integral part of this. If the banning orders are made, will operators actually set up identification procedures to turn away potential clients in the interests of their workers?

The record so far has shown that protection of workers has not been a significant feature of the industry in the past. I suggest that there is a question about the policy behind the bill and whether this clause is consistent with that policy, which is that clients and prostitutes should be treated equally. The question might well be asked: why should the reprehensible conduct relate only to the health and safety of a prostitute and not to that of other present and future clients, and why should a client's unlawful conduct towards others working in the business, such as receptionists or drivers, not be grounds for banning?

I think that there are some practical issues that need to be addressed. It sounds good, but it is a bit more restrictive than applying right across the range of the work force. If you are going to ban for one reason, why not ban others for other reasons? I have some difficulty with it and I will not be supporting the amendment.

The Hon. T.G. CAMERON: I draw the Hon. Angus Redford's attention to the penalties that he is prescribing for this offence in his amendment to clause 7. The maximum penalty if a person carries on a business in contravention of a banning order will be $50 000. It is currently set at $35 000, although I am not sure whether we have just amended that

under my amendments to $50 000. Perhaps we still have to do that.

Is the honourable member concerned that the penalty for the client will be $20 000 and the penalty for the prostitute looks like being at least $35 000, if people support my amendments, and could be $50 000?

The Hon. A.J. REDFORD: I suppose there is a difference in relation to the extent of the damage that might be caused, in relation to the conduct that might be envisaged, which might lead to a prosecution under this clause on the part of a client, and that might be considered to be done in relation to the damage. But I am not wedded to it, and if we reach that clause and the honourable member wants to bring some equality into the penalty provisions, I probably will not have any objection.

The committee divided on the new clause:

AYES (12)

Dawkins, J. S. L.	Elliot, M. J.
Gilfillan, I.	Holloway, P.
Kanck S. M.	Laidlaw, D. V.
Pickles C. A.	Redford, A. J. (teller)
Roberts T. G.	Sneath, R. K.
Xenophon N.	Zollo C.

NOES (6)

Cameron, T. G. (teller)	Griffin K. T.
Lawson R. D.	Lucas R. I.
Schaefer C. V.	Stefani J.F.

Majority of 6 for the ayes.

New clause thus inserted.

Clause 6.

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

Pages 7 and 8—Insert new clause as follows:

Power to make banning order

6. (1) The District Court may, on application under this section (which may be made by any person), make an order (a banning order) prohibiting a person—

(a) from carrying on or being involved in a sex business; or

(b) from obtaining or seeking to obtain sexual services as a client.

(2) A banning order may—

(a) provide that the prohibition is to apply—

(i) permanently; or

(ii) for a specified period; or

(iii) until the fulfilment of stipulated conditions; or

(iv) until further order;

(b) in the case of an order prohibiting a person from carrying on being involved in a sex business—provide that the prohibition is to take effect at a specified future time and regulate the conduct of the business until that time.

(3) An application for a banning order must state the grounds on which the order is sought.

(4) A person against whom the banning order is sought must be given reasonable notice of the application.

(5) If, on an application under this section, the court finds a reasonable basis to suspect that proper grounds for making the order exist, the court must make the order unless the defendant satisfies it to the contrary (ie that sufficient grounds to make the order do not in fact exist).

This amendment seeks to delete existing clause 6 as it came from the other place and to insert a new clause which effectively deals with the power to make a banning order, the sorts of banning orders that might be made, who might apply for a banning order and the basis upon which a court would make a banning order.

There are two significant differences between the clauses passed by the House of Assembly and my proposed amendment. The first significant difference is the class of people who might apply for a banning order. The bill from the House of Assembly provides that a banning order can be made only to the District Court by the Attorney-General, the DPP or a person authorised by the Attorney-General or the DPP to make the application.

The effect of my amendment is to extend the class of person who might apply for a banning order to any member of the community. I have suggested this amendment because it is my view that applications for banning orders to be confined to the Attorney-General and the DPP, or people authorised by either of those two, is a very small class of people indeed.

The conduct of these businesses, if I can call them that, may potentially have the capacity to affect a broad group of people for all sorts of different reasons, particularly if one looks at the grounds upon which a banning order can be sought. One might think, particularly, say, in relation to occupational health and safety issues, that it might be appropriate that people who are seeking to protect the rights of workers within this sort of business might want to have the capacity to seek a banning order without having to go cap in hand to either the Attorney-General or the Director of Public Prosecutions.

It might also be thought appropriate for local government officers, next door neighbours, or other people who are adversely affected in a planning sense, to go to the District Court and seek a banning order against those who are operating outside the planning laws. So, in that sense, given that the nature of this sort of conduct has the prospect of affecting a large range of people in all sorts of different ways, and bearing in mind that this is quite new legislation, we cannot possibly anticipate every single circumstance.

