LEGISLATIVE COUNCIL

Tuesday 13 November 2001

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

ASSENT TO BILLS

Her Excellency the Governor, by message, intimated her assent to the following bills:

Land Acquisition (Native Title) Amendment,

Rail Transport Facilitation Fund,

Statutes Amendment (Stalking),

Unclaimed Superannuation Benefits (Miscellaneous) Amendment,

Waterworks (Commercial Land Rating) Amendment,

West Beach Recreation Reserve (Review) Amendment.

QUESTION ON NOTICE

The PRESIDENT: I direct that the written answer to question on notice No. 105 be distributed and printed in *Hansard*.

COMMUNITY CABINET DINNERS

105. **The Hon. T.G. CAMERON:**

1. What is the purpose of 'Community Cabinet' dinners?

2. How many 'Community Cabinet' dinners have been held during 2000-01?

3. How many people have been invited to each?

4. On what criteria are guests invited?

5. How much in total, including venue hire, food drink and other expenses, has been spent on the 'Community Cabinet' dinners?

The Hon. R.I. LUCAS: The Premier has provided the following information:

Cabinet meetings are held in the community as an extension of the South Australian government's commitment to listening to the community and regional development. The meetings give members of the community the opportunity to meet with the Premier, ministers and chief executives of government agencies and to raise any issues of concern.

These community cabinet meetings also give the state government the opportunity to inform members of rural, regional and metropolitan communities of its broad directions and key local projects. Ministers also have the opportunity to see 'first-hand' how regions are developing.

Community or regional cabinet meetings are held in all other states and territories, except for the ACT. The South Australian government holds a similar number of meetings each year to most other jurisdictions.

Community cabinet dinners provide the opportunity for a broad spectrum of local community representatives to meet the government. Dinner guests include local school students, Aboriginal and multicultural community leaders, both small and large business and industry representatives, primary producers, judges and magistrates, tourism operators, media, sporting club members, environment groups, education officials, health and medical workers, community service providers, and volunteers.

This reflects a broad cross-section of the local community representing all age groups, with a balance of local men and women.

The Premier speaks at each dinner outlining the government's broad policy directions and some key local initiatives. Dinner guests are then given the opportunity to ask questions of the Premier and ministers and to discuss issues face to face. Community cabinet dinners are of benefit to local people not only through the opportunity to have their views heard, but also through the injection of activity into local businesses, by way of, catering, facility and equipment hire, function staff, and accommodation where required.

Twelve community cabinet meetings were held in 2000-01 in Whyalla, Victor Harbor, Port Pirie, Adelaide, Tea Tree Gully, Gawler, Kadina, Riverland districts, Mount Barker, Pinnaroo and surrounding towns, Cummins, Port Lincoln and vicinity, and Port Augusta.

Costs for each community cabinet dinner varies according to a number of factors. For example, the number of people attending the dinners (between 70 and 200 local guests), hire costs for local facilities, equipment and function staff. During 2000-01, 2 342 people were invited to community cabinet dinners. The total cost of community cabinet dinners for the year 2000-01 was $128 268. The average cost per community cabinet dinner for the year 2000-01 was $10 689.

PAPERS TABLED

The following papers were laid on the table:

By the President—

- Auditor-General—Supplementary Report—Agency Audit Reports, 2000-2001
- District Council of Tumby Bay—Report, 2000-2001

By the Treasurer (Hon. R.I. Lucas)—

- National Wine Centre of Australia Report, 2000-2001
- Regulations under the following Acts—
  - Education Act 1972—School Financial Year
  - Superannuation Act 1988—Austraining International

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

- Reports, 2000-2001—
  - Code Registrar for the National Third Party Access Code for Natural Gas Pipeline Systems
- Dairy Authority of South Australia
- Dog Fence Board—South Australia
- South Australian Sheep Advisory Group
- The South Australian Forestry Corporation—ForestrySA
- SABOR Ltd
- Rules of Court—
  - Magistrates Court—Magistrates Court Act—Trial Court

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

- Regulations under the following Acts—
  - Liquor Licensing Act 1997—Dry Areas—
  - Mount Gambier
  - Victor Harbor

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

- Reports, 2000-2001—
  - Charitable and Social Welfare Fund—Community Benefits SA
  - Controlled Substances Advisory Council
  - Department for Environment and Heritage
  - Department for Transport, Urban Planning and the Arts
  - Environment Protection Authority
  - Reserve Planning and Management Advisory Committee
  - South Australian Aboriginal Housing Authority
  - The Office of the South Australian Independent Industry Regulator, Rail Regulation
  - Wildlife Advisory Committee
  - Coast Protection Board—Report, 1998-1999
- Regulation under the following Act—
  - National Parks and Wildlife Act 1972—Dogs on Granite Island

By the Minister for the Arts (Hon. Diana Laidlaw)—

- Reports, 2000-2001—
  - Adelaide Festival Centre
  - Adelaide Festival Corporation
  - Art Gallery of South Australia
  - Country Arts SA
  - Disability Information and Resource Centre Inc
  - History Trust of South Australia
  - Jam Factory Contemporary Craft and Design Inc
  - Libraries Board of South Australia
  - South Australian Film Corporation
  - South Australian Museum Board
  - State Theatre Company of South Australia

The Carrick Hill Trust
The State Opera of South Australia

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

Construction Industry Long Service Leave Board—Actuarial Report, 2000-2001
Rules under Acts—Workers Rehabilitation and Compensation Act—Workers Compensation Tribunal Rules 2001.

FESTIVAL OF ARTS

The Hon. DIANA LAIDLAW (Minister for the Arts): I seek leave to make a ministerial statement on the subject of the Adelaide Festival of Arts.

Leave granted.

The Hon. DIANA LAIDLAW: Yesterday the Chairman of the Board of the Adelaide Festival Corporation, Mr John Morphett, announced that the Artistic Director of the 2002 Adelaide Festival, Mr Peter Sellars, had resigned. Ms Sue Nattrass has now been engaged by the board as Artistic Director for the 2002 Adelaide Festival. Ms Nattrass was the Artistic Director of the Melbourne Festival in 1997 and 1998 and earlier was General Manager of the Victorian Arts Centre for seven years.

Ms Nattrass is highly regarded across the performing arts industry in Australia and the wider world. She did not need to take on this new role at such short notice. She has done so in the knowledge that I am determined that there will be an Adelaide Festival in 2002, coupled with a steadfast belief in the importance of the Festival to Adelaide, to Australia, and to our artists and our arts sector as a whole.

Unlike Peter Sellars, Sue Nattrass believes that she can realise the challenging charter that she has been given by the board. Her task is to ensure that the 2002 Adelaide Festival program respects and builds on the core of Peter Sellars' vision by offering new elements with broader appeal and within budget parameters. In fulfilling this undertaking, Ms Nattrass has my full support.

In terms of the conduct of any Festival of Arts, the role of the minister is very clearly spelt out in the Adelaide Festival Corporation Act 1998. Section 16(2)(a) provides:

> No ministerial direction can be given as to the artistic content of any event or activity conducted by the corporation.

This hands-off approach with no political interference in the programming of the Festival has been the basis of Festival programming over the past 40 years. It was certainly a requirement of the Friends of the Festival when the incorporated association agreed to transfer the name 'Adelaide Festival of Arts' to the corporation in 1998. It is an approach which I respect and which I have assiduously honoured, albeit through some very testing times over some time in terms of the delivery of the 2002 Adelaide Festival.

I recall in May this year, when Peter Sellars released Festival highlights to a meeting of the Friends of the Festival, that I publicly indicated that Peter's approach to programming the Festival was scary. I did so even though I am very well aware that, over the 40-year history of the Adelaide Festival, every Festival director has presented their own set of challenges. Ultimately, they have been managed and our Festival today is regarded as one of the three best in the world along with Edinburgh and Avignon.

Over time I have sought and gained undertakings from the board and Peter Sellars that the new programming ideas and arrangements for 2002 would embrace the Festival's strong support base, as well as reaching out to attract new audiences, would include events that would meet the needs of sponsors and funding bodies, and would meet budget, recognising that this Festival had higher up-front development costs, a lower box office target and more free events. At one time I recall that I had to extract a commitment from the Artistic Director to use the Festival Centre.

There have been many issues to manage in the realisation of the 2002 Festival, including:

· the mid-term retirement in April this year of the Chairman, Dr Ed Tweddell, following some seven years of service;

· the appointment of a new Chairman, Mr John Morphett, plus new members of the board to provide stronger financial scrutiny;

· the retirement of the CEO Nicholas Heyward, Production Manager David Malacari, Financial Controller David Hepper and the recruitment of new senior staff to fill these positions;

· the revelation of losses attributed to the 2000 Festival after an earlier audit sign off of the accounts;

· and the identification of a budget shortfall by the board for the 2002 Festival associated with the difficulty in securing sponsorship targets. As I have already advised, this shortfall will be met by an increased investment of $2 million from the state government.

Overriding all these matters was the challenge that the board and I faced in gaining a final sign-off by Peter Sellars on his program, including a date for the release of the program highlights. Within budget parameters and contractual commitments, Peter's dilemma was what to include or exclude from an ambitious artistic agenda. In the end, his programming priorities were those unveiled on 31 October 2001, together with advice that further events would be released in January next year.

As everyone is aware, Peter was not able to attend the launch due to other contractual commitments. His absence on this occasion, following so closely on the heels of the board's decision to withdraw the infamous Hitler advertisement, has not helped promote the Festival program in a positive light. The program itself has also been judged harshly across Australia by art critics, commentators and regular Festival supporters as lacking in substance and broad based appeal, and failing to meet the expectations that Peter himself had foreshadowed over the past year and more.

Peter Sellars has not been insensitive to the events and comments of recent weeks in particular. Nor has the board and nor have I. As everyone is also now aware, over the weekend, the Chairman, Mr Morphett, spoke with Peter Sellars seeking adjustments that would respect the core of his program, but with the addition of elements that offered broad appeal. These adjustments were to be made within agreed budget parameters, because I had already identified to the board that the government, on behalf of taxpayers, would not be investing more funds.

Ultimately, Peter Sellars did not believe he could accommodate what the board sought and, as of yesterday, with profound regret, he resigned as Artistic Director of the Festival 2002. I seek leave to table a copy of Peter Sellars's statement, issued yesterday. It accompanied a media announcement issued by the Chairman of the board announcing Mr Sellars's resignation.

Leave granted.

The Hon. DIANA LAIDLAW: I cannot pretend that the events of recent weeks—in fact longer—have been anything less than traumatic while the gestation of the Festival itself has ever been easy. The circumstances today are not ideal, but

as Mr Morphett noted in the conclusion of his media release yesterday, I regard the position reached as a positive outcome for the 2002 Adelaide Festival and beyond. This view has been confirmed over the past 24 hours by the spontaneous demonstration of resolve and goodwill from artists, the art sector, Festival supporters generally and most members of the parliament—but notably not the opposition—to get behind both the 2002 Festival and Sue Nattrass as Artistic Director to ensure its success and that of future Adelaide Festivals.

The Adelaide Festival will not disintegrate. The Adelaide Festival, together with the Fringe, the Australian performing arts market, the World Information Technology Conference and the National Environment Conference—'Sustaining our Communities'—is poised to make a strong impact in Adelaide, as usual, next March.

CLAYTON REPORT

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to make a ministerial statement on the subject of the report of the Director of Public Prosecutions with respect to the second software centre inquiry report.

Leave granted.

The Hon. K.T. GRIFFIN: On 24 October 2001, I referred the report by Mr Clayton QC to the Director of Public Prosecutions. I have already informed the Council of that action and the detail in the letter of referral to Mr Rofe QC. I received the report of the Director of Public Prosecutions on 2 November 2001 and decided that, in the public interest, it should be released publicly. It was so released on that day. I now seek leave to table that report.

Leave granted.

The Hon. K.T. GRIFFIN: The Director of Public Prosecutions reported that he had considered the matter and decided that there should be no criminal convictions. I draw attention to the following paragraphs, which are the essence of the report, as it is appropriate to have them recorded in *Hansard*. The report states:

> With due respect to Mr Clayton QC and acknowledging the advantage he had of seeing and hearing the witness, I do not believe with respect to Mr Olsen there is any prospect of proving he acted dishonestly in the relevant sense of the possible offences under consideration. Similar considerations apply to Mr Cambridge, albeit with less force. It was clearly open to Mr Clayton to make the findings on dishonesty that he did given the facts as he found them. The question for me is not whether I would have come to the same conclusions but rather whether I think there is a reasonable prospect of proving beyond reasonable doubt they were the only rational hypotheses open on the facts. I do not. Accordingly there will be no criminal prosecutions of Mr Olsen or Mr Cambridge for the offences of perjury or abuse of public office. In view of the opinion I have come to, it is not necessary to examine the technical aspects of the offences.
>
> The situation is somewhat different with respect to Ms Kennedy particularly in relation to paragraph 8 of her statutory declaration made 15 January 1999. In my opinion there is on the material presented a reasonable prospect of conviction on a charge under section 27 of the Oaths Act. However I am aware that the allegation was investigated by police in 1999, which investigation found there was insufficient evidence to lay a charge. The investigation was conducted by officers of the Serious Fraud Squad supervised by a senior officer and included an extensive interview with Ms Kennedy under criminal caution. I have reviewed the police file and can find no error or omission that would vitiate their conclusion. In those circumstances I do not think it is in the public interest that the charge be now revived; to do so would carry overtones of double jeopardy. Although the allegation is serious, it is not so serious that the public interest requires a prosecution.
>
> The statutory declaration of Mr Cambridge was found by Mr Clayton to be dishonest in some respects (see paragraphs 1106, 1107, 1109, 1111, 1112 and 1113). Again with respect such findings were open to Mr Clayton but I cannot say those findings were the only rational inference to be drawn from the facts. Accordingly there will be no prosecution of Ms Kennedy or Mr Cambridge for offences against the Oaths Act.

LAND, SALE AGREEMENTS

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to make another ministerial statement, this time on the subject of a warning about agreements for the sale of land with very long settlement periods.

Leave granted.

The Hon. K.T. GRIFFIN: It has come to my attention that a property scheme is being promoted in this state that is cause for considerable concern. The scheme involves an agreement for the sale of a residential house on land and has several features that are of significant advantage to the vendor and significant disadvantage to the purchaser. The effect of the scheme is that it places any purchaser at great disadvantage in terms of the rights and obligations that usually are provided by a standard sale and purchase agreement. What is of greatest concern is that it appears that the scheme deliberately attempts to avoid many of the consumer protection mechanisms provided by a number of South Australian acts. The primary feature of the scheme is that the purchaser agrees to buy the property and pays a deposit but does not pay the balance of the purchase price until some specified date many years into the future.

Under the sale agreement the purchaser moves into the premises and as part of that sale agreement rents the property from the vendor until the date of settlement. The benefits which are claimed to accrue to the purchaser are that the purchase price is in today's dollars but is not payable until some much later date—in one example, 15 years. Presumably it might be superficially attractive to a purchaser who is unable for whatever reason to obtain a standard housing loan, even with the current low interest rates. However, for these benefits, the costs to the purchaser are significant.

The purchaser acquires no interest in the property until settlement. This means that, should the vendor have mortgaged the property and then that mortgagee subsequently forecloses at any time prior to settlement, the sale to the purchaser cannot proceed. In this event the purchaser will not only lose his or her deposit and all of the rental payments but, more significantly, will also lose the right to remain in occupation of the house. A purchaser therefore has no security either in terms of certainty of settlement or occupation.

Another difficulty with the scheme is that the vendor can avoid the contract at any time prior to settlement if the purchaser breaches any of the provisions of the rental agreement. However, the purchaser cannot get out of the contract under any circumstances and is required, come what may, to pay the balance of the purchase price at the completion of the rental period of, say, 15 years. Adding to the purchaser's difficulties, the operation of the scheme is such that if the purchaser's financial circumstances improve and he or she wishes to bring the settlement date forward there are hefty penalty provisions in favour of the vendor, and if the purchaser wishes to sell prior to settlement the transfer cannot be made.

Of particular significance is the fact that the scheme attempts to avoid the prohibition in the Land and Business (Sale and Conveyancing) Act 1994 against the sale of land by instalments. This prohibition is designed to protect

purchasers against such arrangements. Prior to the introduction of this prohibition, the vendor and purchaser would sometimes enter into a contract which allowed the purchaser to pay the purchase price in instalments over a period of years. In the interim, the vendor would continue to hold the title and be the registered proprietor of the land.

Although it was possible for the purchaser to place a caveat on the title many did not do so either because they were unaware that they could or because they simply refrained from doing so. Thus, an inspection of the certificate of title would reveal only that the vendor held title to the land and would not reveal the interests of the purchaser, even where the purchaser had paid almost the full purchase price.

There were instances where the vendor then mortgaged the land and eventually failed to keep up the mortgage payments and the mortgagee exercised the right to sell the land. The original purchaser lost both the money paid and the land that was being purchased, which is precisely the same mischief which arises under this scheme.

However, this scheme would seem to avoid the wording of that provision which prohibits the sale of land by instalments. The rental payments in this case do not amount to instalments as the rent does not come off the purchase price. Further, the rental aspect of the agreement does not attract the protections of the Residential Tenancies Act 1995. Section 5 of that act excludes rental agreements associated with the purchase of property. This exclusion was designed to allow temporary arrangements between vendors and purchasers where settlement dates cannot be exactly synchronised and a purchaser needs to move into a house prior to the settlement date.

However, the result of the Residential Tenancies Act not applying to such agreements is that the vendor in this new type of scheme is able to secure a rental arrangement with the purchaser which does not give the purchaser the benefit of the tenancy protection provisions of the Residential Tenancies Act, including, for example, the tenant's right to quiet enjoyment of the premises.

Indeed, when the cost of the rent (which may be above market rates for the area) is factored in, the overall proposition is one that is very financially disadvantageous to the purchaser. The rental payments are calculated on the basis that each rental payment is equivalent to the monthly repayments on a notional loan for the purchase price at 3 per cent above the two-year fixed term home loan rate of one of the major banks.

Clearly, rental payments calculated on such a basis will not be reflective of the true rental market value of the property. When one considers the generally long life of these particular rental agreements, it is inevitable that the purchaser will end up paying much more to the vendor than he or she ever would under an ordinary rental agreement.

The particulars of one example of this scheme operating in South Australia have been brought to my attention. It has taken place in the northern suburbs and involves the sale of a modest suburban home on a block of land. It has been suggested that the vendors may have bought the rights to use the scheme by attending a 'get rich quick' type of seminar touring the state. It may well have evolved from a similar scheme operating in Queensland.

Staff of the Office of Consumer and Business Affairs, the Legal Services Commission, the Australian Competition and Consumer Commission and the Australian Securities and Investment Commission are examining the legality of the scheme. It may be that legislative amendment is required to more directly address this type of arrangement. The contract is extremely complex and its provisions so weighted in favour of the interests of the vendor that the scheme could be said to prey on those in the community who are unable, for whatever reasons, to secure a home loan but who nevertheless desperately wish to own a family home.

Potential purchasers considering a purchase under this type of scheme should be warned about the operation of this scheme and be discouraged from entering such arrangements without comprehensive independent legal advice as to the costs and risks associated with it. I wish to draw to the attention of members the existence of this scheme. I encourage them to refer any constituents' concerns to the Office of Consumer and Business Affairs.

GOVERNMENT, SYSTEM

The Hon. R.I. LUCAS (Treasurer): I seek leave to table a copy of a ministerial statement on the subject of major reforms to the processes of government made in another place today by the Premier.

Leave granted.

QUESTION TIME

FESTIVAL OF ARTS

The Hon. CAROLYN PICKLES (Leader of the Opposition): My questions, on the subject of the Adelaide Festival, are directed to the Minister for the Arts, as follows:

1. Will the minister detail Mr Peter Sellars' salary package and entitlements including any termination payments he may have received?

The Hon. M.J. Elliott: Was it as good as Bruce Guerin's?

Members interjecting:

The PRESIDENT: Order!

The Hon. CAROLYN PICKLES: Do you think he has done a good job?

Members interjecting:

The PRESIDENT: Order!

The Hon. CAROLYN PICKLES: My questions continue:

2. I understand that to date $100 000 of ticket sales has been booked at the box office, $85 000 of which is for *El Nino*. In the light of Peter Sellars' departure, will the minister confirm the status of *El Nino*, Mr Sellars' own production of John Adams' opera, a highlight of the program—one of the very few?

3. If this event does not go ahead, will members of the public be reimbursed?

4. Will the duration of the Festival now be restored to its traditional 17 days, which is critical in drawing international and interstate visitors?

The Hon. DIANA LAIDLAW (Minister for the Arts): The Festival has released a statement today which is headed 'Director will receive entitlements' and which reads:

> 2002 Festival Board Chair, John Morphett, said today that former Artistic Director, Peter Sellars, would be paid his contract entitlements following his weekend resignation. 'However, how much that is and when it happens has not been decided. We haven't had that discussion with Peter,' Mr Morphett said.