In my view there ought to be as broad a group of people as possible entitled to seek redress if they are adversely affected by this sort of activity. It seems to me that it is better to start with a broad range of people and see how that works. If we find down the track that it is being abused, or causing enormous problems having that broad range of people, it is simpler for parliament to revisit the issue rather than do it vice versa, that is, having the Attorney-General and the DPP refusing to take action, or whatever, causing some degree of community disquiet and then having to come back to extend the range of the class of people who may be entitled to seek a banning order. That is the first significant difference.

The second significant difference relates to proposed subsection (5), which provides:

> If, on an application under this section, the court finds a reasonable basis to suspect that proper grounds for making the order exist, the court must make the order unless the defendant satisfies it to the contrary (ie that sufficient grounds to make the order do not in fact exist).

That is clear, and I am quite unequivocal about this: it is a reversal of the onus on the part of the applicant to prove the grounds set out in clause 5 of the bill. In a number of respects, what goes on inside these premises, and the nature of the business, will be difficult for people not directly involved in that business to determine precisely. And, indeed, one of the significant problems that we have with the enforcement of existing prostitution laws is that it is so difficult to prove that sort of conduct.

I will give members an example. I had a meeting with representatives of the Police Association late last year, and one of the members of the executive who was in my office explained that they were seeking to prosecute a well known proprietor of a business in Adelaide. So, they spent months going through the bins of this enterprise looking for condoms and other evidence that might show that this sort of conduct

was taking place. In the end, after months of investigation, they finally obtained sufficient evidence and took the matter to court. As a consequence, the proprietor was prosecuted and convicted and, I understand, given a fine of $100 and a good behaviour bond. It is a fairly significant cost to the community for what is not treated by the courts as a very serious offence, which is another reason why the current law is treated by the community with some degree of disrespect.

This measure enables, basically, the broader community, first, to seek a banning order; secondly, to put up what information they have; and, thirdly, because of the privileges parliament may give these people who operate this business if this legislation passes, the responsibility of demonstrating that they are not acting in breach of clause 5. It seems to me that that is not too much to ask, given that we are taking this radical step, from a South Australian perspective, to enable them to achieve that end.

The Hon. DIANA LAIDLAW: Essentially, when this amendment has been canvassed with me in the past, I have had no difficulty with the Hon. Mr Redford's proposal to extend to police and the community the right to apply for a banning order. I think I need to be more comfortable, however, about the reverse onus of proof provision. Can the honourable member—

The Hon. A.J. Redford interjecting:

The Hon. DIANA LAIDLAW: Yes, please—because, generally, I have not been in favour of reverse onus of proof practices. I have not had the experience that the Hon. Mr Redford has had of the legal processes and clients and the prosecution and defence of anyone involved in the sex industry. So, the Hon. Mr Redford does bring a practical, legal perspective to these issues of banning orders. Can the honourable member tell me whether, if there was a legal business and members of the Festival of Light, for instance, as members of the community, wanted just to say that they did not like what was going on—if they just wanted to raise a complaint as members of the community—it would not be the Festival of Light that would have to prove or substantiate the case; it would be the—

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: Yes—I have not been agin the extension of the banning orders to the police and the community. But I want to understand that. And the Festival of Light representatives, because they just find this whole thing odious, in all conscience, may not like what is happening next door or down the street or across the neighbourhood in another community and make an application, but they do not have to prove it, and yet it is a legal business.

The onus is on the legal business to prove what is claimed by the opponent—the Festival of Light or anybody else, for instance. Could you explain it because I genuinely wish to understand this?

The Hon. A.J. REDFORD: I think it can be answered by careful analysis of the clause itself. In general terms it is not strictly a general reversal of the burden of proof, and I will explain why as I take you through clause 5. It is important to keep in mind as I make this explanation that we are only at the stage of getting a banning order, which is a prohibition. It does not carry with it any other sanction such as a penal sanction or a fine. So, it is not done within the context of any prosecution process, and it is not uncommon for that sort of clause to be in all sorts of provisions, indeed, at the common law. There are many occasions where some might say that, once an allegation is made, the common law imposes upon people the onus to prove the contrary because it is in their capacity to be able to do so, and it is my view that this falls within that category.

I heard the Hon. Terry Cameron's comments, although I doubt whether they will appear in *Hansard*. First, if an application is made, the court has to find a reasonable basis, and the minister used the Festival of Light as an example. Let us say you do get a body that decides to become zealous in relation to that. They still have to present sufficient material before the court for the court to get to a position, on a reasonable basis, to suspect that proper grounds exist for the making of an order.

So, they cannot do it simply on the basis that someone from some organisation comes along and says, 'I believe that unlawful activity is taking place,' or 'I believe that they are in contravention of a planning order,' or 'I believe that there are breaches of occupational health and safety.' There has to be a reasonable basis before the respondent in these proceedings would be called upon to give an answer. So, in that sense, in my view, that would prevent the sorts of concerns to which the minister was alluding.

The Hon. SANDRA KANCK: I notice that the wording in the bill provides, 'The District Court may, if satisfied that there are proper grounds to do so. . . ' Implicit in the explanation of the Hon. Mr Redford is that that would be part of the court's consideration, but the wording that Mr Redford is proposing does not say 'if satisfied that there are proper grounds to do so'. Would he consider including those particular words in his amendment?