He continues (and this is relevant):

> Peter was paid $100 000 a year and, in this last year, has returned $50 000 as a contribution to help finance the 2002 event. That was his decision, and his alone.

I have been informed, following questions on this matter from various quarters over the last 24 hours, that Peter has not sought a payout and that—

Members interjecting:

The Hon. DIANA LAIDLAW: He has resigned and the interjection earlier from the Hon. Mike Elliot was relevant. He has resigned in the belief that he was seen as an impediment to the Festival: he has resigned in the Festival's best interests. This was not an example that we have always seen in the public sector or in terms of appointments to authorities, for instance, by the board to develop the program for an arts festival. Mr Bruce Guerin has, in terms of his—

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: Sorry?

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: Yes, I do not think he is alone in that response to Mr Guerin. Peter Sellars has resigned and he has not sought payment and, as far as I understand, there are no payments due.

In terms of *El Nino*, the honourable member has asked me to confirm the status of that event. As she would appreciate—and Sue Nattrass made the statement yesterday—that matter is being discussed. The board in its statement yesterday also indicated that it would like some continuing role with Peter in his capacity as an artist. That is still being discussed.

Sue Nattrass is currently taking a little bit of time—and all of us who love and value the Festival would respect this in terms of the undertaking she has made to the board—to assess the program, the contracts that have been let and the budget situations, and to make the adjustments that she would find acceptable. In doing so, she must take into account what other events can be secured within the budgets and within the framework of the integrity of the Festival as well as the availability of venues.

There are many complex issues which I suspect the honourable member would know about but would not wish to acknowledge in terms of the political response, thrust and capital that the opposition is seeking to extract from this. I spoke to the shadow minister yesterday and she kindly came out of shadow cabinet to speak to me about this issue before the statement was made—I did that as a courtesy to her as shadow minister—and I went through the sensitivities of the situation, mentioning my respect for Sue Nattrass and for the—

The Hon. Carolyn Pickles interjecting:

The Hon. DIANA LAIDLAW: She has a hard job, made no easier by the political games that the opposition is playing.

Members interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: I went through all of those sensitivities as a courtesy to the shadow minister yesterday because I thought that she would be interested and was due that courtesy. I found it very interesting that, just two hours later, it was not the shadow minister who was speaking for the opposition but the shadow Treasurer, Mr Foley. I wonder who speaks for the Labor Party on the arts now, and who will do so if it is in government in the future. Is the pattern for the future that Mr Foley, the shadow Treasurer in this instance, will speak for the Festival?

Certainly, I accept my responsibilities—I always have. They have been testing times, and I have acknowledged that. I have talked through various issues with the board, and all of the matters I have outlined in my ministerial statement today. In the meantime, Sue Nattrass knows that she has my full confidence. It is important in her eyes and in mine, and for the arts—

The Hon. Carolyn Pickles interjecting:

The Hon. DIANA LAIDLAW: The shadow minister may be interested in this—across Australia that this Festival progresses. Sue Nattrass has taken on a mountain of responsibility and I will do everything in my power to support her in the realisation of this event.

The Hon. SANDRA KANCK: I have a supplementary question. Does the Festival have a contractual agreement with Mr Sellars regarding the production of *El Nino* and, if not, why was there not a signed contract?

The Hon. DIANA LAIDLAW: I will refer that matter to the board and bring back a reply. I will seek to get that reply promptly.

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister for the Arts a question about the Festival of Arts.

Leave granted.

The Hon. CAROLYN PICKLES: In her ministerial statement earlier this afternoon the minister talked about section 16(2)(a) of the Adelaide Festival Corporation Act and the role of the minister. I refer to section 8, 'Composition of board', which provides:

(1) The board will consist of not more than eight members appointed by the Governor, of whom—

(a) one will be a person selected from a panel of three persons nominated by the Friends of the Adelaide Festival Incorporated; and

(b) one will be a person selected from a panel of three persons nominated by the Corporation of the City of Adelaide; and

(c) the remainder will be persons nominated by the minister. . .

(3) One member of the board will be appointed by the Governor to chair meetings of the board.

Section 9(3), 'Terms and conditions of appointment of members', provides:

The Governor may remove a member from office on any grounds that the Governor considers sufficient.

My questions are:

1. How can the minister absolve herself from any responsibility in this fiasco by claiming that she maintains an arm's length relationship with the board of the Festival when, very clearly, she has a statutory responsibility and appoints the majority of the members of the board, one of whom was, until recently, her arts adviser?

2. If the minister refuses to take responsibility, will she then sack the board, which has clearly failed to fulfil one of its statutory functions which is 'to continue and further develop the Adelaide Festival of Arts as an event of international standing and excellence'?

The Hon. DIANA LAIDLAW: I have never refused to accept my responsibilities. What I have indicated today is that, at times, it has been very testing to exercise those responsibilities. In terms of the issue of the sacking of the board, there is no intention on my part to do so. The board—as the honourable member would appreciate if she just sat back and thought about it for a moment—has just signed an Artistic Director for 2002, Sue Nattrass; and, therefore, the Festival (and I cannot recall her words), programming and the like are being pursued for 2002.

I think that there is an illogical inconsistency in the honourable member's argument, but that is not necessarily surprising. I do not think there is more that I can add.

However, I can assure the leader that at no time have I—and at no time would I—abrogate my responsibilities as minister in any arts circumstance no matter how difficult those circumstances. I know that, in terms of the conduct and realisation of the Adelaide Festival 2002, my commitments to Sue Nattrass have been very important in securing her as the Artistic Director. I intend to fulfil those commitments to her.

GREEN PHONE

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Treasurer a question about Green Phone.

Leave granted.

The Hon. T.G. ROBERTS: In the last week of parliament I asked a question about the collapse of Green Phone and whether the government intended to seek an inquiry or whether it was attempting to put in place some measures that might alleviate some of the suffering associated with the collapse of Green Phone. Today's *Border Watch* contains a story that indicates that Green Phone's debt is running at $4 million—the original figure I was given was $1.9 million. Currently, 88 claims are being made on the administrator.

The administrator is trying to deal with the problems associated with the collapse of Green Phone but, in relation to a regional area and its subscribers being affected, I, as well as people in the community, believe that some immediate attention should be paid to the problem so that the service itself does not collapse and neither it nor its potential for employing particularly young people in the IT industry in the South-East is lost to the region. The administrator—

The Hon. T. Crothers: What's Rory McEwen doing about it?

The Hon. T.G. ROBERTS: The honourable member will have to ask that question of Mr McEwen. The other questions with which the administrator is wrestling at the moment include the role of the Limestone Coast Regional Development Board (or the activities of its former namesake, the South-East Economic Development Board), the role of the South-East Local Government Association, the role of various individual associations with the organisation (which may or may not have played a part in Green Phone's collapse or, indeed, have had possible fiscal responsibility for its collapse), the ownership of the internet service provider (formerly known as South-East On-Line) and the prospects of rescue finance from government or any other source.

Other questions also need to be examined and answered to try to rebuild Green Phone in the South-East and the western districts region of Victoria (commonly known as the green triangle) to ensure that a pilot program such as this is not sunk on the basis that the capital has been either misdirected or spent unwisely. It is important that an assessment is done as soon as possible so that confidence can be built back into the community for those people who are trying to keep it afloat, and it is also important to try to sort out whether misadventure caused the problem or, perhaps, misappropriation or misdirection of funding. All those questions remain unanswered while there is no commitment to an inquiry at either a state or federal level.

The Treasurer replied to my question during question time in the last sitting week and said that he would refer it to the Premier, but I have not yet received an answer. He also indicated that he was hamstrung by the fact that the federal government was in caretaker mode, which is no longer the case, because a new federal government has been elected and ministerial responsibilities are being apportioned. My questions to the Treasurer are: will the government move urgently to support a Senate inquiry into the reasons for the collapse of Green Phone?

The Hon. R.I. Lucas: A Senate inquiry?

The Hon. T.G. ROBERTS: A Senate inquiry, because it covers two states and commonwealth funding. That would be a long-term measure for trying to find out what occurred with Green Phone. In the short term, will the Treasurer support a state government inquiry into the collapse of the company so that confidence can be rebuilt in the community as a result of the collapse of this important IT company?

The Hon. R.I. LUCAS (Treasurer): To my knowledge, no federal ministry has been formed, unless that has occurred in the past hour.

The Hon. T.G. Roberts: I said it is being formed.

The Hon. R.I. LUCAS: It has not been formed.

The Hon. T.G. Roberts: It is going to be formed shortly.

The Hon. R.I. LUCAS: Yes, it will be, but the Hon. Terry Roberts indicated that, when I last answered this question, I said that we were hamstrung because we were in the middle of a federal election campaign and there were no federal ministers to take control, as they will need to, of this particular series of events. As I stand here today, whilst we have had the federal election and a government has been elected, my understanding is that ministers have not been appointed and therefore we do not know which federal minister will be in charge of this area. As I indicated last time, the Hon. Mr Roberts can rest assured that, as soon as somebody is in the saddle, we will be assiduous in having discussions—as I am sure will others, including administrators and others who have a concern—about the circumstances surrounding Green Phone.

I will again refer the matter to or have discussions with the Premier who, wearing his hat as Minister for Regional Development, brought back a reply to earlier questions that the Hon. Mr Roberts or the Hon. Mr Redford raised some time ago about Green Phone. I am happy to have those discussions, certainly from the viewpoint of state departments and officers, because we are concerned with what we read and hear about Green Phone, but processes have now been set in place and we will have to be mindful of them. Clearly people have legal rights and are entitled to exercise them, should they so wish, in whatever way—

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Redford indicates that writs are flying left, right and centre. I have heard the rumours but I am not aware of the detail of what is occurring. The government is not in a position to intervene between warring factions or parties—'factions' is not the right word—in relation to this issue.

As I said last time, a significant part of this funding has come from the federal government. I think that the reply of either the Minister for Primary Industries or the Attorney-General indicated that funding of over $2 million came from the federal government towards the Green Phone project. Clearly, the major responsibility rests with the federal government, and the key issue for us will be to have a federal minister in the saddle so that we and others can have urgent discussions with that minister. It would be my view that it is more sensible to have those discussions before embarking on the misadventures (or otherwise) of Senate inquiries, but, ultimately, that is not an issue over which I have control. In fact, the federal Labor colleagues of the Hon. Mr Roberts, the

Democrats or indeed others, can control the establishment (or otherwise) of Senate committees of inquiry.

From our viewpoint, we are concerned. We will wait for a federal minister to be put in charge. We will then see quickly what we can do in relation to taking up these issues with the federal minister. As I understand it, officers within the appropriate federal departments have views and possible recommendations for a new minister to consider. As soon as that minister is in place, we will need to know what those recommendations and views are and, ultimately, what the decisions of the federal government might be. Dependent on that and subject to that, the state governments—Victoria and South Australia—can make decisions as to what, if any, response the state governments might need to give and then, of course, further down the line, regional development boards, councils and other interested parties will be able to make decisions.

I am not convinced, as I said, that the member's suggested response of a Senate inquiry is a way of resolving this particular issue quickly. I think that, firstly, other mechanisms will need be tried but, ultimately, the issue of a Senate inquiry is not within the state government's power to control. As I said, ultimately it can be with the Labor senators and the Democrat and Green senators.

The Hon. A.J. REDFORD: I ask the following supplementary questions:

1. Will the Premier investigate why he was told in answer to my question last year, tabled on 21 September, that SELGA owned or had purchased the business of SE On-line when in fact Green Phone had purchased it?

2. Who gave the Premier that advice?

3. Was the Premier misled in preparing his answer to my question?

4. Will the Premier attempt to ensure the public release of the sale contract signed by Mr Pfitzner and Mr King and any loan agreement with the Local Government Financing Authority so that we can determine the terms of any sale, whether SELGA is owed any money and whether SELGA has complied with the terms of any loan agreement with the Local Government Financing Authority?

5. Can the Premier attempt to find out what, if any, is the exposure of the South-East Local Government Association as a consequence of the Green Phone collapse?

The Hon. R.I. LUCAS: I will be happy to refer the honourable member's supplementary questions to the Premier and bring back a reply.

HMAS *HOBART*

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Treasurer, representing the Minister for Tourism, a question about the scuttling of the HMAS *Hobart*.

Leave granted.

The Hon. J.F. STEFANI: I refer to an article that appeared in the *Advertiser* of Friday 9 November 2001 dealing with the scuttling of the HMAS *Hobart* in Yankalilla Bay. In particular, the article described the delays caused by the requirement to clean contaminated fuel tanks in the vessel, as well as addressing other environmental procedures, which have proven to be more difficult than expected. My questions are:

1. Will the minister advise the anticipated date when the vessel will be scuttled to become a diving attraction?

2. What are the estimated total costs associated with the plan to scuttle the vessel?

3. Will the minister confirm the actual costs to be met by the state government to finalise the project?

The Hon. R.I. LUCAS (Treasurer): I will refer the honourable member's questions to the minister and bring back a reply.

PORT AUGUSTA RACETRACK

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Transport, representing the Minister for Environment, a question about the use of waste oil on the Port Augusta racetrack.

Leave granted.

The Hon. SANDRA KANCK: My office has received a copy of correspondence between the Director of Mulhern Waste Oil, Mr David Braham, and then Premier John Olsen about this matter. Mr Braham became aware of the practice when his office received a letter from the Port Augusta Racing Club requesting the supply of 40 000 litres of waste oil for use as a dust suppressant on the club's race track. The letter went on to say that the Environment Protection Agency had granted the club a licence to use waste oil in this manner. Mr Braham has refused to supply the oil. His understanding is that under the Water Resources Act the use of waste oil as a dust suppressant has been illegal since the 1990s, and he believes that waste oil should be cleaned and re-used.

The Hon. R.R. Roberts: Very responsible!

The Hon. SANDRA KANCK: Absolutely; very responsible. The reply Mr Braham received from the then Premier indicated faith in the judgment of the EPA and suggested that because the oil is sourced from diesel vehicles 'the lead content of the oil would be minimal as would be the risks of contamination of land.' Inquiries I have made indicate that that might not be the case. I have been told that because the oil is used in diesel engines it is highly likely to contain extreme pressure additives which are likely to be chlorinated and which may contain heavy metals other than lead, such as tungsten. Further to that, this will be influenced by where the oil has come from, for instance, the differential or the gear box.

Of concern is the vaporising of the oil with subsequent concentrating of the level of contaminants in what remains on and in the soil, with the potential for this to be disturbed by racing horses and even kicked into the faces of bystanders. My questions to the minister are:

1. Does the Water Resources Act prevent the use of oil in this way? If so, how is it that the EPA can override such a provision?

2. Has the EPA tested the waste oil for any chlorinated extreme pressure additives and heavy metals? If so, what other substances were found to be in the oil?

3. If there has been no testing, why not?

4. How many other sites in South Australia have been given permission to use oil as a dust suppressant?

5. How the does the minister reconcile the practice outlined with the objects of the Environment Protection Act and, in particular, avoiding, remedying or mitigating any adverse effects of activities on the environment?

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

CLAYTON REPORT

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Attorney-General a question about ALP press releases.

Leave granted.

The Hon. A.J. REDFORD: On Tuesday 30 October the Hon. Paul Holloway, the deputy leader of the Labor Party in this place, asked a question of the Attorney-General concerning an opinion from a barrister in Adelaide, Mr Michael Abbott QC, and then proceeded to make certain assertions concerning that report. In response to that question, the Attorney-General referred to a letter dated 24 October 2001 directed to Mr Paul Rofe QC, Director of Public Prosecutions, concerning the second software centre inquiry and indeed, for those of us who do not take the trouble to get copies of letters, actually read the contents of that letter into the *Hansard* record. In response to a challenge from the Hon. Paul Holloway, he tabled a copy of the letter—

The Hon. P. Holloway interjecting:

The Hon. A.J. REDFORD: You asked him; you said, 'Table it', and he did. That is what happened. He tabled the letter advising the Director of Public Prosecutions of, first, the motions passed in the House of Assembly and, secondly, setting out some statements to the effect that the director could have access to any information he required that might be in the possession or control of the government.

Following that rather public disclosure it was surprising to see that the member for Elder and shadow minister for government enterprises, etc., issued a news release dated Friday 2 November in which he made a number of assertions. In it he asked for a guarantee that the Director of Public Prosecutions had been given access to all the evidence gathered in the Clayton inquiry. He went on to say:

> I have been concerned by a report in today's media that the DPP has already signed a report into whether any charges should be laid in response to the Clayton Report.

He continues:

> If it is true it seems altogether a hasty assessment. The report was only sent to him last week on a motion in parliament initiated by independent members.

He goes on to make a number of assertions about whether or not material might—

The Hon. R.R. Roberts interjecting:

The Hon. A.J. REDFORD: The honourable member interjects. He has had a good Saturday and a good Sunday and all the member for Elder can do is point score. Policy is the word: policy.

Members interjecting:

The PRESIDENT: Order!

The Hon. A.J. REDFORD: Policy is the word: just spell it. In any event, a number of other misleading statements are made in this news release. In the context of that, my questions are:

1. Has the Attorney seen the news release issued by Mr Patrick Conlon MP?

2. Has the Attorney observed those errors already identified or any other errors in the news release issued by the member for Elder?

The Hon. K.T. GRIFFIN (Attorney-General): The only matter in the honourable member's explanation with which I would have some dispute is his statement that I was challenged by the Hon. Paul Holloway to table the letter to the DPP. My recollection is that in the House of Assembly earlier in the afternoon there had been a question asking the Premier what information had been provided to the Director of Public Prosecutions. Fortuitously, I had my letter to the DPP available and I quite readily, freely and willingly—without challenge—tabled the letter. In fact, I think I read it into *Hansard* at the time.

So it is all the more puzzling that on the Friday following that Tuesday when the information was on the public record—the letter had been tabled and read into *Hansard* and I had answered the question of the Hon. Mr Holloway—Mr Patrick Conlon put out his own press release. I was somewhat puzzled by this when I started getting calls from the media asking, 'What have you given to the DPP?' When I came to look at the press release it seemed that either Mr Patrick Conlon was playing some games—and I was not quite sure what the purpose of them might be—or he had not caught up with the fact that one of his colleagues in the shadow cabinet, but in the Legislative Council, had asked me a question about the Clayton report and what had been referred to the DPP and that I had answered it.

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: I suppose it is a bit like Rip Van Winkle—that history can pass you by while you are asleep. One wonders whether Mr Patrick Conlon might have been asleep on the occasion and whether he pursued the gathering of information from his colleague; or maybe it is because—

The Hon. R.I. Lucas interjecting:

The Hon. K.T. GRIFFIN: —he was doing some other lobbying. I suppose Rip Van Patrick or Rip Van Conlon might be an appropriate description. So, that was the first aspect: a person who purported to be on the ball, who was challenging the government about the information that was provided to the DPP, was asleep on the job. The second aspect of this that was of some concern was that Mr Conlon said, 'We'd also like to know whether Mr Rofe has spoken to Mr Clayton.' Now the Labor Party goes on to immediately give some apology by saying, 'The opposition has a high regard for Mr Rofe and would expect him to carry out a thorough and complete investigation into Mr Clayton's report.'

So it was a bob each way: had he spoken to Mr Clayton, so, Premier, go out and ask the DPP who he has spoken to—a little bit of political intervention—and we have every confidence as an opposition in the DPP, we would expect him—

The Hon. T.G. Cameron: Perhaps he got carried away. He will be Attorney after the next election!

The Hon. K.T. GRIFFIN: After the events of Saturday I cannot imagine that—

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: There were two issues of concern in the press release: the first is the fact that Mr Conlon had not kept up with what had been going on in the parliament earlier that week and, secondly, that he was tending to suggest that there ought to be a bit of political intervention with the DPP. I have put it quite strongly on the public record that, first, that is illegal under the Director of Public Prosecutions Act and, secondly, that it is not the way in which I would establish a relationship with the DPP—and I have a perfectly proper and professional relationship with him.

One only needs to look at the annual report of the DPP, who is at liberty to say what he likes about that relationship,

to note that he also believes that the relationship between him and me, as the Attorney-General, has been cordial and professional. So, I thank the honourable member for his question. There are some important issues which it raises. I would hope that Mr Patrick Conlon might have learned from the errors of his ways.

SMALL BUSINESS ADVOCATE

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Treasurer questions regarding the Office of the Small Business Advocate.

Leave granted.

The Hon. T.G. CAMERON: I recently received the annual report and the spring quarterly newsletter from the Office of the Small Business Advocate. It made interesting reading. Page 5 of the spring newsletter displayed statistical information which revealed the total number of cases handled by the Office of the Small Business Advocate for the year 2001-01, the regions which complaints came from and the time taken by the office to complete its investigations into the complaints. During 2000-01, the office received 2 266 inquiries of all types, of which 148 cases went on to be investigated by the office. That is approximately three per week. For an office that employs four staff and has an annual budget of over $340 000, that could hardly be described as a heavy workload.