The Hon. A.J. REDFORD: There is an important difference in this respect. One of the problems I had with the bill as it came from the lower house is that, on my reading of it, you could actually found the grounds for a banning order and, notwithstanding founding of the grounds for a banning order, the District Court would still retain a discretion. So, under the bill as presented from the lower house, you could actually show that a person had acted unlawfully—go through that whole exercise—and the District Court, in its discretion, could turn around and say, 'All right, you have proven all of that, but we have decided in the exercise of our discretion not to impose a banning order.' I am not happy with that, when the District Court has in my view sufficient discretion in terms of what it can and cannot do with a banning order.

If you look at subclause (2), it can provide that the prohibition is to apply permanently, for a period, until the fulfilment of stipulated conditions or until further order. So that in my view gives the District Court all the discretion it needs.

What I do not want to see is the District Court avoiding its obligations under that by saying, 'All right, you have proved it and I as the judge am satisfied that there are grounds for a banning order but I am not going to do anything.' I have the greatest respect for the courts and they do a difficult job but, if we let that go through, we will get inconsistent decisions and applications, particularly in the initial stages of this measure, and it will bring the whole law into disrepute quickly if we allow that to happen. For that reason, quite deliberately the words 'if satisfied that there are proper grounds to do so' were omitted from the beginning of proposed new clause 6.

The Hon. K.T. GRIFFIN: The debate on this clause again brings into very sharp focus the difference between a legal business and an illegal business. What we have to remember is that, if this bill goes through, apart from those who operate on the fringe, we are dealing with a legal business. However objectionable we might find prostitution

to be, if it is a lawful business, it should as a matter of principle be dealt with as any other lawful business is dealt with.

The Hon. Mr Redford is proposing that there be effectively a presumption that, if there is a reasonable basis to suspect that proper grounds for making the order exist, the court must—I emphasise that—make the order unless the defendant satisfies it to the contrary that sufficient grounds to make the order do not in fact exist. There is certainly a presumption in favour of a banning order. The onus of proof is quite different from what is in the bill, which provides that the District Court may act if satisfied that there are proper grounds to do so. That is quite different from 'reasonable grounds to suspect'. Reasonable grounds to suspect means that the hurdle for the applicant is very much lower in the amendment—

The Hon. A.J. Redford: That is the intention in the amendment.

The Hon. K.T. GRIFFIN: I am explaining it because you did not explain it in that way, with respect. I want to sharply draw the distinction between the two. The onus of proof is very different in the two amendments. Looking at some of the occupational licensing legislation that we have, because that is effectively what this is, I note that there is a provision in the Land Agents Act to engage in disciplinary orders that might lead to a suspension of a licence or the suspension of a right to practise where the onus of proof is on the balance of probabilities. It is not a reverse onus. There must be some basis upon which the court moves from having evidence before it that there are proper grounds to the point at which it actually makes the decision to issue the banning order.

The other problem with this amendment, I suggest, and it is quite an important issue to ponder upon, is that with the bill, whilst I do not think the Attorney-General and the DPP necessarily are the right people to issue proceedings for a banning order, nevertheless, that is what has come out of the House of Assembly. That is what was introduced as one of the options in one of the bills that the government had drafted to enable this issue to be considered. It is not uncommon in legislation where there might be a very strong desire among members of the public to be mischievous to put in some hurdle to legal proceedings being taken where either the approval of the DPP or the Attorney-General has to be obtained. For example, with offensive publications, the Attorney-General has to approve a prosecution where a person is alleged to have been in possession of child pornography.

So, it is not uncommon for that to be there. One has to consider what is the likely scenario if prostitution businesses become lawful but there is strong public emotion in relation to them. Under the amendment, it will mean that any person can issue proceedings for a banning order. Maybe that is something that we ought to agree with, but I would want to flag that there are some real risks, particularly in an industry such as this, where there is a huge potential for controversy and there is the prospect not only that objections may be made on moral or religious bases but also that other operators might be encouraged to take proceedings for a banning order against a competitor. It may provide a basis for extortion or blackmail. A whole range of consequences can flow from leaving this open to any member of the public to take proceedings.

The Hon. Diana Laidlaw: Is there an objection to any member of the public being able to apply for a banning order, or would it then be subject to reverse onus of proof?

The Hon. K.T. GRIFFIN: I have two objections.

The Hon. Diana Laidlaw: You have both objections?

The Hon. K.T. GRIFFIN: Yes, I have both objections. The first, as I have indicated, is to the significant reduction in the burden of proof. I come back to the principle that I am seeking to reflect, on the basis that, if it gets through, this bill will make lawful the business of prostitution. I may not like it, and I am likely to express my views quite firmly at the third reading stage. But, if it is to be lawful, there has to be a good policy reason for treating it differently from other lawful businesses, in my view.

The Hon. A.J. Redford interjecting:

The Hon. K.T. GRIFFIN: That is all right; so what? I missed the point. So, the different level of proof is a major cause of concern because, if it becomes lawful, it is treating this business so differently from other lawful businesses. The second is the basis upon which someone can make a complaint and, upon that complaint, found an application to the court for a banning order. As I have said, I think there is the potential for open slather. It opens the way for extortion and blackmail and for the courts to be considerably clogged by harassment actions, even if ultimately costs might be awarded against the applicant for a banning order.

I have two fundamental objections. I am not altogether happy with the Attorney-General and the DPP having the responsibility. If someone wants to insert a provision giving the police responsibility—

An honourable member interjecting:

The Hon. K.T. GRIFFIN: It could be delegated, and it would certainly be the intention to delegate if this legislation containing this provision got through the parliament.

The Hon. Sandra Kanck: Are you against both clause 6 and the clause 6 amendment?

The Hon. K.T. GRIFFIN: No. I am saying that I have some reservations about the Attorney-General or the DPP being the persons to issue the proceedings for the banning order, but it may be that that will be delegated to the police to take that responsibility. I will not oppose the whole clause. I am saying that I will oppose the amendment, because there are two fundamental policy issues and issues of principle in relation to the Hon. Mr Redford's amendment about which I have considerable concern.

The Hon. A.J. REDFORD: I will just deal with the first point the Attorney made—and he has made it on a number of occasions. He says that we are creating a legal business here, so we should leave it alone. With the greatest of respect to the Attorney, that is a nonsense. We as a parliament on many occasions over many decades have created lawful businesses with some pretty severe restrictions; for example, the practice of medicine, where we dispense drugs in a certain way. If you do not dispense them in a way that the law prescribes, pretty severe sanctions apply.

An honourable member interjecting:

The Hon. A.J. REDFORD: With the greatest of respect, the proper way is whatever this parliament says is the proper way.

Members interjecting:

The Hon. A.J. REDFORD: But if this parliament determines that that is the proper way for this sort of activity to be conducted, then that is the proper way. The Attorney has said that we are creating a legal business—it is not an illegal business—and we should walk away and allow this business to flourish and conduct itself in a laissez faire manner. With the greatest respect to the Attorney, that is a nonsense. If this is to be allowed, we as a parliament are entitled to set up a regime in which this business is to operate.

The Attorney-General has voted against this—and that is what I like about the whole process—but then says, 'Let's not agree with some of the restrictions and deal with some of the difficulties that people might face in dealing with this legislation.'

Members interjecting:

The Hon. A.J. REDFORD: No, I am about to go through them. The Attorney would acknowledge that one of the biggest difficulties we have with the existing law—and I know the Attorney said this in his second reading speech—is that it is unworkable. It does not work. In fact, it is a joke.

Members interjecting:

The Hon. A.J. REDFORD: No, I am saying it is a joke.

The Hon. K.T. Griffin interjecting:

The Hon. A.J. REDFORD: I didn't impute it to you. One of the reasons it is a joke is that no-one can do anything about it. If you wanted to prove the offence of receiving money in a brothel, we had these ridiculous exercises where police officers—and this took place over a decade ago—would run around, pretending to be clients. They would have to get undressed and lie on the table.

An honourable member interjecting:

The Hon. A.J. REDFORD: A year ago—the honourable member obviously keeps a closer eye on this than I do.

The Hon. T.G. Cameron interjecting:

The Hon. A.J. REDFORD: That is a little more sophisticated than what I had to put up with when I dealt with these matters as a lawyer. The trick was that they would get the police officer involved. It used to catch the police officers out, because they never knew how far they could go and how many clothes they could take off. We used to have to go to court, and you would hear the police officer go through the whole description. Quite frankly, the attitude around the courts, from the bench down, was one of mirth and contempt for the sort of law that was delivered by the parliament to the people who had to administer the law.

Let us look at some of the grounds that exist for the obtaining of a banning order. The normal approach is, 'Let's send in the police; we'll go through the bins; we'll look for condoms and'—as the Hon. Terry Cameron said—'We'll set up people opposite with cameras.' Quite frankly, that is absurd and should not take place with the authority of this parliament. If that is what the Attorney wants, I suppose that is what the Attorney will get, if he gets the numbers on this clause. At the end of the day, it will bring the whole regime into disrepute.

The other point I will make (and I know he has two problems and one is the class of people who can complain) is that, if the Attorney looks at the bill in toto, he will see that there are provisions for this sort of activity to take place in certain circumstances in suburban areas. Why not give a broad range of people, who may or may not be affected by this sort of business, some right and redress, because we do not give them many rights or redresses in any other way, shape or form? We certainly do not give it to them in relation to the planning application process because we have taken that out of the hands of local government, with which I agree. In order to get a reasonable check and balance, this in my view is one way of going about it.

We have the reverse onus commonly throughout legislation. One only needs to look at what the tax department can do to you if you are in business, particularly under the old regime of sales tax, where they could send you a notice—and this was not a court suspecting on a reasonable basis—stating what they deem your tax payable to be and you have to go along to court and prove otherwise. Plenty examples of that exist in other parts of the law.