Of the 148 investigations, 102, or 69 per cent, were from the metropolitan area, and 46, or 31 per cent, came from country South Australia. Thirty-eight per cent of the 148 investigations had a successful or partially successful outcome, according to the report. However, I am disturbed to find that more than 75 per cent of the investigations undertaken during 2000-01 took more than one week to complete; 52 per cent took more than a month; 29 per cent took more than three months; and almost 10 per cent took more than six months to be completed. Small business just cannot afford that length of time for their issues with the government to be resolved. They say a week is a long time in politics: for a small business it can be all the difference between staying afloat and going under. My questions are:

1. Does the minister believe it is acceptable for South Australian small businesses to have to wait up to six months for their complaints to be investigated?

2. Will the minister examine why investigations undertaken by the Office of the Small Business Advocate are taking so long to be resolved?

The Hon. R.I. LUCAS (Treasurer): I would certainly agree with the honourable member—I am sure all members would—that we would like all issues of concern to small business to be resolved as quickly as possible. I will obviously need to get some detail from the office in relation to those types of inquiries that are taking longer than might otherwise be expected: the member talked about 10 per cent being longer than six months and another percentage being longer than three months. I will seek advice from the office to see whether it can give us some details of the types of inquiries and the reasons for the delays, and whether they are problems with government departments, individuals within those departments or our processes in terms of how we address these issues.

The Hon. T.G. Cameron: I'm pleased to note that the minister reads the report.

The Hon. R.I. LUCAS: The office will be delighted—

The Hon. Diana Laidlaw: We're impressed too!

The Hon. R.I. LUCAS: They will be delighted to know that there are two MPs, at least, who read their report: as their minister I certainly read the reports. I place on the record that, whilst only a small number of matters go to a formal inquiry, I am sure the Hon. Mr Cameron would acknowledge that sometimes a lot of information can be given very quickly, and issues can be resolved over the telephone or through a return letter or fax, which might be just as helpful to the small business person in their dealings with government. I will get as much information as I can in an attempt to respond to the honourable member's question.

LABOR PARTY POLICY

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Treasurer questions on the subject of Labor Party policies.

Leave granted.

The Hon. L.H. DAVIS: It was interesting to note that in the federal election last Saturday the Liberal Party primary vote in South Australia was the highest of any Liberal Party vote recorded in any state of Australia, and the Labor Party vote in South Australia was the lowest of any vote recorded by the Labor Party in any state in Australia. There was a swing of some 1.4 percent to the Liberal Party on a two party basis.

The Hon. P. Holloway interjecting:

The PRESIDENT: Order, the Hon. Paul Holloway!

The Hon. L.H. DAVIS: Senator Chris Schacht, the sitting Labor senator who was placed third on the Labor Party—

The Hon. P. Holloway interjecting:

The Hon. L.H. DAVIS: Aren't you going to listen to this Paul? I am quoting one of your colleagues. Senator Chris Schacht, the sitting Labor Party senator who was placed third on the Labor Party ticket and lost his seat, launched a bitter attack on the Labor Party machine following last Saturday's election. Honourable members will remember that Senator Schacht was beaten into third place on the ticket only because the AWU was registered with the Labor Party for 14 020 members when in fact the AWU election earlier this year revealed that there were just over 9 000 members eligible to vote, according to the Australian Electoral Commission.

In addition, senior Labor officials in this state and elsewhere, as well as members of parliament, have admitted that the federal Labor Party's failure to announce policy until the election campaign was a major factor in its resounding defeat—in fact the biggest swing recorded to an incumbent government federally since 1966.

Mr Mike Rann, the Leader of the Opposition in this state, stated publicly at the platform convention held on 14 October 2000 that the Labor Party's policies would be 'signed and sealed and costed for the public to scrutinise'. That was over a year ago but, to date, there have been a few superficial statements made with no costing.

Mr Rann, we all know, has attacked privatisation by the Liberal government when, in fact, in cabinet Mr Rann voted for the privatisation of the State Bank and the sale of the government's interest in the Gas Company, and supported the federal Labor government's privatisation of Qantas and the Commonwealth Bank. My two questions are:

1. Has the Treasurer seen the comments of Senator Schacht and his attack on the state Labor machine?

2. Does the Treasurer think the Leader of the Opposition, Mr Rann, has rolled himself into a smaller ball than Mr

Beazley with respect to policy details and the all important question of where the money is coming from?

The Hon. R.I. LUCAS (Treasurer): I suspect that if Mr Rann has rolled himself into a ball, it would have to be a smaller ball than the former federal Leader of the Opposition—

An honourable member interjecting:

The Hon. R.I. LUCAS: Yes. Certainly in a policy sense, what we confront is exactly the same set of circumstances in South Australia as I have highlighted over the last six to nine months in response to a series of questions. We have seen so far, first, a refusal from the Leader of the Opposition to keep his promise. He made a promise that he would release all his policy promises, and costed, by October last year. He has not been able or prepared to keep that promise. Thirteen months ago, he promised to deliver costed promises and he has not. This year all we have seen is some general direction statements which are direct photocopies of existing government policies, or future government—

An honourable member interjecting:

The Hon. R.I. LUCAS: I can indicate that the government had already announced and implemented the Centre for Innovation, Business and Manufacturing when the Leader of the Opposition released a bold new policy. The only difference was that, instead of calling it the Centre for Innovation, Business and Manufacturing, he called it the Centre for Innovation, Business, Industry and Manufacturing. He added one extra word and a comma, and that was his bold new policy—one extra word and a comma.

The Hon. L.H. Davis: Did he put it in the right place?

The Hon. R.I. LUCAS: Yes, he did put it in the right place. That was his bold new policy promise in relation to a centre for innovation. We had already announced it in the budget papers, it had already been implemented and an acting executive officer for the centre had been appointed, and we had this bold new vision or policy. That is the sort of policy that the Hon. Holloway is trying to defend.

There have been two areas in which the Labor Party has made policy promises and they were, in effect, in the health area. It promised a 10 year funding bonanza, funded by the federal government, in terms of real growth in public hospital funding. Of course, it had not really thought about what would happen if Mr Beazley lost the federal election. Suddenly, its one health policy has disappeared out of the window because Mr Beazley (surprise, surprise!) is not—

An honourable member interjecting:

The Hon. R.I. LUCAS: Its only policy promise relied on a federal Labor government offering additional money. The second policy promise—

The Hon. P. Holloway interjecting:

The PRESIDENT: Order, the Hon. Paul Holloway!

The Hon. R.I. LUCAS: Settle down. The Hon. Mr Holloway is a little bit agitated this afternoon. The second policy promise, which was a bit different, was another federal deal with Kim Beazley and it was for additional education funding by the federal and state governments for education zones. Again, it relied on Kim Beazley being elected as Prime Minister. Its second policy which was different from that of the state Liberal government has disappeared out the window, together with its promise on public hospital funding. So, it is left with two key policies which have been torn asunder because it had not considered what would happen if a federal Labor government was not elected and it would have to think up its own policy promise. All it is left with—and, as I said, we must congratulate—

The Hon. P. Holloway interjecting:

The PRESIDENT: Order! The Hon. Paul Holloway!

The Hon. R.I. LUCAS: The Hon. Mr Holloway is obviously disgruntled about the federal policy on asylum seekers. He can speak on that if he wants to, but I will not be diverted—

The Hon. T.G. Cameron interjecting:

The PRESIDENT: Order, the Hon. Terry Cameron!

The Hon. R.I. LUCAS: I will not be diverted, as much as I am tempted. The key issue is that the people of South Australia deserve an opposition which does more than whinge and whine and is a policy free zone. Sadly, in South Australia we have a former New Zealander leading the Labor Party who thinks he can surf into office by whingeing and whining, by copying government policies and by refusing to keep his promise that he would release costed promises by October of last year.

GOVERNMENT RADIO NETWORK

The Hon. IAN GILFILLAN: I seek leave to make a brief explanation before asking the Minister for Administrative and Information Services a question about CFS communications systems.

Leave granted.

The Hon. IAN GILFILLAN: We are on the brink of a fire season in many regions of the state, which would be common knowledge to honourable members from rural areas. For some weeks, I have been raising serious questions about operating issues in regard to the CFS communications systems (GRN radios, pagers and so on), without getting adequate answers. These are issues that are seen as critical to thousands of South Australians who voluntarily fight fires and attend accident scenes in rural and regional South Australia. The internal CFS document titled 'CFS Position Paper' dated 10 April this year is a damning indictment of the phasing in of the GRN thus far. It raises issues of smoke related problems with the trunked sub-network, desensitisation leading to missed calls and inadequate performance of the UHF GRN Simplex sub-network compared with the existing broadband network, particularly in the firefighting arena.

The fact that signal desensitisation seems to occur when radios are within five metres of each other or in pine plantations and densely forested areas continues to be a serious cause of concern. The CFS has undertaken exhaustive research and testing and, as of earlier this year, had not been able to resolve these operational issues when two collocated UHF radios are used. Additionally, tests conducted by the CFS have shown a reduction in range of 30 per cent with the move from VHF broadband Simplex services to the GRN UHF Simplex sub-network.

At page 2, the CFS position paper on services provided by SA GRN states:

> A further issue, not related to the performance of the GRN sub-networks, is a budgetary one. The CFS has estimated that it requires an additional—

and I emphasise 'additional'—

> $11.4 million in capital funding for GRN related costs when utilising current configurations. It is unable to meet funding without having an adverse effect on other areas of CFS business.

My questions to the minister are:

1. Have the issues identified in the position paper been addressed to the satisfaction of the volunteers serving the CFS? If so, is there a written report on these solutions; is it

public; and has it been distributed to the volunteers? If not, why not?

2. What extra funds have been allocated to make up the $11.4 million shortfall as identified in the position paper?

3. What would be the adverse effects as identified in the position paper if the extra funds are not available?

The Hon. R.D. LAWSON (Minister for Administrative and Information Services): This question, strictly speaking, relates to the operations of the Country Fire Service, for which the Minister for Emergency Services has ministerial responsibility, and I will refer the specific questions to the minister for a considered response. However, it is worth saying a number of things in relation to the question, because I have had discussions with the Hon. Robert Brokenshire about the so-called internal CFS document dated 10 April to which the honourable member refers.

I am advised that the paper to which he has referred today, and to which he referred previously in the media, is a draft document prepared by somebody within the CFS or related to the CFS. It was not an official document: it was the musings of a particular individual and has no status. The honourable member describes it as a damning indictment. I was shown a copy of the document last week and I thought it interesting that the honourable member was on the airwaves so describing the document, because it contains passages which are extremely complimentary to the operations of the new government radio network—

The Hon. L.H. Davis: Did he mention that?

The Hon. R.D. LAWSON: No. Indeed, the Hon. Ian Gilfillan failed to mention those aspects of the document which were complimentary. It is worth saying that the government radio network, which is both on time and on budget, is a major engineering project which is being rolled out progressively across the state. It is delivering a service of which all who use it are extremely complimentary. It is meeting all of its technical and other specifications. It is a network on which this government had the guts to bite the bullet as a consequence of the recommendations of the Coroner following the 1983 bushfires when, throughout the 1980s and early 1990s, the Labor government failed to take any steps.

The Hon. M.J. Elliott interjecting:

The Hon. R.D. LAWSON: The Hon. Mike Elliott chips in, 'It doesn't work in smoke.' What arrant and idle nonsense. I heard someone the other day on radio say, 'The radio network does not work in the rain.' These sorts of preposterous claims are being repeated by ignorant people and, unfortunately, undermining the confidence of the community in this particular network. It is interesting to see the reports of the police and the State Emergency Service that are using the network. The honourable member talks about signal desensitisation. Anyone who owns a mobile phone knows that if it is used near a telephone or a transistor radio there is an element of desensitisation in radio transmissions that are closely related to each other.

The CFS has particular operational requirements, not only in relation to the pagers (which the document to which the honourable member referred made some reference) but also in relation to the data and voice networks that are all part of the government radio network. The CFS has particular operational requirements, and they relate to the transmission of messages from headquarters and other control posts to stations in the field, as well as to vehicles. The hand-held unit to unit transmissions that occur on a fire ground raise particular issues, which are invariably handled by means of Simplex transmissions.

The CFS laid down its own operational requirements in relation to communications at the fire ground. It was the CFS that sought particular range and other operational requirements. There has been a great deal of discussion across the whole of the CFS network, including the volunteers. The honourable member suggested that volunteers had been kept out of discussions, but that is certainly contrary to my understanding of the situation. So far as I am aware—and the minister will, I am sure, confirm this—there have been extensive training and other sessions and communications with volunteers at every level.

The honourable member talks about an alleged budgetary issue of some $11.4 million of so-called GRN-related costs. As I mentioned a moment ago, I can confirm that the budget for the government radio network has not been exceeded in any way. All that is required to be built and installed by Telstra, including design and operation, is occurring, and occurring within budget. Some minor delays have occurred in relation to some native title issues on a particular transmission site at Bumbunga Hill. However, I am advised that those issues have been resolved and that they and the particular region, which includes Kangaroo Island (and the redundancy system to ensure continued communication with Kangaroo Island and Yorke Peninsula), have all been appropriately attended to.

I will refer the balance of these questions to the Minister for Emergency Services who will, I am sure, provide a spirited response.

CRIMINAL LAW CONSOLIDATION (OFFENCES OF DISHONESTY) AMENDMENT BILL

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

That standing orders be so far suspended as to enable me to move an instruction without notice.

Motion carried.

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

That it be an instruction to the committee of the whole Council on the bill that it have power to divide the bill into two bills, one bill to be referred to as the Criminal Law Consolidation (Offences of Dishonesty) Amendment Bill comprising clauses 1 and 2, and clause 3, excluding proposed new sections 151 to 153, and clauses 4 to 12 and schedules 1 and 2, and the other to be referred to as the Criminal Law Consolidation (Payola) Amendment Bill comprising clause 3, Part 6—Division 3—Payola—consisting of proposed new sections 151 to 153, and that it be an instruction to the committee of the whole Council on the Criminal Law Consolidation (Payola) Amendment Bill that it have power to insert the Words of Enactment.

Motion carried.

STATUTES AMENDMENT (MOBIL OIL REFINERIES) BILL

Adjourned debate on second reading.

(Continued from 1 November. Page 2620.)

The Hon. M.J. ELLIOTT: I rise to speak on the second reading on behalf of the Democrats. The transport spokesperson for the party will also be making a contribution to this bill. I do not believe that, at this time, the government has

made a fully convincing argument for what is a significant case of corporate welfare in South Australia. In his second reading explanation, the Treasurer noted that in 1994 the government agreed to abolish charges payable on the imports of crude oil and condensate unloaded at Port Stanvac in return for a commitment from Mobil to a $50 million three-year investment program which, he noted, had now been completed. That was back in 1994.

This legislation removes further charges and also makes a very dramatic cut in local government rates paid by the company. I note that, on this occasion (unlike the previous occasion in 1994), there does not appear to have been any clear undertaking from Mobil in terms of how it will react to the generosity of the government. When he closes the second reading debate, will the Treasurer inform this Council whether or not there are any agreements of a similar nature to those struck with Mobil back in 1994 in relation to either an investment program by Mobil or any other commitment in terms of how long it intends to stay in South Australia?

In the absence of that, one is left with the impression that the government, not knowing whether Mobil would go, but threatened with the possibility that it might, has simply coughed up the money. If that is the case, that must be of great concern. In his second reading explanation, the Treasurer did note that Port Stanvac is a deep-sea port, one that can accommodate tankers, which Mobil's other refinery cannot. That being the case, there is a real incentive for Mobil to keep Port Stanvac at this stage because it can bring the very large ships into Port Stanvac and complete loading elsewhere.

In that case, a decision to close or not close Port Stanvac is more likely to be dependent upon decisions in relation to operations by Mobil elsewhere. Indeed, while the sums of money are significant to a state that is struggling to put enough money into education and health, etc., to a multinational the size of Mobil it is not much more than small change. In the absence of the government making a case in the second reading explanation in relation to this handout to Mobil, and unless the Treasurer is capable of doing that in response as to the undertakings we have from Mobil, the Democrats are not minded to support the second reading of this bill.

The Hon. SANDRA KANCK: In 1968, in my final year of secondary education, my geography class studied theories of locational advantage and we looked at a number of industries in and around Adelaide, and the Port Stanvac refinery was one of those. We visited there and, at the beginning of the tour, we were told by the refinery manager or the PR person that Port Stanvac was an essential part of Mobil's operations in Australia. It was explained to us that crude oil carriers carrying a full load could not get into the port that serviced the Altona refinery in Victoria because of the shallowness of the water there.

The Hon. M.J. Elliott: How big were the ships then?

The Hon. SANDRA KANCK: They were much smaller than at present. As a consequence, Mobil needed a stop-off point with a deeper port so that some of the crude oil could be pumped ashore, thus allowing a lighter ship to travel onto Victoria, where the remainder of the load could be decanted for Altona. So Port Stanvac was effectively a staging post. When I again visited the Port Stanvac refinery three years ago, this time as the Democrats' transport spokesperson, one of the first questions I asked was whether that was still the situation, and the answer was yes.

So why is the South Australian government giving in to Mobil and getting the taxpayer to subsidise that company to the tune of $600 000 each year for the next three years, and what do the South Australian taxpayers get out of it? Do we have a guarantee that Mobil will keep its plant running here in this state for any length of time? I ask that question because it is believed by those who work in the industry that, in the reasonably short term, Mobil is likely to rationalise its presence in this country to one or two refineries, and I would like to know whether Port Stanvac will be one of those two refineries.

Mobil could, for instance, choose to close Port Stanvac and centralise its infrastructure in New South Wales and Western Australia. In reaching agreement with Mobil on the content of this bill, I would like the Treasurer to reveal whether the government discussed the likely future of Port Stanvac at the end of the three-year period of taxpayer subsidy. Unless the government has achieved some cast iron guarantees, Mobil could take the money and run after three years. Is there anything in writing about Mobil's long-term commitment to South Australia? What is our comeback if Mobil ups and walks away in three years, five years or 10 years?

Do we have any undertakings from Mobil about upgrading the port infrastructure? Such an upgrade is sorely needed. The original caissons at the wharf were designed for 16 000 tonnes dead weight, but they are now handling ships of 45 000 tonnes dead weight. This is infrastructure that is being stretched beyond its safety limits, the sort of thing that could lead to more oil spills at Port Stanvac. So, for the taxpayer subsidy, what will Mobil do about that problem?

Mobil's environmental record at Port Stanvac has not been good, and I think we should look at that record. Former workers tell me that, between 1962 and 1985, Mobil dug pits, which are 400 metres off the cliff face, into which were dumped oil, asbestos, bitumen and sulphur. I have more recently heard about bituminous oil being found a short distance from the surface near the shoreline, and perhaps the use of those pits is related. A ballast tank on the wharf collapsed and disintegrated, spewing contaminated material. Eight tonnes of rust scale containing highly toxic tetramethyl lead was dumped near the foreshore and covered with about 10 centimetres of soil.

In September 1996, there was an oil spill at Port Stanvac, and the official figure was that 10 000 litres of oil were spilt. Our belief is that between 40 000 and 140 000 litres of crude oil were spilled and the real figures have been covered up. In June 1999, 270 000 litres of oil were spilt into the sea off Port Stanvac as a result of a faulty hose coupling. Also, there has been a succession of five fires at the refinery in a 10-year period, some big and some small, and I quote from an *Advertiser* article of 5 January this year as follows:

> January 1990: Two refinery workers were seriously burnt; one died from his injuries three months later.
>
> Mobil Oil Australia was later fined $30 000 after pleading guilty to two breaches of occupational health and safety laws.
>
> April 1992: Equipment failure was blamed for a fire which blanketed the southern suburbs with smoke.
>
> November 1994: Fire swept through a sulphur recovery unit.
>
> August 1998: An explosion and fire occurred after a pipe failed in the crude oil distillation unit. The fuel refinery was closed for two months, with repairs costing $14 million.
>
> Five million litres of fuel was shipped to Adelaide daily to maintain supplies.

That article was written the day after there had been an explosion when a double-tanker truck was loading at the

Mobil plant. Not all that much damage was done on that occasion. The article said that a truck sustained some fire damage but there were no injuries. However, this succession of injuries at Port Stanvac does not give any cause for confidence.

Less noticed is ongoing air pollution. The facility needs to be upgraded to meet greenhouse gas targets. It is using technology that is, for the most part, 50 years old and clearly does not meet Australia's international greenhouse gas reduction targets. Has Mobil promised the government anything in this regard? Has the government succeeded in getting any trade-off from Mobil in regard to improving its environmental performance? I personally would not even begin to think about corporate subsidies unless such undertakings were given and in writing and enforceable. From the point of view of safety, back in 1999, I was told by a worker that there is no buffer zone around the LPG fuel storage area and, as a consequence, the workers nickname them the bullets. If there was a fire in the LPG storage area, it would take all the rest of the fuel storage with it. Not good.

Exxon-Mobil is a big player on the world scene and its dividends to shareholders have grown at an average rate of 4.9 per cent over the past 18 years. Why should such a multinational company require any subsidy at all from the South Australian taxpayer? In 1995, Mobil Australia had $2 billion in assets and generated over $5 billion in gross sales. It does not advise what its profitability is. Since that time, it has spent $600 million on new facilities in both the refining and marketing aspects of its operations. This is not a company that needs corporate welfare.

Under those circumstances, I find it difficult to read the situation that has resulted in the introduction of this bill as being anything more than blackmail. In concluding, I cannot say whether or not we will support the second reading. It will be dependent on the answers the Treasurer gives to the questions we have asked and any reassurances that the government is able to give that Mobil is not taking South Australian taxpayers for a ride.

The Hon. NICK XENOPHON: I support the second reading of the bill. I understand that the committee stage will hopefully shed light on a number of important questions raised by honourable members, including the Hon. Sandra Kanck and the Hon. Mike Elliott. I have concerns about the corporate welfare aspects of this measure, but I understand the government's position about the potential strategic importance of an oil refinery in this state. My understanding is that this refinery has a fairly significant electricity power bill and I query to what extent this legislation would be required if the electricity power prices for this refinery were significantly lower as a result of a fully competitive electricity market in the state.

Having said that, I support the second reading. I look forward to the Treasurer's responding to some of the concerns expressed by members. I do acknowledge the strategic importance of the refinery, but I have concerns about the extent to which this package would have been required had circumstances been different with respect to electricity prices in this state.

The Hon. R.I. LUCAS (Treasurer): I thank the Labor Party, SA First and the Hon. Mr Crothers for their indication of support for the bill, which should ensure its passage—if I can count the numbers correctly—in this chamber this afternoon. I will—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: I think that the Hon. Mr Xenophon indicated he supported the second reading, but he was waiting for the answers to questions that had been raised by the Hon. Sandra Kanck and the Hon. Mike Elliott. If the Hon. Mr Xenophon is indicating his likely support, I am happy to welcome that as well. I can only repeat the broad comments outlined in the second reading and perhaps provide a little more detail. We have to make a threshold decision. Let me say that I can understand that people can come to different judgments about this threshold decision; that is, is it or is it not strategically important to have an oil refinery in our state? If you make a decision that it is not, then you can come to completely different positions from what the government, the opposition and other members in this chamber have adopted—

The Hon. M.J. Elliott: Will all that money make any difference?

The Hon. R.I. LUCAS: As I said, I am not criticising members in relation to the threshold decision. I am saying that you have to make a threshold decision: is it or is it not strategically important? You may make a decision that it is not strategically important for the state of South Australia to have a refinery—and not every state has a refinery. As I said, it is a policy position you can take, and I am indicating that I do not think people should be criticised for taking that policy position. It is not one with which I agree, but I can understand the position—

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Elliott is being defensive in relation to this. I am endeavouring to be generous of spirit as is my wont, and I am not sure why he is being defensive. I did not say it was the position that was being put. I am just saying that it is a valid position for someone to take. It is not one with which I agree, but I can understand. However, what I am saying is that, if you do take a decision that it is important strategically for the state to have an oil refinery, then I believe—and it is the government's position, and it would appear to be the view of the majority of members in this place—that the proposed changes in this bill are required to support that policy position. That is, it is strategically important for this state to ensure, to the extent that we can, that we have an oil refinery in South Australia.

To answer one of the questions from the Hon. Mr Elliott or Hon. Ms Kanck—I am not sure which—no, there is no guarantee in the legislation and I cannot give you a guarantee that Mobil will ensure that the refinery is here in 10 years, 20 years—

The Hon. T. Crothers interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Crothers says—and I will come to that point—that if they pull out, there will be no rates at all. That is indeed one of the issues that I will address in relation to the position of the Onkaparinga council. Having made the decision, as I said, that it is strategically important, then it is certainly the government's view that the package of measures we have outlined in this bill are important to achieve it. Secondly, as I indicated, there is no guarantee in the legislation and I can give no guarantee. I believe—and I have been told—that there is no way of giving a guarantee that for five, 10, 15, 20 or 50 years we will have an oil refinery in South Australia.

Certainly the government's view and local Mobil management's view is that if we want to maximise the chances of keeping an oil refinery in South Australia we have to do all

we can—and that is not just government; that is management, employees, and councils—to ensure that Mobil in South Australia remains competitive within the multinational company that operates in this business in countries around the world. That is why I would have to say that I think it is simplistic of the Hon. Ms Kanck to say, 'This is a global giant; this is small beer.' That is just not the way in which global giants operate.

It might not be the way in which the Hon. Ms Kanck might like them to operate, but the brutal reality is that global giants in all industries—not just the oil industry—are making decisions in countries, regions and sectors, and if, from their viewpoint, they can achieve what they want to achieve (as the Hon. Ms Kanck indicated) by rationalising the number of refineries in Australia by cranking up the size and the capacity of refineries in Singapore, or other parts of South-East Asia, which is one of the options, then global companies will make those decisions. The fact that we might like to have an oil refinery in South Australia will count for nothing—

The Hon. T. Crothers interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Crothers raises an important point. If I could continue the debate, I think we have the same challenge in relation to automotive manufacturing in South Australia. We have global companies such as Holden and Mitsubishi (within Daimler Chrysler) which are, in my view, strategically important industries for the state of South Australia. As they look at their global operations, companies such as Daimler Chrysler will make decisions that are in the global interests of the company, and if that means that, in their view, a plant in a particular part of the world is not competitive, then that will help guide their decision making.

In all these areas, we are working very hard with companies to say, 'Okay, what will help convince your regional and international boards to continue the operations of these parts of your companies?' When we talked with local Mobil management in South Australia, they indicated that they had to do a range of things. They had to conclude successful enterprise bargaining arrangements with their employees. They had to reduce the costs of their operations across the board.

In relation to one of the costs they said, 'Look, this year we are paying $1.2 million in rates to the local council. Equivalent refineries in the other states are paying of the order of'—I think it was—'$200 000 to $300 000. You cannot expect our refinery in a small state such as South Australia to be competitive on a national basis, let alone an international basis, if, because of legislation you have introduced as a parliament, we are paying $1.2 million.' The CEO of the Onkaparinga council was quoted on radio as saying that, if the Mobil refinery was rated in the same way as all their other major industrial ratepayers in Onkaparinga, they would pay about $100 000 a year in rates. That is $100 000 compared with $1.2 million.

Why the difference? The difference is that previous parliaments have signed indentures and bills which had rates to be paid to the local council increasing at a rate which continued to increase to the level it is at now—$1.2 million. And so the refinery people said to us, 'Here is about $1 million that we can take out of our bottom line to help us to be competitive and to continue to argue our case persuasively (we hope) at the regional and international board levels of our company.' The state government and clearly the opposition and others have taken the view that it is important for us to do what we can to ensure that Mobil in South Australia remains cost competitive, and it is important that we do what we can to maintain the strategic industry in South Australia.

Having made that decision, the government's first position was that this was a decision of the parliament. If there were the numbers in the parliament for it to decide that the council should get not $1.2 million but $200 000 or $300 000 out of it, it could have been just a decision to make that adjustment, and the council would still be getting more from Mobil than it would get from its normal rating formula, but it would be getting $1 million a year less. When that occurred, I can understand that through the elected representatives and officers, members of parliament and community members the local council said, 'This is an outrage; why should we lose $1 million of our rate revenue without getting some compensation for all this?'Whilst it is easy to characterise this as corporate welfare, I think we need to be looking at it in the context of assistance that has been provided to a company but also to the Onkaparinga council to help it manage the transition from a situation where it is getting $1.2 million this year to a situation where in the future it will be getting $500 000, inflated by a particular factor for each year onwards, so broadly a reduction of $700 000.

The deal that has been negotiated is providing assistance to the company and also the council. For example, we are in the process of seconding three full-time economic development officers to the council for a period of two or three years. Their job is to work with the council to try to attract new industry to the Onkaparinga council area to help both in terms of job development opportunities within the Onkaparinga council and also, if new industries can be attracted to the south, they will also pay rates to the Onkaparinga council.

In some small way that may also assist in the rate base of the Onkaparinga council. We have negotiated some other matters with the council in many parts, and they include reprioritisation of existing buckets of money within government departments and agencies to provide additional help and assistance for the Onkaparinga community and some emergency housing money in the Whitton Bluff area. Those sorts of areas will see benefits for the Onkaparinga community as part of a total negotiated package with them.

It is a transitional period. At the end of the transitional period the Onkaparinga council will have a rate base from Mobil of $500 000 plus the inflator, as opposed to $1.2 million. So, when one is talking about who is paying in the long term for the assistance to the Mobil refinery, certainly the Onkaparinga council would argue that it and its ratepayers are doing so. In the compromise they have agreed to this long-term reduction in the council rate base coming from the Mobil company. They have made that decision, I assume, and their press releases indicate that they appreciate the strategic importance of Mobil, but they also know that quite a number of Onkaparinga council workers and their families rely directly for their weekly income on the Mobil presence in the Onkaparinga council area. Obviously, for a variety of reasons they have been prepared to come to a compromise.

The final point that the Hon. Mr Xenophon raised was the issue of electricity prices. Why am I not surprised? I indicate that this negotiation with Mobil has been going on for about three years. It was first started by my predecessor, the Hon. Iain Evans, in about 1998, when he commenced discussions and negotiations. That was nearly three years before the end of the grace period for customers and the recent public concern from industry about the significant

increase in electricity prices in July of 2001 for a number of companies.

I assure the Hon. Mr Xenophon that this was an issue for Mobil considerably earlier than the grace period and customer concern in terms of electricity prices. I do not know the current contractual arrangements that Mobil has with electricity retailers; they are obviously commercially confidential and are issues ultimately between Mobil and the particular retailer concerned. From the government's viewpoint, I will not go through all the detail of what the government is doing to see a more competitive electricity market in South Australia; avid readers of *Hansard* can refer to other contributions I have made about that. To summarise, we are obviously working assiduously to try to see a more competitive electricity market nationally and also in South Australia.

The Hon. Mr Holloway raised some questions about the abolition of charges on the outward movement of crude oil from Port Stanvac. I am advised that the abolition of charges is expected to have a negligible impact and that since the indentures were last amended in 1994 charges have been levied on only two occasions, and both were exceptional circumstances. There appears to be some doubt about these numbers, and if I get different advice I will advise the member.

The interim advice I have is that the total value of the charges levied was $126 214. If there is any variation to that number I will certainly advise the honourable member, by way of letter if the parliament has risen. With that, I thank the majority of members, who have indicated their support for the second reading and the passage of the bill. I thank them for that. I hope that with this, together with other changes that Mobil has implemented through its enterprise agreements and other cost saving measures, we will see what we are all aiming to see, namely, a long-term future for Mobil and its refinery here in South Australia.

The Council divided on the second reading:

AYES (16)

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

NOES (3)

Elliott, M. J.	Gilfillan, I.
Kanck, S. M. (teller)	

Majority of 13 for the ayes.

Second reading thus carried.

In committee.

Clauses 1 and 2 passed.

Clause 3.

The Hon. M.J. ELLIOTT: During the second reading stage I noted that, back in 1994 when the government gave up certain service charges in relation to petroleum products at the wharf, part of the deal was that Mobil committed to an investment program which I think demonstrated a clear commitment to stay. I understand the Treasurer saying that he did not know whether or not Mobil would stay, but he did not respond to a question I asked about whether or not Mobil had made any investment commitments either, which would be a sign of goodwill by Mobil. Is Mobil committing to an investment program of any significance as a consequence of the deal that has been done?

The Hon. R.I. LUCAS: There is no specific investment program as part of this agreement. As the honourable member indicated, there has been a significant investment program at Mobil. I understand that there is ongoing investment, as there would need to be in any oil refinery. To answer the honourable member's question about whether there is a specific commitment to spend $X million as a result of this deal, the answer is that there is no specific commitment.

The Hon. M.J. ELLIOTT: In responding, the Treasurer also indicated that there is no commitment to stay for any length of time. There have been occasions when the government has sought to attract industries to South Australia and has given all sorts of concessions or other forms of financial incentive, but part of those deals has often been that moneys might be forfeited if the companies did not perform in certain ways or stay for certain periods of time. It would seem to me that, if the reason for doing this is to try to ensure that Mobil is staying, at the very least it could have been conditional on its actually staying and that should it leave within a certain period of time it would forfeit the amounts.

At this stage it seems to be very open-ended: the money is being handed over but there is absolutely no commitment of any sort in return. Will the Treasurer respond and say why we could not have taken a similar approach to that given previously in terms of incentives when we have tried to attract new companies?

The Hon. R.I. LUCAS: As I indicated in response to the honourable member's and other members' questions in answer to the second reading, ultimately after the short transition period the cost of this deal is not one for South Australian taxpayers but is one which ultimately will be felt by the ratepayers of the Onkaparinga council. The Onkaparinga council, after the three-year transition period, will have a rate revenue of $500 000 plus an inflation provision rather than the $1.2 million plus an inflation provision that it currently has.

It will not be like an ongoing payroll tax incentive, which I think is the sort of thing the honourable member is referring to, where governments in the past have provided payroll tax incentives—and I think in the long-distant past it might also have included land tax—and have provided exemptions or rebates on that and there are clawbacks. Ultimately, the cost is to be borne by the Onkaparinga council and its community, and obviously it is not a question of attracting somebody who is holding on to a company.

That is where this is significantly different to the other deals. From that viewpoint, if Mobil goes—as the Hon. Mr Crothers has succinctly put it—if the company decides to go, then it will not be paying the council any rates, and even if it were to be replaced in part by housing development, although I understand that there would be some environmental opposition to housing development in some of those areas—

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: —I'm not sure, but there are some issues in relation to that—the rate revenue is unlikely to be equivalent to $1.2 million per annum, which was the old rate revenue coming from Mobil. That is why it is the government's view that this deal is different to the typical deal that the Hon. Mr Elliott has been talking about.

The Hon. M.J. ELLIOTT: While I was talking about the cost generally—and this covers clause 4, but I think the matters are of a similar nature so I will handle them to-

gether—the government, in terms of changes to the indenture, is removing service charges on the loading and unloading of fuel. I have not seen any estimate of the value of that agreement. Can the Treasurer inform this place what charges are being forgone?

The Hon. R.I. LUCAS: Perhaps the background noise during my second reading reply prevented the honourable member from hearing my response. The Hon. Mr Holloway asked that question and the advice I was given was that the abolition of charges on the outward movement of crude oil from Port Stanvac is expected to have a negligible impact. Since the indentures were last amended in 1994, charges have been levied on only two occasions, and both were exceptional circumstances. I repeat what I said earlier, that this last estimate of the number is still being checked by a couple of departments, so if there is a different figure later on I will come back and correct the record. At this stage the estimate of the total value of the charges levied on those two occasions is $126 214.

The Hon. M.J. ELLIOTT: I have an observation at this stage. As I understand it, Port Stanvac is processing some 11 million litres of fuel per day, and if my mathematics is correct that is a little over 3 billion litres of various fuels per year. While the sum of money that is going to be foregone, and ultimately foregone by the people of the City of Onkaparinga, is significant to them, the cost impact of this rate rebate, in terms of the actual cost of operating this refinery, must be relatively insignificant. Why does the government feel that this announcement is going to make any real difference in terms of the company's decisions, as distinct from the impact on the council?

The Hon. R.I. LUCAS: Again, repeating what I have said earlier, this issue in and of itself is not the only factor that is going to be the difference between a refinery staying in a particular location or not. As I said, local Mobil management, upon whom we need to rely in terms of their interrelationship with both regional and international management, have said to us that they needed to make a package of changes including, and I repeat again, enterprise bargaining arrangements with their employees. They needed to reduce costs across the board. They needed to make some other changes and one of the changes in this package was this significant reduction in the cost of the rate revenue that was paid to the local council.

I repeat the fact that similar refineries in other states are paying $200 000 to $300 000 in rates to their local councils. I am aware that Mobil was paying $1.2 million in the last financial year to the local council. So it is not to argue that this factor, in and of itself, will be the difference. There is a package of changes that local management at Mobil said they needed to make, some we could not impact, others we could, and we have worked hard, together with the local council, in the areas we could have some impact on. Ultimately, as I said, and to its credit, the local council has seen the value of keeping Mobil as a big employer of local people in the community and it has been prepared to compromise on its original position to see a reduction in its long-term rate revenue in the interests of keeping Mobil in its community.

The Hon. M.J. ELLIOTT: Just for the record, I note the total rate revenue of the Onkaparinga council is currently about $46 million. So the revenue coming from Port Stanvac is currently about 2½ per cent. This cutback really means that it is going to be losing something quite close to 2 percent of rate revenue as a consequence of this decision. Either it will have to trim services to that extent or it will have to raise rates by that extent to compensate for this gift that has been given to Mobil.

The Hon. NICK XENOPHON: My question to the Treasurer relates to a statement that he made at the end of his second reading speech, where he stated that 'the new indenture agreements would be greatly beneficial to the state' and, further, 'that South Australian industrial activity is likely to be increased by added ship handling and storage activities at Port Stanvac'. Can the Treasurer indicate whether any estimates or modelling have been done on that? Has there been any study or advice given in relation to the likely impact that this indenture will have with respect to increased activity at Port Stanvac?

The Hon. R.I. LUCAS: I do not have that information with me, if indeed it is available. I am happy to take it on notice and correspond with the honourable member if I can find anything. I suspect, if he is talking about detailed economic modelling, the answer is probably 'No.' In terms of estimates, again I will take advice and if there is any information I can share with the member I am happy to do so.

The Hon. NICK XENOPHON: I have another question for the Treasurer. Conversely, if Port Stanvac is not there, what is the flip-side in terms of the economic impact? What impact will the absence of Port Stanvac have on economic activity and the security of fuel supplies?

The Hon. R.I. LUCAS: Again, I think we might be able to give some general comments in relation to the honourable member's question, but ultimately it will be one of those difficult issues to nail down and prove one way or the other. It will depend on how other companies reacted and one would have to make some guesstimates as to what the actions of other companies might be, and indeed as to what Mobil might do if it closed down Port Stanvac: what would it do in terms of its other operations? Would it maintain the port facility here and, though closing the actual refinery down, still use the port? I think there has been speculation on that. So, we might lose the jobs here but Mobil might refine in other parts of the world, or Australia, and tank the fuel in, thus keeping the port. So, there are a variety of options. I am happy to take advice and see whether there is anything useful I can provide to the honourable member over and above what I have just said.

The Hon. P. HOLLOWAY: I thank the Treasurer for providing the answer earlier about the cost of the abolition of cargo service charges payable on the outward loading of crude oil. I did mean to ask during the second reading stage, but did not, about the impact of the abolition of cargo service charges generally on finished fuel product imports at Port Stanvac. So, as well as the abolition of the cargo service charge for crude exports, there was also the abolition of that charge. If the Treasurer does not have that information perhaps he could supply that before the bill gets to another place. In his explanation the Treasurer said:

> If the refinery was rated using the standard formula used for other City of Onkaparinga properties, substantially lower rates would be payable.

The Treasurer has provided some information about that, but could he tell us exactly on what basis properties would normally be rated? For example, would the standard formula used for other properties also apply to an industrial zone? On what basis was that comment made?

The Hon. R.I. LUCAS: Let me answer the second question first. It was a radio interview that Geoff Tate, the CEO of the Onkaparinga council, gave at a time when this became a public issue. According to the transcript, he

indicated something along the lines that, if it was rated the same as other industrial sites or companies within the Onkaparinga council, however they are rated, the rate revenue would be about $100 000. I think it was an ABC radio transcript at the time. I cannot help the honourable member as to the rating assumptions made by Mr Tate in the calculation: I rely on his assessment for that.

I will have this matter checked before debate in another place but I have before me advice on charges regarding the unloading of finished petroleum products, and if that covers the honourable member's question I think the answer is as follows: since the indenture was amended in 1994, the only charges levied have been for imports of premium unleaded petrol in July 1999, totalling $18 559, following a shutdown of the refinery, and in January 2000, totalling $3 604, on imports of unleaded petrol. If that is the question (and if I have interpreted my complicated notes correctly), it is about $22 000 over the last seven years, so it is negligible. If that is not entirely accurate I will have the information corrected before the bill is debated in another place.

The Hon. P. HOLLOWAY: I assume that that would be the total cost of the abolition of all cargo service charges as proposed in this bill. If there is some other charge that has been overlooked, perhaps the Treasurer could indicate later.

The Hon. M.J. ELLIOTT: I made an observation earlier that Port Stanvac is processing more than 3 million tonnes of fuel per year. The final rate forgiveness in three years will be worth $700 000 a year to the company. If my mathematics is correct, it turns out to be 1/40th of a cent per litre, so we are talking about .02¢ per litre. One cannot help but wonder whether or not that is even close to a significant figure when one sees fuel prices that move around 10¢ per litre in a single day. In fact, they move around by a factor of 200 or 2 000 times greater per day. As I said before, there will be a bit under 2 per cent of rate revenue to be forgone by this council for the sake of 1/40th of a cent per litre—in fact it will be something less than that—in terms of product coming from the refinery.