It seems that when we are dealing with this area, where it is difficult, new and controversial, these sorts of provisions can be applied because we are approaching this whole process with a degree of caution. If at the end of the day the Attorney says, 'I don't like this; I'm not going to have these very careful checks and balances', he may well finish up with a bill that passes this place and will increase prostitution activity markedly. If that is a consequence, I suppose that we all collectively share that responsibility.

The Hon. CAROLYN PICKLES: In listening to the Attorney, I am concerned about the aspect of the reverse onus of proof. I would like to explore that further and discuss it with the Hon. Mr Redford outside the chamber, as I am not convinced that there will not be some vexatious people who, if this bill passes and prostitution becomes legal, will not use this mechanism to try to make the activity of prostitution absolutely impossible to continue. Obviously we will recommit some of these clauses at some stage, but I am wondering whether it is possible to vote on this clause section by section so that we could perhaps sort out which bits some people support and which bits some people do not. If not, I would support the whole of the clause, but with the proviso that I want to see it recommitted to be convinced that the reverse onus of proof will not open the flood gates.

The Hon. T.G. CAMERON: I am pleased the Attorney got up and in a legal way explained concerns I had with the amendments being moved by the Hon. Angus Redford. I have two concerns, one being the reverse onus of proof and the other concerning the opportunities that may be created for frivolous or vexatious applications to be made to the District Court. Whilst I appreciate from the Hon. Angus Redford's explanation that there is a difference between making an application and actually securing an order, what would stop a group of people who were concerned about a brothel that was operating in their neighbourhood running an orchestrated campaign against that brothel by having opponents merely lodge applications to the District Court? That concerns me.

Another area of concern is that the Attorney stated that we would now be creating a legal business, so I went back and looked at part 5A.(a), an amendment already carried standing in the name of the Hon. Angus Redford. I am not a lawyer so if I have this wrong I am sure one of the lawyers in this chamber will point it out. However, 5A.(a) refers to grounds for prohibiting a person from being a client: a person acts unlawfully as a client of a sex business. If a person does that, I understand that they would have a fair chance, if they did conduct an unlawful act, of ending up in the District Court.

My question to both the Attorney and the Hon. Angus Redford—if, in fact, it is a valid question—is: what if a client upon leaving a brothel decided that he did not want to pay or, during the course of the service, decided to ask for additional services and, upon the completion of the appointment, he was asked for additional money? My understanding of that is that that, of itself, would be an unlawful act, because they had entered into a contract, there had been an offer, acceptance and consideration, but he was not prepared to pay the consideration.

In my opinion as a lay person that would give either the prostitute or the owner of the brothel the right to make an application to ban that person from obtaining or seeking to obtain sexual services as a client. I think it could then pave the way for issues such as blackmail, extortion, etc. to occur.

The Hon. A.J. Redford: Why?

The Hon. T.G. CAMERON: Irrespective of whether the act of prostitution has been made legal or not, let us assume that a prominent public person such as a politician in a marginal seat was using the services of a prostitute legally in a brothel. He might have been a regular client and, for whatever reason, the client and the prostitute fell out. She then said, 'I'm not very happy about you deciding to terminate your services with me. I expect you to compensate me in some way. I want $5 000 from you.' I suggest to the Hon. Angus Redford that it would be a very brave politician—

The Hon. A.J. Redford interjecting:

The Hon. T.G. CAMERON: Let me finish before you interject—in a marginal seat who would then say, 'You will not get a cent out of me—take me to the District Court if you want to.'

The Hon. A.J. Redford: What for?

The Hon. T.G. CAMERON: As I understand it, all that person would have to do is allege that the client had acted unlawfully for any reason, and they could lodge an application in the District Court. I think that a lot of clients would be worried about that, and I think—

The Hon. A.J. Redford interjecting:

The Hon. T.G. CAMERON: Yes, but we would be creating a legal business, as I understand it. I know that the act of prostitution in itself is not unlawful.

The Hon. A.J. Redford interjecting:

The Hon. T.G. CAMERON: It would appear that you are not even prepared to listen to the point I am making. I will not bother trying to get an answer from you; I will let the Attorney-General answer my question.

Members interjecting:

The CHAIRMAN: Order!

The Hon. J.F. STEFANI: I will join the debate very briefly. I see the wisdom of the Attorney-General's proposal and explanation in relation to having some way of controlling the prosecution. The Racial Vilification Act is an example which provides clearly that, before prosecution proceedings can be taken, the consent of the DPP is required. I think it is a very sensible mechanism to introduce such an amendment to the act, because it will stop a lot of unnecessary clogging of the courts through perhaps fictitious circumstances that can evolve in such a very emotional legal business and would be permitted if the law were to pass.

I concur with the Attorney's explanation and I strongly support his view. I think there may be not only the DPP but, as he suggested, perhaps the police or the Attorney-General himself—it has also been suggested that he has that authority. Perhaps there might be some appropriate authority within Crown law or some other mechanism that can be provided to filter the system.