Clause passed.

Clause 4.

The CHAIRMAN: I point out to the committee that clause 4 is a money clause. It is in erased type. Standing order 298 provides that no question shall be put in committee upon any such clause. The message transmitting the bill to the House of Assembly is required to indicate that this clause is deemed necessary to the bill.

Clause 5 passed.

Title passed.

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

That this bill be now read a third time.

The Council divided on the third reading:

AYES (18)

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

NOES (3)

Elliott, M. J. (teller)	Gilfillan, I.
Kanck, S. M.	

Majority of 15 for the ayes.

Third reading thus carried.

Bill passed.

CRIMINAL LAW CONSOLIDATION (OFFENCES OF DISHONESTY) AMENDMENT BILL

In Committee.

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

That, according to instruction, the bill be divided into two bills, the first to be referred to as the Criminal Law Consolidation (Offences of Dishonesty) Amendment Bill to include clauses 1 and 2, and clause 3, excluding proposed new sections 151 to 153, and clauses 4 to 12 and schedules 1 and 2, and the second to be referred to as the Criminal Law Consolidation (Payola) Amendment Bill and to comprise clause 3, part 6—division 3—Payola, new sections 151 to 153.

The reason for taking this course is that, although the issue of payola has been around since well before 1995 when the Model Criminal Code Officers Committee provided its report on theft, fraud, dishonesty and related offences, and that had previously been the subject of extensive consultation through discussion papers being published and comments invited, it is only now that media outlets and representative organisations such as FACTS and the Federation of Australian Commercial Radio Broadcasters have decided that it is time to make some representations. The provision in the bill which I introduced is drafted in a more precise format than appeared in the original model code. Subsequently, various organisations believed that the provision was too broad.

It should be remembered that in the Northern Territory the model criminal code provisions relating to payola had actually been enacted and no-one in the media seemed to complain about that. But the bill, even though it has been the subject of comment since June this year, in so far as it relates to payola has created something of a feeding frenzy among media organisations and representative bodies. I have met with a number of them. There has been correspondence to me, and I have responded. There are some amendments on file in response to the representations made but, still, there is concern.

I am very disappointed about that, because I would have thought that nobody could quarrel with the principle of the payola provisions. If you get a benefit and you have been promoting the product or service which gives you the benefit but you have not disclosed that you have been getting a benefit, then, to my way of thinking that is dishonest and ought to be appropriately addressed in the criminal law. Media organisations and other representative bodies say they do not disagree with the principle but it is how it is expressed that is relevant. In that context, concern has been expressed about what is alleged to be the broadness of the provision in the bill, even though it has been subsequently amended to clarify certain issues.

It is in that context that I have taken the decision to endeavour to split the bill to leave the payola provisions on the table and to ensure that they continue to be the subject of consultation. There is no way that the payola provisions will be passed before the end of this session, so it will fall to a subsequent government and Attorney-General to consider that issue. It is an issue that has to be addressed, and that is the reason for not amending the bill to take out the provision but leaving it on the table so that it can be properly addressed.

I will continue, up to the election, to consult on the provision with a view to reaching an agreement as to a suitable form for the provision relating to payola. So, that is the rationale for this. Disappointing as it may be, the rest of

this bill is of such importance to the reform of the criminal law that I did not believe that it was appropriate to leave it swinging without making a reasonable effort to get it through both houses before the end of the session. It is an important reform. The removal of the payola provision should not compromise the integrity of the reform provisions. Certainly, I commend the remaining parts of the bill to members.

Motion carried.

Clauses 1 and 2 passed.

New clause 2A.

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

Page 4, after line 6—Insert:

Amendment of s.5—Interpretation

2A. Section 5 of the principal act is amended by inserting after the definition of 'liable to be imprisoned for life' in subsection (1) the following definition:

'local government body' means a council or other body constituted under the Local Government Act 1999;.

This amendment inserts a new definition of 'local government body' into the act. The object of the amendment is to ensure that all kinds of local government bodies or authorities are subject to the appropriate rules. The amendment arises as a consequence of consultation with the Local Government Association and at its request.

New clause inserted.

Clause 3.

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

Page 5, lines 30 to 33 (inclusive), page 6, lines 1 and 2—Leave out the definition of 'money laundering'.

This is the first of two amendments that deal with money laundering. As part of the Criminal Law Consolidation (Offences of Dishonesty) Amendment Bill, it was thought appropriate to move the existing money laundering offence into this new part of the Criminal Law Consolidation Act, and new section 130 contains the definitions for the purposes of new part 5 offences of dishonesty. Subsequently, however, the government received an extensive submission from the National Crime Authority. The NCA pointed out that the existing offence requires proof by the Crown that the accused knew that the property was tainted.

The NCA argued that South Australia stood almost alone in Australia in requiring so strict a degree of proof. It pointed out that legislation by the commonwealth, the ACT, Victoria, Queensland, Tasmania and Western Australia contained a serious offence which was proven where the defendant ought reasonably to know that the property was tainted. Only New South Wales and South Australia require strict proof of knowledge. The NCA submitted that this opportunity should be taken to bring our legislation into line with that of the majority of the other jurisdictions. The government has decided to do so and the whole purpose of these amendments is to achieve that end. The first amendment is simply a drafting amendment; the substance comes in a subsequent amendment.

The Hon. IAN GILFILLAN: As the Attorney has spoken to the substance of the next amendment, I think that it is probably appropriate to make my observations about it now. I suppose that, in a way, I am a bit out of order, except that the Attorney did refer to it and read the note about what is money laundering (clause 138(2)), and I would like to address my comments to that. The definition of 'money laundering' states:

A person who engages, directly or indirectly, in a transaction involving tainted property in circumstances in which the person ought reasonably to know that the property is tainted is guilty of an offence.

I can understand the frustration of law enforcers who have difficulty securing a conviction where they feel quite convinced that the defendant has wriggled their way out of the conviction on the basis that they did not know, when it may well appear that the person is just obtuse and that they had every reason to know. I can understand partly the motive but it still makes me nervous when we have a charge that can convict a person to a maximum penalty of four years imprisonment and, one assumes, a possibility of a fairly substantial fine. So, it is not being treated as a trivial offence by any means.

Having indicated my concern about it, I ask the Attorney whether he has knowledge of cases in other jurisdictions in which this amendment applies and in which successful convictions have been achieved and on what type of evidence would such a conviction be secured?

The Hon. K.T. GRIFFIN: I certainly gave some consideration to the issues raised by the Hon. Mr Gilfillan. The reason why we have this new offence, which is that dealing with the substantive provision which comes in the next amendment, was that I wanted to see whether some balance could be achieved. The next amendment, as has already been indicated, makes it a criminal offence where the defendant ought reasonably to know that the property was tainted. The major difference between South Australia—if this amendment is passed—and the rest of Australia, other than New South Wales, is that the severe, 20-year penalty (which is the provision in the current law) requires knowledge to be proved by the prosecution beyond reasonable doubt.

The Hon. T.G. Cameron: Or a guilty plea.

The Hon. K.T. GRIFFIN: Or a guilty plea; yes, that is right. So, the higher end of the scale retains the general principle of the criminal law about knowledge or intention. This amendment came about because the National Crime Authority said that there were examples of cases where persons against whom it could not be proved that there was actual knowledge that the property was tainted would have been able to be convicted on the basis of the circumstantial evidence. One of the examples given—and I do not have the correspondence with me—was of a person taking bundles of cash on the one day to three or four different banks and depositing them in different accounts.

The reasonable suspicion, I think, is that in those circumstances, combined with some other factors, it could be proved that the person ought to have known that this money was tainted as a result of the practice that was being adopted of putting bundles of cash into different accounts in different banks all on the same day.

The Hon. CAROLYN PICKLES: These amendments were given to me today in detail and I have not had an opportunity to talk to my colleague in another place, but I do not wish to hold up the bill so we will support the amendments in this place and, if there are some questions to be raised between the houses, perhaps my colleague the shadow Attorney-General can talk to the Attorney-General about those issues. Clearly the difficulty is with the NCA. If we do not have nationally consistent legislation, it makes it very difficult for the NCA to act. When we are talking in terms of money laundering, I guess that specifically we are talking mostly about drugs and other criminal activities.

The Hon. K.T. Griffin interjecting:

The Hon. CAROLYN PICKLES: Organised criminal activity. I do not wish to make the role of the NCA any more difficult than it is at the present time. It has a very difficult

job to perform and we in this state have seen some terrible action taken against the NCA. However, I ask the Attorney-General whether he has consulted with the Law Society on this amendment and, if so, what its comments were.

The Hon. K.T. GRIFFIN: I did not consult with the Law Society on this amendment. One must remember that we remain an exception because, in all other jurisdictions except New South Wales and, of course, South Australia, the 20-year maximum penalty applies in the circumstances of the lower level of proof required. That is why, as I said earlier, we have endeavoured to retain the integrity of the normal criminal rules, that is, the knowledge that it was tainted has to be proved, for there to be an exposure to the 20-year penalty. On the other hand, this new offence, which brings us into line with other jurisdictions, is at the lower end of the penalty range. It is a minor indictable offence. From the government's point of view, we are comfortable with that.

Money laundering is raised in a number of contexts—not just drug trafficking but also organised criminal activity. It was raised more recently in relation to the laundering of money for terrorism purposes. I think that we have a good balance between the provisions that exist in other jurisdictions and what is reasonable in the circumstances to deal with money laundering where a person ought to have known that the money or the property was tainted but perhaps was reckless as to whether or not the property was tainted and merely may have had a suspicion but not the actual knowledge. That is the issue that we have to address and, as I said, I am comfortable with the amendment because it provides that balance.

The Hon. CAROLYN PICKLES: I note that the NCA clearly contacted the government to ask that we be brought into line with the rest of the country, but we still have a difference in South Australia. Is the NCA satisfied with the government's amendment?

The Hon. K.T. GRIFFIN: I did not go back to the NCA and say, 'Will you agree with this?' We took the view on a matter of principle as to the way in which this should go, and I think it is a balanced approach. It goes a long way towards satisfying the NCA. In the end, it is a question of whether or not there will be a conviction rather than whether or not it is a huge penalty or a four-year penalty. Four years is still a long time as a maximum. It has the advantage of being able to gain access to the property which is the subject of the offence and to enable it to be confiscated.

The Hon. CAROLYN PICKLES: I thank the Attorney for his comments. I put on the record that I think, with respect to the offence of money laundering for criminal activity, particularly with drugs and some of the activities in South Australia in relation to bikie gangs, it is very important that the NCA can secure a conviction, so I hope that this goes a long way to ensuring that convictions are secured.

The Hon. IAN GILFILLAN: From a matter raised in conversation with the Hon. Terry Cameron and because the wording in the explanation and in the heading 'money laundering' points it out quite emphatically, I am assuming that the offence, the property and the transactions that we are talking about in this amendment relate exclusively to money laundering. That is the understanding I have from the way this amendment is presented.

The Hon. K.T. Griffin: Yes.

The Hon. IAN GILFILLAN: That has been confirmed by the Attorney, but I put on the record before the committee that I am profoundly concerned about that. I make one other observation that, in the penalties for the clear offence, in which there is no ambiguity, a natural person can suffer a maximum penalty which is equivalent to murder, so it is taken very seriously, yet in the case of a body corporate, in the terms of a substantial corporation or a corporation that is involved in this activity, it is a relatively minor penalty of a fine of $600 000.

Coming back to proposed new subsection (2), we always find that we can justify some sort of twist and bending of legislation if we can portray a circumstance that will appeal to the emotive and the justified concerns, sometimes, of a community. One of our obligations is to distance the legislation from what might appear to be the persuasive argument of circumstances at the time. The reference by the Leader of the Opposition to bikie gangs may be reasonable in the context of the debate, but it ought not be overwhelmingly persuasive to pass legislation that will be applicable not only to bikie gangs. It will expose people in our community to a risk, which is a far more tenuous, insecure and unsafe situation than subsection (1).

I would feel much more at ease with accepting this, if I were to accept it, if I had more evidence of typical cases where a satisfactory conviction had been achieved on the basis of new subsection (2). Although we may be a minority of states, New South Wales is no insignificant jurisdiction, and I do not know and I have not heard yet whether New South Wales is contemplating changing, but it may have very good reason to have remained as we have until now. I oppose new subsection (2) of this amendment. From that point of view, I have some disquiet about it, but I do not intend to divide on it. The rest of the procedures seem to be satisfactory but I emphasise my profound concern about proposed new subsection (2).

The Hon. K.T. GRIFFIN: My understanding is that New South Wales has its crime commission and it also has a civil confiscation regime for confiscation of criminal profits, so it is much broader than what we have in South Australia. We have a criminal conviction based regime for dealing with confiscation of profits of crime, and proposed new section 138(1) has been a money laundering offence in this state since the late 1980s. It is only subsection (2) which is the new provision. In so far as New South Wales is concerned, it does not need to change its law. In this context, it is already broader than ours—and broader than ours will be.

In relation to the earlier question by the Hon. Mr Gilfillan, the definition of 'tainted property' has been in place since the late 1980s, and it means:

> stolen property or property obtained from any other unlawful act or activity (within or outside the State), or the proceeds of such property (but property ceases to be tainted when it passes into the hands of a person who acquires it in good faith, without knowledge of the illegality, and for value)

That is on page 7 of the bill, but it is consistent with the provision that has been part of the law of South Australia for the last 13 or 14 years.

The Hon. R.K. SNEATH: With the relaxing of the required evidence for conviction, does that mean that a person buying stolen property, such as a motor car without the knowledge of its being stolen, would have extra difficulty in proving their case under that definition? I find it pretty hard to follow that, if some innocent person purchased property that was stolen, it would add to their difficulty by its being easier for the prosecutor to prove that section than the above section.

The Hon. K.T. GRIFFIN: I do not think so. The definition of 'tainted property', which I just read out, says:

means stolen property or property obtained from any other unlawful act or activity (within or outside the State), or the proceeds of such property—

but then it goes on to say—

(but property ceases to be tainted when it passes into the hands of a person who acquires it in good faith—

so it has to be acquired in good faith—

without knowledge of the illegality, and for value.

If you buy a Rolex watch in the front bar and if it was a price that was not comparable with the price that you would normally expect to pay for a good, first quality, real Rolex, then the presumption has to be that it has not been obtained by lawful means. If you spend $20 on a Rolex watch in the front bar and subsequently—

The Hon. T.G. Cameron: It be will be a fake.

The Hon. K.T. GRIFFIN: Most likely will be.

The Hon. T.G. Cameron: Give a proper example, say, if someone offers you one for $1 000.

The Hon. R.K. Sneath: But if it is not a fake, you would say that person would have problems proving that they did not know.

The Hon. K.T. GRIFFIN: Yes, that they did not have knowledge of the illegality. It is a question of what the circumstances are in which you buy it. If you have a stolen motor vehicle, for example, and you buy it without checking the registration details, in those circumstances you are most likely to be required to disclose that if the theft is detected. There are all sorts of examples one could give, but I would not have thought that the passing of this new offence really compromises a person who is acting in good faith without knowledge of the illegality and is actually acquiring something for value.

The Hon. R.K. SNEATH: I do not think the Attorney-General's answer cleared that up for me. He gave an example of a Rolex watch, and there is no doubt that some people would think that a Rolex watch was stolen if someone was trying to sell it too cheaply, but then there is the other person who might not think that is the case, especially a young person. For example, a con artist could convince them that he was down on his luck and that is why the car or the property was cheap. Some young person could purchase something that was stolen at a ridiculous price by being conned and then, under this new section, not have the full extent of the law on their side as they would have under money laundering.

The Hon. CAROLYN PICKLES: On my understanding of the definition of money laundering in relation to the context of this bill, the NCA is probably not too fussed about $10 transactions in front bars. Would that not come under receiving offences rather than this particular offence and, similarly, knowingly taking a stolen car would be a receiving offence? On my understanding, we are talking about very large sums of money which people wash through various means. For example, they might buy a property in the hills and somehow launder it or try to clean the money somewhere. We are not talking about small transactions in front bars, and I think we should clarify that. I would have thought the offences about which the Hon. Bob Sneath is talking are more related to receiving than this context.

The Hon. K.T. GRIFFIN: The Leader of the Opposition is correct. It was probably unfortunate that I started to get into the front bar analogy. Obviously, receiving stolen property—

The Hon. T.G. Roberts interjecting:

The Hon. K.T. GRIFFIN: I do not frequent front bars, but I hear the stories about what happens in—

The Hon. T.G. Cameron: Have you ever been in one?

The Hon. K.T. GRIFFIN: I have been in a front bar. I try to avoid them because they are usually filled with cigarette smoke. It was a misleading analogy to use. The Leader of the Opposition is right. In relation to the sorts of transactions in property, receiving is more likely to be the proper offence for which someone may be charged. This offence is predominantly about cash, and large amounts of cash, and there is no rational explanation for being in possession of cash and using it for a particular purpose. That has very largely been the focus of money laundering offences in the past and will continue to be in the future. What this new offence does not say is, 'You cannot have large lumps of money, but if you have no rational explanation for it and there is some indication of illegality, then you may well have committed the offence.'

In this state, the criminal conviction based regime for confiscation of profits applies. Last year I think nearly $800 000 was confiscated. There is a bit of pressure on all jurisdictions around Australia to look at a civil based confiscation regime without having to prove the offence to the criminal standard. That is something that parliament will have to come to grips with at some time in the future, but that is not the issue at the moment. The issue at the moment is about money laundering and how we can achieve a conviction and thereby confiscation in circumstances where all the evidence points to illegality and where the NCA and others cannot prove beyond reasonable doubt that the person who is actually passing the money had knowledge that it was tainted but nevertheless all the facts and circumstantial evidence point to the fact that it was unlawfully obtained. That is the issue. I understand the concerns that members are raising, but I do not think those sorts of risk apply in relation to this lesser offence.

The Hon. T.G. CAMERON: The Attorney has covered a number of the queries I had in the answers he has given to the questions already put forward, but I want to follow up on something that the Hon. Ian Gilfillan adverted to, because I think it is a weakness in the legislation, and that is the maximum penalty. In the case of a body corporate for the higher offence it is $600 000 and for the lower offence it is $120 000. That equates roughly to $30 000 for each year in prison. With an offence carrying an imprisonment term of 20 years (and I do accept that even the lesser offence could see some people charged who may be innocent, but I guess they would have to go to court if this goes through), it seems to me that it is obvious that anybody deliberately setting out to launder money will just go to their lawyer and for $1 000 set up a shelf company or a company and conduct their transactions through that company.

I notice that we have nothing in here that may pick up a director of that company for a gaol sentence. If someone had been involved in a scam involving $10 million or $20 million, they have a body corporate and are fined $500 000, they would be rubbing their hands and saying, 'Thank you very much' and would be on their way, and there would be no way of catching that director. I am inclined to agree with the point that I think the Hon. Mr Gilfillan made that the penalties appear to be too low. Is there some way that we can pick up the director of a company that engages in money laundering? If you look at the nature of the offence likely to be created, you will see that it is more likely that they would be doing it behind the front of a company. Particularly if they had any assets at all, they would be unlikely to conduct these transactions in their own name.

The Hon. K.T. GRIFFIN: Subsection (1) is a provision which is already part of our law, including the penalty in relation to bodies corporate. Subsection (1), for example, provides that a person who engages directly or indirectly—the emphasis being on indirectly—in a transaction involving property the person knows to be tainted property is guilty of an offence. The same applies in relation to subsection (2) for the subsidiary offence. If one thinks it through, I do not think the person is likely to be successful who goes to the Australian Securities and Investment Commission and sets up a corporation, maybe with one or two shareholders and one or two directors, and seeks to use that vehicle, because in the end there is some person—

The Hon. T.G. Cameron: It worries me when you use the words 'do not think'. Why do they use these company vehicles? Is it to cloud the issue, hoping a magistrate might come to that conclusion?

The Hon. K.T. GRIFFIN: It is my view that because we are using the words 'directly or indirectly' we will pick up a person who may be the promoter of a company which is then used to launder money but, in any event, the problem is that the company can act only through an individual. So, when a person goes to the bank, even though that person may deposit money into a bank account in the name of the corporation, it is the individual who is actually passing that money who is caught by this provision. So, ultimately it always comes back to the individuals involved in the transaction. You see the point that I make? I do not believe that this will create the sort of problem to which the Hon. Mr Gilfillan and you have referred.

In a sense, the penalty for corporations is really a subsidiary issue; it is a relatively minor consideration because, in the end, a corporation acts through individuals. So, with a corporation acting through an individual, whether they be the director, a manager or some other person, the individual will be caught. If it happens to be on behalf of a corporation, I suppose that may be a bit more difficult to prove, unless it is being paid into a company account, but that is not the major focus. In any event, when the NCA made representations to me with respect to the offence, they did not relate to the issues of penalty: they were concerned about the offence which was created and the ingredients required to establish the offence.