The Hon. K.T. GRIFFIN: First of all, I want to correct what the Hon. Mr Redford said about my contribution at the second reading stage in relation to the current law. I said:

> I accept that the present law is outmoded, particularly in penalising the prostitute and not the client without whose demand there would be no prostitution industry. I would support reform to enable the law to operate more effectively and equitably. However, I do not believe it is a legitimate function of government to make sex between adults a form of lawful commerce, and I do not believe that governments should sanction any form of employment in which a person is paid to place his or her personal safety and integrity at risk for the sexual gratification of another.

That is the context in which I referred to the existing law and, whilst the Hon. Mr Redford has given a rather colourful explanation of what he thought I said, that accurately reflects what I did say about the current law.

I want to pick up a couple of issues, first of all the issue of banning orders. The Hon. Mr Redford in the context of his contribution in reply to mine indicated the difficulties of proving the act of prostitution and the purchase of prostitution services. This clause is not about proving prostitution: it is about whether proper grounds exist for banning someone from being involved in the industry, that is, in the sex business. Both the Hon. Mr Redford's clause 6 and the provision in the bill quite clearly identify that it is about orders prohibiting persons from carrying on or being involved in a sex business. So, the issue of proof is not directly relevant to that issue.

The next point is in relation to new section 5A which was passed earlier. If one looks carefully at that, paragraphs (a) and (b) are to be read together, so that the unlawful act to which paragraph (a) refers has to be read in conjunction with paragraph (b). An unlawful act is not refusing to pay for the service: it has to be a statutory offence. But if a person acts unlawfully as a client of a sex business, paragraph (a) is then qualified by paragraph (b), which provides:

> and the nature of the unlawful act leads to a reasonable apprehension for the health, safety or welfare of any prostitute who might be asked in the future to provide sexual services for that person, then proper grounds exist for an order.

So the two are to be read together. I come back to my position on this amendment. The Hon. Mr Redford has not accurately reflected what I have been saying about the choices which we have to make. The choices are whether we are going to allow prostitution businesses to be regarded as lawful businesses within certain parameters, or is it to continue to be dealt with under existing law and prostitution businesses remain, broadly speaking, unlawful? That is the choice.

The Hon. A.J. Redford interjecting:

The Hon. K.T. GRIFFIN: Well, they are unlawful, aren't they?

The Hon. A.J. Redford: They might be unlawful, but they are—

The Hon. K.T. GRIFFIN: The point I have been trying to make is this: there are two clear choices that we have to make. If prostitution businesses are lawful, why then are layer upon layer of broad-ranging powers of intrusion being proposed? I do not think you can have your cake and eat it, too, and that is why I think the choices have to be fairly clear, and we ought not to confuse what we are seeking to do.

In that context, I come back to the points I made earlier about this amendment. One is that, if the business is lawful, what is the justification for quite significantly lowering the hurdle over which an applicant has to rise to establish a reasonable suspicion of proper grounds for a banning order to be made? That has not yet been answered, in my view. The second issue is, of course, who can actually make the application. I have raised the issue and I do not think I need to explore it at any greater length.

The Hon. A.J. REDFORD: The Attorney-General and I have put our differing views. But let me ask the Attorney-General this: if the industry and the business is unlawful today under this legislation—which he supports—why is it that we have, day after day—on what I have been told—$10 000 worth of advertisements in the *Advertiser* over and over again, as well as all the publications that are slipped under doors or put into motels? Why is it that we have 20 to 30 pages of escort agency advertisements in the paper? If it

is illegal, why is that the case? That is the question I ask the Attorney-General.

The Hon. T.G. CAMERON: Clause 5(a) refers to 'the person or any other person who has acted unlawfully in the course of carrying on or being involved in the sex business'. Again, I am not sure of the law on this, but I pose something else for the Attorney-General and the mover of the amendment to ponder. I do not seek an answer now. I raised a query on behalf of a client so I will raise one now in relation to the brothel. It is my understanding that it is unlawful in a hotel not to serve alcohol to a person, irrespective of their race or colour, provided that that person is not drunk.

The Hon. K.T. Griffin: Drunk or offensive.

The Hon. T.G. CAMERON: Yes, drunk or offensive. Because of the way these clauses have been framed, whilst it is well known that I am prepared to support prostitution reform, there are certain conditions to it. One of the things that has always concerned me about legalising prostitution is whether or not the legalisation compelled a sex worker (who in 99 per cent of cases are women) to sleep with the client. What if a client came into a brothel, and he happened to be of a particular colour or race and the woman was not prepared to go to bed with him? My reading of this is that she would be in breach of the law if she refused to serve someone on the grounds of their race, ethnicity or disability. If the client believes that the prostitute has acted unlawfully, he could immediately—

The Hon. A.J. Redford interjecting:

The Hon. T.G. CAMERON: You can answer this later. In those circumstances, could the client then take the prostitute to court and seek a banning order? The reality of what will happen—and I say this with all genuineness—is that the disputation will occur right there and then when the service is about to take place: 'If you are not prepared to go to bed with me, I will seek a banning order and take you to the District Court. You cannot say no to me because of my race or colour.' I do not know the answer to the question I am posing, but it is a serious question, because if the situation arises—

The Hon. A.J. Redford interjecting:

The Hon. T.G. CAMERON: I am going back a bit here; I did raise it on behalf of the client. If the amendment creates a legal situation where a prostitute has to sleep with whomever requests them so to do, then I have a problem with supporting the legislation.

The Hon. A.J. REDFORD: I will respond quickly to that. With the greatest of respect to the honourable member, and perhaps we are moving a bit quick for him, clause 5 as was in the bill referred to—

The Hon. T.G. Cameron: You would never be able to move too quickly for me, Angus.

The Hon. A.J. REDFORD: I am at a loss to understand what the honourable member is saying. Clause 5, as it was initially in the bill, caused exactly the problems the honourable member is suggesting. I moved an amendment to that and it was successful. The honourable member opposed my amendment. I was seeking to address exactly the problem to which the honourable member has alluded, yet he voted against it. Now he is raising it. I must say that I am a little perplexed.

The Hon. CARMEL ZOLLO: I agree with the Hon. Angus Redford. In part, he has said what I wanted to say. I support both clauses 5A and 6 for precisely that reason. A person can object because he is a client and a sex worker can do the same under clause 6(1)(b). Clause 6 also allows the community to object because prostitution cannot be seen in isolation. They are the reasons I support it.

The Hon. DIANA LAIDLAW: I think this has been a very interesting discussion and debate. I suggest that we report progress and think about the contributions that members have made and how we may advance the issue. Everyone is genuine in their contributions and the way in which they would wish to have the issues of community police involved in some way; how they would like to ensure that we have some strict provisions in terms of the way in which we apply the banning orders. It is very exciting for me to think that after many months we have made it to clause 5.

Progress reported; committee to sit again.

STATUTES AMENDMENT (LOCAL GOVERNMENT) BILL

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

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

That this bill be now read a second time.

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

Leave granted.

This Bill is part of the total package of legislation arising from the review of the *Local Government Act 1934* and its replacement with new Local Government Acts.

A Statutes Amendment (Local Government) Bill 1999 lapsed at the close of the last session. This Bill contains some of the provisions of the lapsed Bill which, in turn, were also part of a Statutes Repeal and Amendment (Local Government) Bill 1999 that had lapsed at the close of the preceding session.

Most of the *Local Government Act 1934* was repealed on the 1 January 2000 as a result of the commencement of the new Local Government Acts. This Bill repeals further provisions of the *Local Government Act 1934* covering matters which, under this Bill, are incorporated in appropriate State Acts covering the field. In addition it makes minor technical amendments to the *Local Government Act 1999* and other Acts as a result of issues that have come to light after it was passed.

As previously explained, one of the objectives for the review of the Local Government Act is that remaining Local Government Act provisions concerning regulatory regimes or public sector administration in which both State and Local Government have a role should, if the provisions are still required, be located in the specific legislation which deals with that function. This approach is designed to clarify respective roles, eliminate fragmentation, gaps and overlaps, or provide scope for simplification and consistency with any national standards. It should also assist councils to identify regulatory activities for the purposes of separating these from its other activities in the arrangement of its affairs, as required under the *Local Government Act 1999*. The *Statutes Amendment (Local Government and Fire Prevention) Act 1999*, the further integration of Local Government's role in traffic management and parking control into the Road Traffic Act by means of the *Road Traffic (Road Rules) Amendment Act 1999* introducing national Australian Road Rules, and amendments in this Bill to the *Public and Environmental Health Act 1987* concerning sewerage systems are examples of this approach.

Other amendments to the Food Act and the Highways Act similarly assist to clarify responsibilities by relocating some specific provisions of the *Local Government Act 1934* in the appropriate legislation.

The remaining amendments are technical in nature and are either consequential upon the passage of the legislative reforms, remove inconsistencies, or clarify the intent of the new Local Government Act.

The operation of some provisions of the *Local Government Act 1999* relating to public consultation requirements applying to the grant of a permit for business purposes over a public road was suspended upon proclamation of the Act. This followed concerns that the application of the provision was being interpreted more restrictively than intended. As an interim measure, a regulation was

made to cover prescribed situations for which public consultation was required. Given the success of the prescribed arrangements, it is now intended that they replace the provisions in the Act.

Other technical changes to the Local Government Act 1999 include clarification of the status of easements with respect to community land, clarification of the approval processes for driveway crossing places, removing inconsistent clauses in relation to council subsidiaries and significant business activities, and ensuring alterations to model by-laws are subject to disallowance by Parliament.

At the request of the Local Government Finance Authority Board, amendments are made to the *Local Government Finance Authority Act 1983* to extended the term of office of representative members to three years so as to fall into line with the term of office for elected council members, now three years, as a result of legislative changes in 1996.