Amendment carried.

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

Page 10, lines 14 to 18—Leave out new section 138 and substitute:

Money laundering

138 (1) A person who engages, directly or indirectly, in a transaction involving property the person knows to be tainted property is guilty of an offence.

Maximum penalty:

In the case of a natural person—Imprisonment for 20 years.

In the case of a body corporate—$600 000.

(2) A person who engages, directly or indirectly, in a transaction involving tainted property in circumstances in which the person ought reasonably to know that the property is tainted is guilty of an offence.

Maximum penalty:

In the case of a natural person—Imprisonment for 4 years.

In the case of a body corporate—$120 000.

(3) A transaction includes any of the following:

(a) bringing property into the state;

(b) receiving property;

(c) being in possession of property;

(d) concealing property;

(e) disposing of property.

This is the substantive provision we have actually been debating. I do not think it is necessary for me to go over the bases upon which we have moved to insert the new section.

Amendment carried.

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

Page 13, line 17—Leave out 'AND PAYOLA'.

This is consequential upon the splitting of the bill.

Amendment carried.

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

Page 14, line 1—Leave out 'council or other'.

This amendment is consequential upon the earlier amendment dealing with the definition of 'local government body'.

Amendment carried.

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

Page 14, lines 2 to 7 (inclusive)—Leave out the definition of 'public information medium'.

This amendment is consequential upon the splitting of the bill.

Amendment carried.

The CHAIRMAN: I put the question: that new sections 151 to 153 as proposed to be inserted by clause 3 be postponed until after consideration of the Criminal Law Consolidation (Offences of Dishonesty) Amendment Bill has been reported and concluded.

Question carried.

New section 154 passed; clause as amended passed.

Clauses 4 to 7 passed.

Clause 8.

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

Page 20, lines 19 and 20—Leave out 'by inserting after its present contents (now to be designated as subsection (1)) the following subsection:' and insert:

—

(a) by striking out the definition of 'local government body';

(b) by inserting after its present contents as amended by paragraph (a) (now to be designated as subsection (1)) the following subsection:

This amendment is consequential upon the earlier amendment dealing with the definition of 'local government body'.

Amendment carried; clause as amended passed.

Clauses 9 to 12 passed.

New clause 13.

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

Page 22, after line 10—Insert:

Insertion of s.330

13. The following section is inserted in Part 9 of the principal act after section 329:

Overlapping offences

330. No objection to a charge or a conviction can be made on the ground that the defendant might, on the same facts, have been charged with, or convicted of, some other offence.

There is considerable overlap between some offences of dishonesty. This fact has given rise to protracted and very complex litigation in the United Kingdom. The current act contains a provision which partly deals with the problem. Section 195(3) of the current act, in relation to obtaining by false pretences, provides:

If on the trial of any information under subsection (1)(a) it is proved that the accused stole the property in question, he shall not by reason thereof be entitled to be acquitted of obtaining the property by false pretences.

The model criminal code draft contained a similar provision, as follows:

17(2)(vi) A conviction for an offence against this section is an alternative verdict to a charge for the offence of theft and a convic-

tion for the offence of theft is an alternative verdict to a charge of an offence against this section.

When we were consulting on the draft there was a submission that the current bill should be amended to include a similar provision. We agree with that submission but think that the provision is of general significance. That is why it has been generalised and placed in the appropriate part of the act.

The Hon. R.K. SNEATH: Does that have any effect on a person who might be charged with receiving and who then might not be able to defend their rights not to be charged under clause 3?

The Hon. K.T. GRIFFIN: It avoids the overlap, so if you have been charged with receiving you cannot argue that you should have been charged with theft. It is designed to avoid people playing technical games.

New clause inserted.

Schedules 1 and 2 and title passed.

Bill read a third time and passed.

CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) (MISCELLANEOUS No. 3) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 26 September. Page 2233.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The opposition supports the second reading. The subject of classification has been on the *Notice Paper* in one form or another for many months now. Unlike the other bill, which proposed a system of classification for the internet, this bill is very simple and without controversy in its intention. It seeks to achieve legislative consistency in this area with commonwealth amendments that were passed last March. The states and territories have until 23 March next year to get similar amendments through. As the amendments are minor and largely technical, they do not require too much detailed attention.

Briefly, the bill seeks to amend the definition of 'film' to ensure the soundtrack to the film is also included. The bill expands the definition of 'persons or organisations eligible to seek review of a classification by the review board'. Practical amendments are made to the bill and the Attorney gives us an example of that. The commonwealth act has necessitated consequential amendments to our act. For example, definitions have been amended which include a new definition of 'international flight': this means that a carrier passing through our airspace en route will not be subject to Australian classification laws. The range of films and computer games which are exempt from the classification requirement has been expanded. The state act will be amended to ensure it does not apply to an exempt film or computer game. The bill also contains other amendments which relate to category one publications in restricted premises to bring the state act into line with the commonwealth act. We support the second reading.

The Hon. T.G. CAMERON: This bill mirrors commonwealth legislation which was recently passed: that is uniform legislation, as I understand it, which has been agreed to by all state parliaments. This bill makes only minor and technical amendments to the act, chiefly making the state legislative scheme consistent with the commonwealth scheme. The new provisions of the act enable state classification councils to have the same calling powers as the national council; and category one restricted publications in a restricted area to be displayed but delivered in an opaque cover. It clarifies requirements as to pay and play computer games, that is, coin-operated machines displaying classifications.

Examples of the technical provisions include the following: the definition of film now includes the soundtrack of the film, which can be appropriate; broadening the scope of computer games to include add-ons which may require different classification; expanding the range of films exempt from classification; allowing the board to require an unrestricted publication to be sold in a sealed bag; and clarifying the powers as to international and domestic flights and classification of films therein. SA First supports the bill and would only hope that our police force would do something about enforcing it.

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

FAIR TRADING (PYRAMID SELLING AND DEFENCES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 25 October. Page 2460.)

The Hon. T.G. CAMERON: I have a brief contribution to make in relation to this bill. You would be surprised at how many people have been parted with their hard-earned savings over the years through various schemes of this nature, sometimes involving considerable sums of money. But there have been two events which have caused the offence of pyramid selling to be reviewed at the current time. The first was a South Australian Supreme Court case, Gilmore vs Poole-Blunden, which identified the need to amend the defence available to defendants in cases of pyramid selling. The other reason was a national audit of consumer protection law. The amendments will be entered into other states' fair trading acts and the Trade Practices Act. It replaces a set of provisions with model provisions in what is referred to as a plain English rewrite. I think it is something to be welcomed in other legislation. A pyramid selling scheme is one where the payment of money to join the scheme is based entirely or substantially on the prospect of payments for recruiting people to the scheme. SA First supports this bill.

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

[Sitting suspended from 5.56 to 7.45 p.m.]

GENE TECHNOLOGY BILL

Adjourned debate on second reading.

(Continued from 1 November. Page 2601.)

The Hon. P. HOLLOWAY: The opposition supports the second reading of this important bill. This bill, of course, comes to us from the House of Assembly where it was debated at some length, so I will make my comments relatively brief, but it is certainly a most important measure. This bill is necessary to ensure that South Australia meets the requirements of the national scheme to regulate genetically modified organisms. All states and territories under the Gene Technology Intergovernmental Agreement have agreed to introduce legislation in their respective parliaments to ensure

that the national scheme applies consistently throughout Australia. Therefore, it follows that, if we are to be part of the national scheme, as I believe we should be in this and many other areas, essentially we must pass this bill in its existing form. Even if we as one state might disagree with small parts of this bill, I think we have to accept the fact that it is better to have a nationally agreed scheme than to have no scheme at all. It is my understanding that New South Wales, Tasmania and the Northern Territory are yet to sign the intergovernmental agreement but that these jurisdictions have agreed to sign it and that this will take place in due course.

The national regulatory scheme includes the commonwealth Gene Technology Act 2000 (which commenced on 21 June this year), commonwealth regulations, complementary state and territory legislation, the intergovernmental agreement (to which I have referred) and a ministerial council. The Gene Technology Act 2000 establishes the Gene Technology Regulator, which administers and enforces the legislation. According to the regulator's web site, it is also responsible for assessing any risks posed by GMOs, informing and advising other regulatory agencies, states and territories and the public about GMOs and GM products, and providing reports to parliament on an annual basis.

At the time the office of the Gene Technology Regulator was launched in June this year, my federal colleague Mr Alan Griffin, parliamentary secretary to the shadow minister for health, expressed some concerns about the lack of policy principles or guidelines for assessing the risk involved in applications. In a media statement dated 21 June, Mr Griffin stated:

> Labor has said over and over again that the future of Australian biotechnology and gene technology industries depends on public confidence, and public confidence comes as a result of rigorous, effective and transparent regulation.

Another concern of the ALP at the time of the launch was that a regulator had not yet been appointed to run the office. Mr Griffin stated at the time:

> . . . they have not yet appointed a regulator to run the office and, according to answers given in senate estimates, we won't see one for some months. Instead, the new office will be under the direction of the person responsible for overseeing the interim office that has been criticised by a parliamentary committee for not doing its job properly or openly.

I have since noted that, according to a press release of the federal Minister for Health and Aged Care dated 30 September this year, a regulator has been appointed to commence in December 2001, some six months after the office was launched. According to the minister's explanation of the bill before us, the Gene Technology Regulator is responsible for regulating dealings with GMOs in South Australia through a national licensing system. This covers research, field trials and commercial releases. When deciding whether to approve a licence application, the regulator must give consideration to the potential impact of the GMO on public health and the environment. Applications are automatically provided to the states for their advice.

The Gene Technology Act 2000 also establishes a ministerial council which sets the policy framework under which the regulator functions. Three advisory committees—the Gene Technology Technical Advisory Committee, the Gene Technology Community Consultative Committee and the Gene Technology Ethics Committee—provide advice to both the regulator and the ministerial council. I believe it is important to note the position of the federal opposition in relation to the Gene Technology Act 2000. While it was ultimately supported, the parliamentary secretary to the shadow minister for health stated the following:

> The legislation was passed in the end with the support of the opposition. We worked closely with the government in order to ensure that some amendments were put in place that would improve the transparency of the system and place more publicly available information on the record in order to ensure that there was a rigorous capacity to understand what the regulator was doing and in that way ensure a better regulatory system.
>
> We were not totally happy with what was passed, although we believe that, other than in a couple of areas, it was very good legislation. I concur with the view of the government that at this stage the legislation is world's best practice, although I think it still could have been improved to a degree. The important thing was that we needed to get a system in place and, if we did not get a system in place sooner rather than later, then the problems which already existed would get much worse.

That is a quote from the shadow minister in the House of Representatives on 25 June. That quote, probably, pretty well sums up my views on this bill. It is better that we get something in place. I am sure that, from time to time, in an area of emerging technology such as this, we will be amending this bill to address issues that arise.

The Hon. Diana Laidlaw: We will always be catching up.

The Hon. P. HOLLOWAY: Yes, we will always be catching up; it is that sort of area. Nevertheless, it is important that we get the system up. It does require an intergovernmental agreement between the commonwealth and the states because, of course, there are areas where GMOs have impacts that come under both state and federal legislation. It is important that we have this scheme in place and, certainly, I must say that the signs so far can make us all rather hopeful that the system will work well and address the many complex issues involved. While the commonwealth legislation was supported by the federal opposition, some concerns were expressed about the actual operation of the legislation and public perception of the legislation.

This concern was echoed by this parliament's Social Development Committee which, as a result of a motion passed in the other place on 6 April 2000, conducted an inquiry in two parts: Biotechnology in Health and Biotechnology in Food Production. Those reports from the Social Development Committee are currently before this parliament. In its report regarding Biotechnology in Food Production, the Social Development Committee stated:

> A general distrust of scientists and multinational companies who are developing the technology became apparent to the committee. . . A common theme emerging from witness statements, whether supporting or decrying gene technology, was the need to increase the public's understanding about the processes, benefits and threats associated with the technology.

In summary, the committee stated:

> To date attention on the issue has centred on promotion of opinion rather than on promoting understanding and factual information and, in the interest of the public, this approach needs to be replaced with one which educates and informs.

At the ALP National Conference in 2000, the following commitment was made:

> That all Labor governments should develop or adopt a comprehensive code of ethical practice for biotechnology in Australia.

The ALP is committed to public consultation on the health, safety, ethical, environmental, legal and employment implications of genetic technologies in the medical, agricultural and research sectors. This is vital to ensure that the community is not left behind in this debate. Education must be a central plank to any advance in gene technology. We

support the passage of this bill. It is important that we do get something in place. I know that, in the dying days of this parliament, it is important that we get this bill through—

An honourable member interjecting:

The Hon. P. HOLLOWAY: —and perhaps of this government. As I said at the commencement of the debate, there was a very lengthy discussion in the other place, so I will not go through all the many issues involved in it here. Of course, it will transpire that, in the future, many issues will need to be addressed in relation to genetically modified organisms. I guess that, on this subject, we will have to try to keep abreast of scientific developments that are happening so rapidly. The opposition supports the bill. We look forward to its passage and a regime put in place that, hopefully, will put some order into the very rapid development of GMOs in our community.

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

RETAIL AND COMMERCIAL LEASES (CASUAL MALL LICENCES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 1 November. Page 2616.)

The Hon. CARMEL ZOLLO: The opposition supports this legislation. The issue of casual mall licensing is one which has, from time to time, been brought to the attention of the opposition; and, when the Hon. Nick Xenophon first filed amendments to reflect that concern in what was then a GST amendment bill, the opposition supported it as well as indicating support for his subsequent private member's bill. The GST legislation was, of course, not proceeded with, but the opposition's amendments to that bill in relation to assignment of leases did receive support in an amended form and were subsequently passed.

The issue of casual mall licensing was then referred to and addressed by the Retail Shop Leases Advisory Committee. I note the consultation that has occurred in the sector, in particular the signed letter of understanding between the interested parties. The signatories to the letter are representatives of the Westfield Shopping Centre Management (Westfield Head Office), the Property Council of Australia, the Shopping Centre Council of Australia, the Newsagents Association of South Australia, the Australian Small Business Association and the Australian Retailers Association.

I noted that the letter was not signed by the Small Retailers Association of South Australia. In subsequent discussion with its representatives, it was indicated that the association is realistic enough in its understanding that a consensus by the other signatories was reached in relation to this code of practice. However, neither representative felt that they could sign off on the agreement. The comment was made that the fact that legislation is before us now recognises that there is a problem, but they are of the view that this legislation will not solve the problems being encountered; rather, they believe that it will strengthen the rights of the landlords and, as such, it was felt that this particular legislation is not necessarily in the best interests of their members.

Concern was expressed that what we will end up seeing is every tenant being offered casual mall space, and if it is not accepted grounds for grievances could be deemed as not existing. Apparently the Small Retailers Association of South Australia still finds itself asking the question: who is the most important person in the centre—someone who takes out a lease for some five years and makes a long-term commitment, or someone who comes in for a special promotion? The Small Retailers Association believes that this legislation does give significant advantages to lessors by formalising the process.

Obviously, it means receipt of extra income from those who are paying for the privilege of casual mall licensing. Basically, the association sought simple parity but believes that what we are seeing in this code is a very much formalised system, which is not very simple at all. However, given the obvious consensus, the association made the decision to state its point of view rather than be malicious in trying to prevent this legislation. In relation to the Property Council of Australia, in August this year—along with the shadow minister for consumer affairs and shadow attorney-general, the member for Spence in the other place—I was pleased to have been given the courtesy of meeting with Mr Milton Cockburn of the Shopping Centre Council of Australia.

We discussed what stage the negotiations had reached and the efforts of the committee to reach some sort of consensus. The bill before us seeks to establish a casual mall licensing code as set out in a new schedule to the Retail and Commercial Leases Act 1995. As already indicated, some compromises have had to be made. The code provides a legislative framework in which casual mall licensing can operate. It clarifies the entitlements and expectations of those affected parties, as well as ensuring that lessees have access to greater information about casual mall licensing in retail shopping centres. As to be expected, the greatest concern of lessees is protection from unfair competition in the granting of casual mall licences.

I note that the Attorney advised that the introduction of the code will require an education and publicity campaign to advise interested parties and that that campaign will be undertaken in conjunction with industry. The advisory committee will also be charged with monitoring how the code of practice is working. Given the concerns of the Small Retailers Association of South Australia Inc., I am glad to see this statement by the Attorney. A full explanation of the schedule appears in *Hansard*, so I see no reason to repeat what is in the schedule. Rather, I indicate that, when appropriate, I will be asking questions during the committee stage, in particular in relation to clause 6, 'Competitors', which deals with the granting of casual mall licences to competitors of adjacent lessees. As indicated, the opposition supports the legislation.

The Hon. NICK XENOPHON: I indicate my support for this bill. The Hon. Carmel Zollo has summed up the position very clearly in terms of the history of this legislation and the concerns of the State Retailers Association, previously known as the Small Retailers Association. The history is that some 12 months ago I moved amendments, as did the Hon. Carmel Zollo, in relation to assignments. With the support of the opposition, the Democrats, SA First and Independent Labour, both those amendments with respect to assignments and casual mall leases were passed. As a consequence of that, a process of considerable negotiation and discussion was convened by the Attorney involving all relevant stakeholders including the Shopping Centre Council, the Australian Retailers Association, the State Retailers Association, the Newsagents Association and the Office of Consumer and Business Affairs.

While this legislation does not go as far as I would have wanted in terms of protecting the interests of tenants, still it

is legislation that goes further than that in any other jurisdiction, as I understand it. It is certainly a step in the right direction. I am concerned that it may not have the desired effects in terms of protecting the interests of tenants, but the Attorney ought to be commended for a lengthy and painstaking approach in dealing with this issue. The consultation has been useful. When I met with Mr Milton Cockburn from the Shopping Centre Council a number of weeks ago, he made the point that the hands-on approach by the Attorney was welcomed and was almost unique compared with other states where that sort of attention and consideration would not have been given, and the Attorney ought to be congratulated on that.

The Shopping Centre Council made the point that the process has been positive, that it has made concessions with respect to the concerns of tenants in relation to casual mall leasing, and I note the support of the Newsagents Association and the Australian Retailers Association. I am concerned that the State Retailers Association is remaining neutral on this whole issue, that is, it is not supporting the bill but neither is it opposing it actively, and obviously it has concerns about its implementation. I am willing to see how this bill will be implemented over the coming months, the impact that it has on tenants, and I think that the process has been very good in the end, that at least we have an acknowledgment from the government and from the Shopping Centre Council that reform was necessary and, at the very least, this piece of legislation goes further than legislation in any other state.

The Attorney ought to be congratulated for a process that began as a result of amendments that were moved some 12 months ago, and I would like to think that the interests of tenants in respect of casual mall licences are now being protected in South Australia more so than in any other state or territory. If the legislation does not have the desired effect, it is something that parliament ought to revisit some time next year. I support the second reading of the bill. Like the Hon. Carmel Zollo, I have some questions in relation to some of the clauses, particularly as to how clause 6 with respect to competitors will work. I indicate that to the Attorney, but I look forward to the passage of this legislation in the current session.

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

FAIR TRADING (PYRAMID SELLING AND DEFENCES) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 2644.)

The Hon. IAN GILFILLAN: My contribution indicating support is brief, so members will have to listen hard and quickly if they are going to hear it. The aim of the bill is to address concerns raised by a national audit of inconsistencies and deficiencies in consumer protection law conducted by the commonwealth. The concern raised related to the pyramid selling provisions of the Trade Practices Act 1974 and indicated that the provisions were unclear and difficult to follow. The amendments clarify this.

The other proposed amendment to the act arises from the decision in Gilmore v. Poole-Blunden. This relates to defence provisions within the act. I note that the Law Society has reviewed the bill and found that it achieves the objectives as stated by the Attorney-General. All is sweetness and light and therefore the Democrats support the second reading.

The Hon. NICK XENOPHON: Ditto!

The Hon. T. CROTHERS secured the adjournment of the debate.

PRICES (PROHIBITION ON RETURN OF UNSOLD BREAD) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 31 October. Page 2575.)

The Hon. IAN GILFILLAN: This is a longer contribution, so members will have time to relax in their seats. We support the second reading of this bill, which is a great relief to the Attorney—who is not paying attention.

The Hon. L.H. Davis: Is this under instructions from Natasha?

The Hon. IAN GILFILLAN: Well, the bread of life. The aim of the bill, apart from dealing with inane interjections from both sides of the chamber, is to address a problem that arises from the expiration of the prices regulations of 1985. It relates to the prohibition on the return of unsold bread by retailers to the bakery that supplied it. That was prohibited in the 1980s as it was considered an unfair burden on smaller bakeries that could not afford to dump or give away the unsold bread. I am sure that some of the older members of this place can still remember the exciting debate we had over that legislation!

The regulation-making powers of the Prices Act in regard to unsold bread provide that regulations may be made to:

> (b) prohibit any transaction or arrangement under which financial relief or compensation is directly or indirectly given or received in respect of bread that, having been supplied for sale by retail, is not sold by retail.

However, as the Attorney-General rightly points out, that does not apply to bread returned without financial relief or compensation. That is very perceptive of the Attorney-General, which is how he got the job and has held it so long. To remedy this, the bill before us adds the following paragraph to the regulation-making powers of the act:

> (ba) prohibit the return of bread referred to in paragraph (b) to the supplier of the bread whether or not financial relief or compensation is directly or indirectly given or received in respect of that bread.

That means it is an offence to throw the old bread back over the fence into the bakery. You could have a very serious problem—

The Hon. T.G. Roberts interjecting:

The Hon. IAN GILFILLAN: Anti-sparrow; pro possum. While I would have thought that for drafting purposes it may have been better to amend paragraph (b) rather than adding another subsection to the act, the amendment moved by the Attorney-General does achieve the desired effect. The measures are uncontroversial and logical in nature, and we support the second reading.

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

LAW REFORM (DELAY IN RESOLUTION OF PERSONAL INJURY CLAIMS) BILL

Adjourned debate on second reading.

(Continued from 1 November. Page 2621.)

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their support for this bill. The history of this bill is as follows. The Hon. Nick Xenophon introduced a bill that drew attention to the fact that there is an incentive for defendants and persons who control the defence of claims for personal injuries to delay the resolution of claims of claimants whom they think are likely to die in the near future. His bill was to remedy this in cases in which the claimant suffered an industrial related condition. The government considered that any amending legislation should be wider in scope and different in approach. It devised this bill as an alternative to the Hon. Nick Xenophon's bill.

I circulated a draft of the bill to over 90 people for comment and submissions before its introduction on 26 July 2001. I said that, if the bill introduced by the Hon. Nick Xenophon was passed, the government would reconsider this bill. Later that sitting day, the bill introduced by the Hon. Nick Xenophon was passed by the Council with amendments under the new title Survival of Causes of Action (Dust-Related Conditions) Bill 2001. That bill was passed by the House on 4 October and has come into operation.

The bill now before the Council was circulated for further comment and submissions. Approximately 20 replies were received. The responses were mixed, but the majority either supported it in principle or confined their comments to drafting issues. A minority, including the Law Society of South Australia, opposed it on principle. The government has decided to proceed with this bill, notwithstanding the passage of the Survival of Causes of Action (Dust-Related Conditions) Act. However, I foreshadow that I will be moving an amendment to avoid overlap between that act and this bill. Also I intend to move amendments to clarify the drafting of some provisions.

The Hon. Ian Gilfillan raised some questions based on a communication to him from the Law Society of South Australia. The same or similar points were raised in the society's response to my invitation to comment on the bill. The Accident Compensation Committee of the Law Society prepared the response. Its concerns fall into two broad categories. The first is an objection to punitive damages generally. The second relates to how the bill would work in practice. The first point relates to the nature of the remedy that this bill would provide.

The bill would give courts and tribunals a discretion to award against a defendant, or person who controls the defence, damages that include a punitive component. These damages may be awarded where the injured person, who is entitled to damages or compensation, has died before his or her claim has been resolved and it is proved that the defence side has unreasonably delayed resolution of the claim in the circumstances covered by this bill. If a case for award of delayed damages is made out, then the court is to determine the amount of the damages having regard to three factors: the need to ensure that the person in default does not benefit from its unreasonable delay; the need to punish the person in default for the unreasonable delay; and any other relevant factor.

The first one will include courts in determining the amount that the person in default has gained by the delay. The second factor will allow a court to award an additional amount if it considers that the conduct of the person in default warrants punishment. In this regard, it is important to remember that in this state awards of damages are made by judges and other judicial officers, not by juries. The third is any other relevant factor, and this may result, in some cases, in a reduction in the amount that would otherwise be awarded if the court had regard only to deprivation of the profits of delay and punishment.

It appears from the letter I received from the Law Society that the Accident Compensation Committee objects to the punitive element that may be comprised in these damages. In fact, it appears that it is opposed to the award of exemplary or punitive damages in any context. No reasons are given in the submission for this stand, either generally or in the context of this bill. For a long time there has been a common law power to award exemplary or punitive damages in tort cases in which the defendant acted with deliberate and outrageous disregard for the plaintiff's rights or, as it is often expressed, the defendant consciously acted wrongfully with contumelious disregard for the plaintiff's rights.

These are different from aggravated damages which are compensatory in nature. This bill would give a discretion to award damages that are like exemplary damages but in circumstances circumscribed by the bill. There has been considerable debate about common law exemplary damages. At the root of the debate is a difference of opinion about the role of the law of civil wrongs. Some argue that it is limited to compensation. Others argue that it includes the expression of disapproval of certain conduct and the deterrence of future similar conduct by the defendant and others. This is a debate of long standing that is unlikely to be resolved in the near future, if ever.

One of the virtues of the common law of torts is that it evolves and changes with changes in our society. Others who are not interested in the philosophy and underlying principles of the law of torts may be influenced by stories of large awards of exemplary damages made by juries, particularly American juries. However, the South Australian experience is very different. There are no civil juries in South Australia, unlike some other Australian states. South Australian courts and the High Court of Australia have been quite conservative in the exercise of their common law powers. In recent years, this parliament has passed several statutes that have provided for the award of damages in the nature of exemplary damages. They, like this bill, are designed to serve a particular purpose and I am not aware of any adverse criticism of the manner in which they have been used.

The English Law Commission, the Irish Law Reform Committee and the Ontario Law Reform Commission have all examined and reported on exemplary damages, or punitive damages as some prefer to call them. All recommended the retention and some extension of exemplary damages. The English Law Commission's examination of the topic was intensive. It published a discussion paper in 1993 and a supplementary discussion paper in 1995 and it reported to the parliament in 1997. It received 146 written submissions on the second paper, including many from members of the judiciary, barristers, solicitors, academic lawyers, the Scottish Law Commission and associations of lawyers and insurers.

The commission reported that a considerable majority of consultees favoured the retention of exemplary damages and 'a principled statutory expansion of the availability of exemplary damages'. The commission, which preferred the term 'punitive damages', concluded that they were useful for filling gaps in the law in which other remedies or sanctions are inadequate in practice to punish and to deter seriously wrongful behaviour. The Ontario Law Commission recommended that they be retained and that they be available in

cases in which the defendant engaged in the wrongful conduct for the purpose of making a profit.

The Irish Law Commission's opinion was that the primary purpose of an award of exemplary damages should be the deterrence of conduct similar to that of the defendant in the future. In its submission on this bill the Law Society of South Australia takes a different view. The punitive element of damages under this bill is essential to its effective operation. It is the potential for liability for punitive damages that would give the defence side an incentive to deal promptly with claims of people whom they know or should know have a very short life expectancy. If it were removed they may reason as follows. If we delay this case until the plaintiff dies, the worst that can happen is that we will have to pay the same amount by way of delay damages as we would have had to pay for general damages and some costs. The personal representatives of the deceased plaintiff might not pursue us for delay damages, in which case we will have saved the amount of the general damages. If they do, we can deny liability and probably settle for less anyway. If the bill leaves room for defendants and insurers to delay because they calculate that an award of damages would be less than the gain they expect to flow from the delay, the bill would not be effective.

I will now respond to the comments made by the Hon. Ian Gilfillan that fall into the second category. Some of the committee's concerns appear to be based on the belief that the bill is intended to attack lawyers. The society does not say so, but probably it has interpreted the definition of 'person in default' in proposed section 35C(1)(d)(ii) as including lawyers who are acting on instructions of the defendant, insurer or other person who controls the defence of the injured person's claim. That provision reads:

> The person in default is (1) the person against whom the deceased person's claim lay or (2) some other person with authority to defend the claim.

In the drafting of this clause the view was taken that normally legal practitioners do not have authority to defend the claim in any relevant sense but merely to act on the instructions of someone who does. I foreshadow that in order to avoid any doubt about this I will be moving an amendment to make clear that this clause is not intended to apply to a lawyer who is merely acting in his or her professional capacity on the instructions of the defendant or person who controls the proceedings.

Some of the committee's comments also seem to be based on the assumption that the plaintiff's solicitor could be sued for delay damages under this bill. With respect to the committee, this is a misreading of the bill. As is clear from proposed section 35C(1), damages may be awarded only against the person in default. The plaintiff's lawyer could not be the person in default for the purposes of this bill. Thus, talk of law claims being involved in most cases and plaintiffs' solicitors feeling forced to bring actions to trial too early is erroneous.

The committee suggests that the role of the court in the earlier action and its decisions will have to be scrutinised and an assessment made of interlocutory decisions of the court. This is incorrect. The nub of the action is unreasonable delay by the person in default, that is, by the defendant or person who controls the defence side of the proceedings. The court and its officers cannot be persons in default for the purposes of this bill. This bill would not provide a backdoor way of reconsidering court orders. Interlocutory decisions and matters such as the length of time between a court hearing and the giving of a decision would be merely items in the chronology of the course of the proceedings and a possible explanation for why trial of the deceased's claim for damages was not reached earlier.

The committee says that delay in the provision of medical reports is common and that it is likely that doctors will be joined as third parties in claims for damages under this bill. The bill would not give any cause of action against a doctor who was asked to provide a report as an expert witness. This is because the doctor is not a person in default as defined in the bill. If it could be proved by the personal representative of a deceased plaintiff that the defendant or insurer had an arrangement or understanding with a doctor that the doctor would go slow in these cases, then the defendant or insurer might be found liable for damages under this bill.

I am advised that the only circumstance in which a doctor engaged on the defence side to provide a report might be joined as a third party is when the doctor's failure to provide the report within a reasonable time amounted to negligence or breach of contract. In that case the defendant to the claim for delay damages might have a separate common law cause of action against the doctor, which might be conveniently heard together with the claim for delay damages.

The society expressed the opinion that claims for delay damages would in all probability be doomed to failure in almost every case. As with any new statutory remedy created by parliament, there will be some initial uncertainty about how the courts will apply it. I doubt that the society's prediction will prove to be accurate. The object of the bill is to deter unconscionable delay by defendants and those who control the defence. The existence of the new right to sue for delayed damages, even if difficult to establish, should have that effect. I think that addresses all the issues raised by members. If there are other issues, we can deal with them in committee on another sitting day.

Bill read a second time.

FREEDOM OF INFORMATION (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 25 July. Page 2063.)

The Hon. P. HOLLOWAY: The opposition will support the second reading of the government's freedom of information bill. This legislation was introduced by the government in response to the long awaited report of the Legislative Review Committee into the Freedom of Information Act 1991 and the subsequent bill that was introduced by the Hon. Ian Gilfillan and the Hon. Nick Xenophon. As I said in debate on Mr Gilfillan's bill, I first moved that the Legislative Review Committee inquire into and report upon the Freedom of Information Act back on 12 February 1997. At that time I stated:

> It is now almost six years since the freedom of information legislation was first introduced into South Australia. That legislation was designed to bring about a major change in the culture of government and public service. It was to change the culture from a presumption that a government is intrinsically secret and that information should only be released in exceptional circumstances to the presumption that governments should be as open as possible with information withheld only in exceptional circumstances.

The Legislative Review Committee found that the current legislation was not meeting the act's objectives and recommended a series of reforms, which were embodied in the draft bill. The Legislative Review Committee suggested that any

amending legislation should: make official information more freely available; provide for proper access by each person to official information relating to that person; protect official information consistent with the public interest and personal privacy; increase progressively the availability of official information for the people of South Australia; enable more effective public participation in the making and administration of laws and policies; and promote the accountability of ministers of the Crown and officials to enhance respect for the law and promote the good government of the state. These aims are central to any effective freedom of information legislation and its operation.

I stated during debate on the Hon. Ian Gilfillan's bill that the opposition had decided to support the government legislation rather than the more radical changes in the Hon. Ian Gilfillan's bill. I made the point that, at this very late stage of the parliamentary session, at least with the government bill there was some chance that we would have it in place before the next election.

The opposition accepts that the government bill, while not adopting all the reforms suggested by the Legislative Review Committee, does at least take account of the committee's concerns about the shortcomings in some aspects of the operation of South Australia's FOI legislation. The main aspects of the government legislation relate to who deals with FOI applications and the time taken to process applications.

The government proposes that the time allowed for agencies to process applications be reduced from 45 days to 30 days. The agency dealing with the application, however, will have the power to extend the time required to process the application, depending on the scale of the application. An applicant can appeal to the Ombudsman for a determination if they are unhappy with the delay.

A further amendment introduces the concept of an 'accredited FOI officer'. Each agency will be required to appoint an accredited FOI officer who will receive training on how to deal with applications and who will hold a senior position in the agency. The opposition believes that this is an important change and I may ask some questions on it when we get to the committee stage.

We have had the case in this state of the former Premier's chief of staff, Vicki Thompson, being the FOI officer dealing with FOI requests—and we know the comments that Mr Clayton made in relation to her actions. The point that comes out of this case is that it is entirely unsatisfactory to have as FOI officers the political staff of ministers (or in this case the Premier). If ever there was an example that showed how unsatisfactory that was it is the case of Vicki Thompson and the subsequent findings of the Clayton report.

The bill also gives greater power to the Ombudsman and the Police Complaints Authority during external review. Each will have the power to seek a settlement of an application and require cooperation of parties during a review process.

Finally, the bill includes local government and South Australia's three universities in its scope. In his second reading speech the Minister for Disability Services expressed the view that further refinement may be required during the recess. The opposition is aware that the Local Government Association has expressed some concern regarding certain clauses of the bill, and I will read into the record a facsimile from the Local Government Association which sets out the concerns of the LGA. It states:

> The Local Government Association seeks your support in addressing concerns in relation to the Freedom of Information (Miscellaneous) Amendment Bill.
>
> 1. Clause 4—The bill includes in a definition of agency a council, and 'any incorporated or unincorporated body established for a public purpose by or under an act'. It is unclear whether it is intended to include the Local Government Association and any single council subsidiaries and regional subsidiaries as these last two are bodies established by councils under the Local Government Act 1999.
>
> Remedy: Include the Local Government Association and single council subsidiaries and regional subsidiaries in schedule 2 of the act as exempt agencies.
>
> Rationale: The LGA is currently exempt and this would maintain and formalise the status quo. The inclusion of single council subsidiaries and regional subsidiaries, often of a business nature such as waste management, will ensure that competitors cannot access sensitive information.

The second point it makes is in relation to clause 33, as follows:

> The bill allows for the minister responsible for the administration of the act to develop and maintain appropriate training programs to assist agencies in complying with the act.
>
> Remedy: Amend to oblige the minister to also accept responsibility for the reasonable costs of providing access to training for councils' FOI officers.
>
> Rationale: There are procedural changes associated with the new requirements that will necessitate training by officers from all councils. This raises cost implications, particularly in relation to travel for officers of smaller country councils that are remote from Adelaide.

The third point is in relation to clause 24 of the bill, as follows:

> The bill would allow an agency to seek leave of the District Court to have a determination by the Ombudsman reviewed. An applicant's request for access is not subject to satisfying a court that its application has merit, as would be required by the council in seeking leave.
>
> Remedy: Amend to ensure the applicant has to satisfy a court that its application has merit.
>
> Rationale: The same requirement as applies to councils would ensure that the community does not have to pay for frivolous actions.

Other matters include:

> Clause 37—Transitional changes provide for incomplete applications at the time of the commencement of the amendments to the act, however the lead-up time required for council officers to undertake training needs to be allowed for.
>
> Remedy: We seek the minister's commitment regarding the commencement of the amendments to the act to ensure that there is an appropriate period of time to allow for council officers to be trained as accredited officers.
>
> Clause 7 of the bill refers to requirements as prescribed by the regulation. The Local Government Association seeks an assurance that we will be consulted in the drafting of the regulations.
>
> The LGA has forwarded this advice to other key members of the Legislative Council and we would appreciate your support on this matter.

They were the concerns that were raised by the LGA back in September. Uncertainty in relation to these local government issues has held up debate on the bill. It is my understanding negotiations are currently occurring between the minister and the Local Government Association, and the opposition will wait with some interest to see the outcome of those discussions. We will make our final decision on the clauses relating to these matters when we see the outcome of those discussions.

The opposition supports the bill, but while it does so it recognises that further changes to FOI legislation may be required to ensure that the FOI process in South Australia is seen to be completely open and fair. As I stated during the debate on the Hon. Ian Gilfillan's bill, the FOI legislation should be seen by the government as freedom of information and not freedom from information.

In concluding my comments on the bill I would like to reiterate some points that were made by my colleague in

another place, the Deputy Leader of the Opposition in the House of Assembly, Annette Hurley. The points that she made in a news release in May when the government first announced that it was looking at the issue I think are of some interest.

The Hon. L.H. Davis: Which house did she issue that from?

The Hon. P. HOLLOWAY: Which house—the House of Assembly. The points that my colleague made are as follows:

> The government can bring in any changes to legislation that it likes—but unless there is the will of government to follow it—it won't work. Giving greater powers to the Ombudsman is not only attempting to fix a problem from the wrong end—it is an admission that it has no intention of adhering to the spirit and objects of the act which favours releasing information—rather than withholding it.
>
> That is because by the time an FOI request reaches the state Ombudsman it has been refused at least twice by the government and the poor applicant has been forced to appeal yet again. Having said that, unless the Ombudsman is given more resources to deal with the growing number of FOI appeals it is asked to resolve, the '*sweeping changes*' will be rendered useless.
>
> The Ombudsman is already struggling under a tide of knocked-back FOI applications. Some people have been waiting several years for the Ombudsman to help resolve their FOI requests—simply because that agency doesn't have enough staff—and government hasn't the will to be helpful.

The point that my colleague also made was:

> The Olsen government—

as it then was—

> should immediately move to ensure that principal FOI officers in government agencies are no longer the personal political staff members of the Premier or his ministers—as some are now.

That was the point that I made earlier. We will pursue that matter. I am pleased to see that there is at least some tightening of that provision, and I will clarify that issue with the minister when we come to the committee stage.

In conclusion, there is no doubt that the FOI bill makes some advances and tidies up some areas such as, for example, the position of FOI officer. But, again, I make the point that for this sort of legislation to be effective it is necessary that any government should have the will to release information. Unless the government of the day is committed to the process of freedom of information, whatever legislation or whatever processes we have are unlikely to operate in the public interest.

During my speech I intended to provide a particular example in relation to seeking information under the FOI act which was a most unsatisfactory situation related to the fisheries area under the Department of Primary Industries. Unfortunately, I do not have the file with me but I will perhaps raise that issue during the committee stage. I have made a number of FOI requests of various government departments over the past six years, and the response has generally been mixed. In some departments they have responded promptly and fairly openly and in other cases it has been like pulling teeth. So, there is no doubt that the performance of the government under FOI legislation is very varied. As I said, during the committee stage I will provide an example when I was given misleading information—in my view, deliberately—by a person who is now the director of a department. The opposition supports the second reading of the bill.

The Hon. IAN GILFILLAN: I indicate that the Democrats support the second reading of the bill, although we believe that it is flawed. Nevertheless, on balance, it represents an improvement to the Freedom of Information Act 1991, even if it were passed in its present form. It is, however, my hope that this minimalist government bill can be significantly improved, and I intend to move a number of substantial amendments in the committee stage aimed at improving the bill so as to rectify many of the deficiencies which the Legislative Review Committee identified in the FOI act in the report that it handed down and which has been referred to by other speakers.

Members may recall that in February 1997 the Legislative Review Committee was asked to report on the operation of the FOI act. It took more than 3½ years for the committee to make its report. That report was tabled on 4 October 2000 and, in a rare show of political unanimity, the six members of the Legislative Review Committee, drawn from three political parties, unanimously recommended a new act modelled on New Zealand's Official Information Act 1982. I took it upon myself to move a private member's bill which was, in fact, the bill recommended by the LRC (I will refer to the committee as the LRC). The Hon. Nick Xenophon moved an identical bill. However, despite the tripartisan nature of the LRC's recommendation and the speeches in parliament of its own backbenchers, the South Australian government found itself unable to support many of the committee's recommendations or the LRC bill.

On 15 May 2001 the minister (Hon. Robert Lawson) wrote to the committee's chair (Hon. Angus Redford) formally responding to the LRC's report and rejecting the LRC's recommendation for a new act. The Hon. Robert Lawson followed up on 25 July 2001 by introducing a rival bill—the one before us—which addresses some of the concerns raised by the LRC but leaves others totally untouched. My private member's bill, which was the bill recommended unanimously by the LRC, was defeated on 3 October 2001, leaving only this bill on the *Notice Paper*. It was strange that on 3 October the Hon. Ron Roberts and the Hon. Angus Redford both voted against the very bill which they had recommended only a year earlier in the LRC report. Having said that, I turn my attention to the content of this government bill.

There are some positive aspects. I am pleased to see that the bill seeks to bring local government into the fold, as it were, and that it seeks to shorten the time limit for agencies to respond to an FOI application. I am also pleased to note that, for the first time, it is proposed to insert a 'public interest balancing test' into the exemptions which may be claimed for documents concerning business affairs and documents concerning the conduct of research.