As the matters covered by this Bill are either technical or have previously been considered by Parliament, the Government hopes the Bill will be dealt with expeditiously.

I commend this bill to honourable members.

Explanation of clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The measure will be brought into operation by proclamation. However, it will be appropriate to provide that the amendment to be effected to section 193 of the *Local Government Act 1999* will be taken to have come into operation on 1 January 2000.

Clause 3: Interpretation

A reference to 'the principal Act' in this measure is a reference to the Act referred to in the heading of the relevant Part.

Clause 4: Insertion of s. 28A

This clause is based on section 883(3) of the *Local Government Act 1934*. Section 883 is to be repealed by this Act. The special arrangements relating to the District Council of Coober Pedy that are to be continued under this provision (being those arrangements that relate to the administration of the *Food Act 1985*) will be brought to an end on a day to be fixed by proclamation, or on 30 June 2002, whichever is the earlier.

Clause 5: Amendment of s. 2—Act not to apply to the City of Adelaide

Clause 6: Amendment of s. 4—Insertion of s. 42B

These clauses provide for the continuing operation of the arrangements currently contained in Part 16 of the *Local Government Act 1934*.

Clause 7: Repeal of Part 16

The arrangements currently contained in Part 16 of the *Local Government Act 1934* are to be inserted into the *Highways Act 1926*.

Clause 8: Repeal of Part 25

The arrangements currently contained in Part 25 of the *Local Government Act 1934* are to be inserted into the *Public and Environmental Health Act 1987* (with consequential modifications).

Clause 9: Repeal of s. 883

The arrangements currently contained in section 883 of the *Local Government Act 1934* are now to be dealt with under the *Food Act 1985* and the *Public and Environmental Health Act 1987*.

Clause 10: Amendment of s. 4—Interpretation

These amendments all relate to the same issue. The *Local Government Act 1934* provided a definition of 'unalienated Crown land' but the term was inadvertently omitted from the new Act. It is therefore now to be included in the new Act.

Clause 11: Amendment of s. 171—Publication of rating policy

This amendment will require a council to send out an abridged or summary version of its rating policy with its *first* rates notice for each financial year. The current provision requires the document to be sent out with *each* notice.

Clause 12: Amendment of s. 193—Classification

Section 193 of the *Local Government Act 1999* declares local government land to be community land, subject to various exceptions. There has been some uncertainty as to whether easements and rights of way are local government land and hence community land (because 'land' is defined to include, accordingly to the context, an interest in land). It was never intended that such interests be included as 'community land' under the Act. The amendment will therefore specifically provide that 'local government land' does not include easements or rights of way for the purposes of the section. As there is an argument that easements and rights of way have been included under the section since 1 January 2000, it is appropriate that the amendment be taken to have come into operation on that date.

Clause 13: Amendment of s. 201—Sale or disposal of local government land

This amendment will allow a council to grant an easement or right of way over community land or part of a road without revoking its classification as such.

Clause 14: Amendment of s. 221—Alteration of road

Section 221(3)*(b)* of the *Local Government Act 1999* relates to the alteration of a road so as to permit vehicular access to and from adjoining roads. However, it only applies if the alteration is indicated on a plan approved under the *Development Act 1993*. It is preferable to relate the alteration to the approval of the actual development.

Clause 15: Amendment of s. 223—Public consultation

This amendment revises the circumstances under section 223 of the *Local Government Act 1999* where authorisations or permits for the use of roads must be subject to public consultation processes. The amendments will bring the section into line with the circumstances that currently apply under the regulations (pursuant to the power prescribed by subsection (1)*(c)*).

Clause 16: Amendment of s. 250—Model by-laws

This amendment will ensure that *amendments* to model by-laws are published in the *Gazette* and subject to disallowance under the *Subordinate Legislation Act 1978*.

Clause 17: Amendment of s. 254—Power to make orders

Clause 18: Amendment of s. 257—Action on non-compliance

These amendments correct clerical errors.

Clause 19: Amendment of schedule 2

These amendments rationalise the operation of clauses 14 and 15, and 31 and 32, of schedule 2 of the *Local Government Act 1999*.

Clause 20: Amendment of s. 3—Interpretation

These amendments update definitions under the *Local Government Finance Authority Act 1983* in view of the enactment of the *Local Government Act 1999*.

Clause 21: Amendment of s. 8—Terms and conditions of office

These amendments are consistent with the move to three-year elections in the local government sector.

Clause 22: Amendment of S. 12A—Powers and duties of relevant authorities

Clause 23: Insertion of new Division

Clause 24: Amendment of s. 25—Institution of appeals

These amendments are consequential on the repeal of section 883, and Part 25, of the *Local Government Act 1934*.

Clause 25: Transitional provisions

This clause deals with transitional issues connected with the repeal of Part 25 of the *Local Government Act 1934*, and the move to three-year terms for elected members under the *Local Government Finance Authority Act 1983*.

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

ADJOURNMENT

At 5.48 p.m. the Council adjourned until Tuesday 27 March at 2.15 p.m.