Finally, on the positive side of the ledger, I welcome the requirement in this bill for the minister to develop training programs to assist agencies to comply with the act. More than that, I am happy to concede that this bill's proposal to have FOI officers accredited for the purpose is something which my bill lacked and should have had and, on reflection, I believe that the potential for officers to be accredited and have significant status in their agencies and departments may very well overcome what may be the proliferation of appeals which was referred to by the Hon. Paul Holloway as overburdening the Ombudsman. I see it as much more advantageous if we can move to grant requests rather than having governments fighting rear guard actions at every turn, trying to block off approaches for information.

However, there are many aspects of this bill which I deplore. Not only is it a wasted opportunity to correct obvious deficiencies in the act but in some areas it makes even worse some of the problems identified by the LRC, and I will

identify them. First, the bill perpetuates the nightmare of schedule 1. One only needs to glance through the seven pages of schedule 1 to realise that it always has been the weakest part of this act. There are so many exemptions that may be claimed that it would be a very unimaginative person who, if he or she wished to keep something secret, could not fit the document concerned into one or more of the categories of schedule 1. For example, merely preparing a briefing paper for a minister on a topic which might one day be considered by cabinet is sufficient to bring a document within the schedule 1, clause 1 exemption, making it a cabinet document. The amendments which this bill proposes to schedule 1 are, in fact, welcome but they do not address the central problem, which is the structure and exceedingly large number of exemptions which are available in schedule 1. My amendments will seek to delete several clauses of schedule 1—clauses which I believe are entirely unnecessary or which overlap with other clauses.

Secondly, the objects of the act include protecting the 'proper administration of the government'. This phrase sounds as if it came straight from the lips of Sir Humphrey Appleby himself. 'Proper administration' is not an end in itself: it is a means to an end. The end is, or ought to be, the advancement of the public interest. That is why I will move an amendment to alter the objects of the Freedom of Information Act to include 'protecting official information' only to the extent consistent with the public interest and the preservation of personal privacy.

Thirdly, the bill not only perpetuates but extends the intrusive and secretive concept of certificates which may be issued by ministers and principal officers of agencies to preempt consideration of whether or not a document is to be exempt under the act. If an agency or an officer cannot fit a document into one of the many exemptions in schedule 1, in my view it is entirely inappropriate for a minister or a CEO to conclusively put a document beyond reach on their behalf and to use a certificate referred to to do that. The bill seeks to extend this anachronism, even to any 'person or body declared by the regulations to be an agency'.

My amendments will seek to delete all references to such certificates in both the bill and the act. Fourthly, the list of exempt agencies will get longer if this bill is passed. The Motor Accident Commission will be under scrutiny, so will the defunct South Australian Development Fund and the Industry Investment Attraction Fund, or a fund substituted for the Industry Development Attraction Fund. So, too—

The Hon. R.I. Lucas: It always has been.

The Hon. IAN GILFILLAN: I do not know whether the point of 'It always has been' justifies it. So, too, will all three universities. Universities are publicly funded institutions which exist under state legislation. It might be interesting to reflect on the parlous state in which, just recently, the Adelaide University's finances have been revealed to be. The Ombudsman has recommended many times that universities ought to be subject to the Freedom of Information Act. I believe that it was an oversight of my bill not to address this issue specifically, and my amendments to this bill will do so.

Fifthly, this bill perpetuates the currently confusing and inconsistent system which permits external merits review by two different agencies. An applicant may, in some cases, choose to pursue external review with either, on the one hand, the Ombudsman or the Police Complaints Authority or, on the other hand, the District Court. An applicant may even choose to go down both paths in succession. This is wasteful and unnecessary, apart from the separate option of judicial review, which jurisdiction my bill would have conferred on the District Court. There is no need for two systems of external review, especially not when this bill also retains the current system of internal review within an agency.

Sixthly, this bill does not address the situation where government records are held by a private company under contract which the company holds with the government. A great many functions formerly carried out by government have been outsourced to, contracted out to or are now managed by the private sector. The provision of electricity and water are but two major examples. I see no reason, as a matter of public policy, why the actions of government should be immune from scrutiny simply because the actions are being performed under contract by privately-owned organisations. My bill addresses this issue and so will my amendments to this bill.

This is an opportunity which this parliament should not allow to slip. After 3½ years of inquiry, this chamber has already rejected the unanimous recommendations of the Legislative Review Committee on freedom of information. That rejection occurred with insufficient debate of the issues involved. We now have an opportunity—although not a lot of time within which to do it, but we should still grasp it—to grasp the limited reform which the government is putting forward in this bill and make it a truly worthwhile reform. Each one of the deficiencies that I have outlined can be the subject of separate debate as I move each one of the corresponding amendments in committee.

It is really up to us, as a chamber of parliament in this state, to ensure whether, in the coming years, the freedom of information legislation really does serve the public purposes, or whether it continues to be just a charade, a face-saving device to protect the release of information rather than facilitate the release of information, which should be the free and open right of the public of South Australia. We will support, of course, the second reading, and I hope that members will, and I encourage them to, take a close look at the amendments that I will have on file and support them in committee.

The Hon. T.G. CAMERON: SA First supports this bill, which includes provisions for transparency, simplicity, information and public disclosure and which was introduced to complement the government's new principles of 'A new dimension in contracting with the South Australian government'. It was introduced in response to the report by the Legislative Review Committee. This bill forces agencies to be specific about how 'contrary to the public interest' tests are applied. It provides for a reduction in time for agencies to deal with applications from 45 days to 30 days, which is welcomed. This will facilitate a review of work management processes in agencies.

However, extensions can be granted with respect to the practicability of fulfilling the request, such as the number of documents, the need to contact third parties, etc. The Ombudsman may accept appeals to extensions. The accredited FOI officer replaces the principal FOI officer to avoid confusion with the principal officer or chief executive of the agency. However, the principal officer may be the accredited FOI officer. All applications for information and amendment of records must be dealt with by an accredited FOI officer. The bill requires greater detail from agencies in regard to their refusal for an application and specifies this detail.

The agencies are required to show the findings of any material questions of fact underlying reasons for the refusal,

together with a reference to the sources of information on which those findings are based. Agencies must specify the reasons why withholding a document would be contrary to the public interest. The Ombudsman and the Police Complaints Authority can seek a settlement of an application during external review and require cooperation from the parties during the review process. The bill meets the definition of 'agency' to that in the State Records Act and provides for the inclusion of local government in this act.

It seems to be a bit of a virus at the moment: the LGA wants to be included in all of the acts. There will be a revision of 'agency' and 'exempt agencies' during the recess. Appropriate training sessions are required and will be overseen by the minister. Machinery changes are also included, which will eliminate ambiguity in the act and improve its effective operation. As I said at the outset of my contribution, SA First supports this bill. However, I indicate to the Attorney that we will be having a close look at the amendments that have been mooted by the Hon. Ian Gilfillan.

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

VOLUNTEERS PROTECTION BILL

Adjourned debate on second reading.

(Continued from 1 November. Page 2622.)

The Hon. T.G. CAMERON: SA First supports this bill. In 1999 the state government sponsored a volunteer summit and forum in Adelaide. The key concern raised was personal liability for volunteers, and this bill is a response to that. The bill gives immunity to individual volunteers from personal liability for an act or omission made in good faith while carrying out their community work, and so it should. Liability will instead rest with the unincorporated body. It is not before time that a bill such as this was placed before the parliament. I have always taken a view that we have never properly recognised the role of volunteers, particularly volunteer CFS fighters, so it gives me a great deal of pleasure to support this bill.

The Hon. T.G. ROBERTS: The opposition supports the bill and, as indicated by contributions in another place, neither the government nor the opposition believe that it is the be all and end all in relation to protection and cover for volunteers. However, it is a start and it gives an indication to volunteers that their contributions are valued by this parliament and by all members in this Council; and that over time circumstances may be such that people who are volunteers in unincorporated bodies may enjoy the same benefits as those who are volunteers with incorporated bodies and who are protected by this bill against some forms of litigation.

There are over 400 000 South Australian volunteers in all services in this state and, certainly, governments could not operate a lot of services in incorporated bodies without them. If we had to pay the full going rate to volunteers—and particularly volunteer firefighters and emergency services officers who put in many hours of training, preparation and in-field operational manoeuvres—the state would certainly be well out of pocket. This applies not only to CFS emergency workers but to all other volunteers who deliver meals, patrol beaches and read to the infirm and the blind.

I noticed that a nursing home that I visited recently held a volunteers' evening, and volunteers are adopting older people in nursing homes. Schools are now encouraging young people to adopt older people who have no relatives or visiting friends, and I pay tribute to all those people who work in those areas. Some volunteers work with the homeless and with people who have mental illnesses who are not being cared for in institutions, as they were some 10 to 15 years ago. Other volunteers work in health fields and look after people with mental illnesses in local communities. They support special events, they run sports clubs for children and young people, in particular, and they certainly do a lot of good work in cleaning up our national parks, waterways and roadside areas in this state. I also notice now alongside some highways that schools and local club organisations are adopting roadside areas for volunteer clean-up days, and I commend the organisations and schools that do that.

Volunteers serve our communities in countless other ways and they are the glue that sticks communities together. As time goes on, governments are going to have to make a decision on just what is regarded as paid work in society and what is unpaid or volunteer work. Communities are going to have to put a value on volunteer work and, as technology increases and displacement within communities takes place, with narrowing opportunities for participation in full-time work, the work that volunteers do may have to be taken into consideration not so much as a work for the dole idea, which is being impressed on most people now, but as work for the betterment of the society that we live in. Worthwhile work through volunteering could at some time in a more progressive age be seen as part of assisting communities and it could be a lifestyle that is covered by a living wage. Those principles will be considered a lot further down the track.

We join with the government in taking these first steps for covering volunteers, and the intention of the bill is to reduce the liability exposure of and potential costs of litigation to volunteers, and I think that needs to be done, not only to protect volunteers who are already working in the organisations that I have mentioned but also to encourage in the future the climate for volunteers to continue the good work that they do. This is one way of showing volunteers that they are valued and that they will be protected against litigation in circumstances in which they may find themselves.

I have raised in this place before that some volunteers have limited means of support and, although I will not say that they seem to be in the main in terms of numbers in the community, a lot of people who volunteer for community work have limited incomes, and they are finding it hard to service their own needs and requirements in being able to meet volunteerism and the pressures that that applies, and that includes running their own vehicle, paying for petrol, etc.

Having paid that tribute to volunteers, and in supporting the Volunteers Protection Bill, I look forward to the committee stage and the third reading and indicate that we will be supporting all stages of the bill. I understand that a lot of questions were raised and answers provided in another place, so I will not go through that process. I look forward to the reply from the minister handling the bill in this place and indicate our support for all stages.

The Hon. T. CROTHERS: I rise somewhat more cautiously than the previous two speakers to support the bill. I have a very simple statement to make—

The Hon. L.H. Davis: You are rising cautiously?

The Hon. T. CROTHERS: Yes, I am rising cautiously and I have a very good reason for that.

The Hon. R.K. Sneath interjecting:

The Hon. T. CROTHERS: Where ignorance is bliss, tis truly a folly to be wise. I rise, because I remain a good unionist, to put the following on the table in relation to how I see this bill being abused. This bill is rather like the Labor Party, which at a convention I once attended put up the proposition for part-time workers. I will not tell the Council what I did to the speaker who herself was a member of parliament in this place over that particular issue, but I think that sometimes the best laid plans of mice and men can go astray.

There is only thing I want you to look up Mr Attorney when the third reading stage comes, and I will put this question: what is the potential for someone who ruthlessly employs people to abuse this bill and to replace their paid work force with volunteers?

One has only to look at what is happening in the garage industry at the moment where proprietors are using all youth labour and, when they are about to turn 18, they find a reason to sack them. There is no doubt that, whilst there are some good employers about, there are some ruthless ones, too. I want to know whether this bill has a safeguard clause to prevent that and, if it has not, I wonder whether the parliament will consider inserting one so that the bill is not utilised in a manner that this parliament never wanted to see. That is, to have paid labour replaced by volunteer labour by some ruthless employer. I have not forgotten my trade union roots. Others might have, but I have not.

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

CORRECTIONAL SERVICES (MISCELLANEOUS) AMENDMENT BILL

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

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

That this bill be now read a second time.

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

Leave granted.

The *Correctional Services Act 1982* (the principal Act) is currently under review. This Bill addresses issues that require urgent amendment to support current practice of the Department for Correctional Services (the Department). The philosophies, attitudes and practices of the Department have changed over time and the principal Act does not currently reflect those changes.

The Bill seeks to expand the authority of the Chief Executive of the Department in regard to a prisoner's leave of absence from prison. This amendment would allow the Chief Executive to revoke any of the conditions placed on a prisoner who has leave of absence from prison. The principal Act provides for leave conditions to be varied by the Chief Executive, but does not allow them to be revoked. The Bill also seeks to give the Chief Executive the power to impose further conditions on a prisoner who has leave of absence from a prison.

The Bill seeks to insert a new section 27A to follow section 27 of the principal Act. There is currently no provision for prisoners to travel interstate for short periods or to manage prisoners who are in this State on leave from an interstate prison. The Bill will address the issues of authority and responsibility for prisoners on leave in South Australia from interstate and will include the authority to respond in the case of an escape of an interstate prisoner while in this State. All States have agreed and a number have already introduced legislation to provide for prisoners to be allowed to take leave of absence interstate. The leave may be required for medical, compassionate or legal reasons.

The Bill seeks to amend section 29 of the principal Act. This section deals with work undertaken by prisoners. The Bill provides for additional control of prisoners who might engage in work that is not organised by the Department. The amendment proposed will require the prisoner to have the permission of the manager of the correctional institution in which the prisoner is held before the prisoner can be engaged in work, whether paid or unpaid and whether for the benefit of the prisoner or any other person. This is aimed at preventing a prisoner from carrying on a private business from prison. Some concern has been raised regarding the potential scope of this amendment; in particular, the potential for the amendment preventing a prisoner from undertaking tasks of a personal nature unless the manager's consent has been obtained. Consideration will be given to this issue during the break.

Clause 7 of the Bill contains a consequential amendment to section 31 to make it compatible with the proposed amendment to section 29.

Section 33 of the principal Act deals with prisoner mail. The Bill makes provision for tighter control of the mail that prisoners are allowed to send and receive while in prison. Clause 8 of the Bill proposes to amend section 33 so as to include an additional item in the list of mail that is deemed to contravene the principal Act; that is, mail that contains material relating to, or that constitutes, work by the prisoner that the prisoner is not authorised to perform. This will also maintain consistency with the amendment to section 29.

The principal Act does not currently allow for the random search of prisoners. Clause 9 of the Bill seeks to amend section 37 of the principal Act by inserting a subsection that provides for the random search of prisoners' belongings for the purpose of detecting prohibited items. This will bring the principal Act into line with current practice for the control of prohibited substances in the prison environment.

The Bill makes proposed amendments to the provision dealing with home detention. The proposed changes to section 37A will restrict home detention to the last year of a fixed non-parole period. It will also ensure that prisoners who receive a sentence of 12 months or less will not become eligible for home detention until they have served at least half of their sentence in prison.

Clauses 4, 11 and 12 of the Bill seek minor changes to the principal Act that will enable all authorised officers, both public and private, to be able to effectively carry out day to day prisoner management.

Clause 13 of the Bill seeks to repeal sections 85A and 85B of the principal Act and to replace those sections with provisions that are updated and reflect better the current practice and philosophy of the Department.

Section 85A of the principal Act is concerned with the exclusion of persons from correctional institutions. From time to time, it is necessary to evict or bar visitors to institutions. This may be as a result of the visitor contravening the principal Act by, for example, bringing in or attempting to bring in prohibited items, or their bad behaviour. The Bill proposes an expanded section 85A, that provides more detail about how, and in what circumstances, a person (other than staff) can be required to leave an institution. The new section will also allow for the banning of a person from a specified correctional institution or all correctional institutions.

Current section 85B provides for the power to detain and search non prisoners and vehicles entering a correctional institution. The current section is mainly applied to visitors to institutions. The new expanded section 85B proposed in the Bill goes into some detail about the sorts of searches that can be carried out of persons who are not prisoners, and vehicles, entering an institution. It also provides the manager of an institution with the power to cause a person or vehicle that could be detained under new section 85B for the purposes of being searched to, instead, be refused entry to, or be removed from, the institution. Information about detention of persons under the section will have to be provided in the annual report submitted under the principal Act.

Since coming to office, this Government has been committed to the objectives of rehabilitation and the secure, but humane, containment of prisoners. Some of the changes recommended in the Bill are necessary to allow the correctional system to operate more effectively and provide the legal framework necessary to prevent the potential abuse of the system by prisoners, while others are of a minor 'housekeeping' nature that will assist in the effective operation of the private prison.

I commend the bill to the house.

Explanation of clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Interpretation

This amendment proposes to insert a definition of the nearest police station for the purposes of determining the police station where a person arrested without warrant under the principal Act must be taken.

Clause 4: Amendment of s. 27—Leave of absence from prison

The amendments proposed to section 27(2) and (4) will mean that if a prisoner is granted leave of absence from prison by the Chief Executive Officer, the prisoner will be able to be released in the custody of, and be supervised by, an officer or employee of the Department. These amendments correct a drafting oversight. In addition, this amendment provides for the Chief Executive Officer to be able to vary, revoke or impose further conditions on a prisoner's leave of absence from prison under this section.

Clause 5: Insertion of s. 27A

27A. Interstate leave of absence

New section 27A makes provision for a prisoner to take leave outside of South Australia. The following provisions apply in relation to requests under section 27 for leave of absence to be taken outside of this State:

- no such leave can be granted in circumstances prescribed by the regulations;
- the leave may only be granted in respect of a participating State;
- the period of leave cannot exceed 7 days (but successive grants of leave can be made);
- the Chief Executive Officer must give written notice of the leave to the chief officer of police and the corresponding chief executive in the State in which the leave will be taken and the chief officer of police in any other State through which the prisoner will have to travel by land;
- the prisoner remains in the custody of the Chief Executive Officer despite being outside SA.

Certain provisions apply in relation to an interstate prisoner who has been granted leave of absence under a corresponding law. They are set out in new section 27A(2).

The Governor may, by proclamation, declare a law of a State to be a corresponding law if satisfied that the law has provisions that substantially correspond with section 27 and this new section and may, by subsequent proclamation, vary or revoke such a proclamation.

The terms corresponding chief executive, corresponding law, escort, interstate prisoner, participating State and State are defined for the purposes of this new section.

Clause 6: Amendment of s. 29—Work by prisoners

It is proposed to insert a new subsection (5) into the current section to provide that a prisoner in a correctional institution is not entitled to perform any other remunerated or unremunerated work of any kind (whether for the benefit of the prisoner or anyone else) unless the prisoner has permission to do so by the manager of the correctional institution.

Clause 7: Amendment of s. 31—Prisoner allowances and other money

Clause 8: Amendment of s. 33—Prisoners' mail

These amendments are consequential on the amendment proposed in clause 5.

Clause 9: Amendment of s. 37—Search of prisoners

It is proposed to insert a new subsection that would allow the manager of a correctional institution to cause a prisoner's belongings to be searched where the manager, for the purpose of detecting prohibited items—

- proposes that the belongings of all prisoners within the institution, or a part of the institution, be searched; or
- has caused the random selection of prisoners from the whole or any part of the institution for the purposes of such a search and the prisoner falls within the selection.

Clause 10: Amendment of s. 37A—Release on home detention

Section 37A(1) gives the Chief Executive Officer a discretion to release a prisoner from prison to serve a period of home detention. The proposed amendments to section 37A will provide that the exercise of the Chief Executive Officer's discretion is subject to the limitations set out below. Each of the limitations that is relevant in relation to a particular prisoner's sentence must be satisfied before the prisoner can be released on home detention.

A prisoner who is serving or is liable to serve a sentence of indeterminate duration and has not had a non-parole period fixed cannot be released on home detention.

A prisoner cannot be released on home detention unless—

(1) in the case of a prisoner in respect of whom a non-parole period has been fixed—the prisoner has served at least one-half of the non-parole period;

(2) in any other case—the prisoner has served at least one-half of the prisoner's total term of imprisonment,

and the prisoner satisfies any other relevant criteria determined by the Minister.

The release of a prisoner on home detention cannot occur earlier than 1 year before—

(1) in the case of a prisoner in respect of whom a non-parole period has been fixed—the end of the non-parole period;

(2) in the case of a prisoner in respect of whom a non-parole period has not been fixed but whose total term of imprisonment is more than one year—the day on which the prisoner would otherwise be released from prison.

Without limiting the matters to which the Chief Executive Officer may have regard in exercising this discretion, the Chief Executive Officer may take into consideration the seriousness of any offence that gave rise to the imprisonment that the prisoner is serving or is liable to serve.

Clause 11: Amendment of s. 52—Power of arrest

Clause 12: Amendment of s. 85—Execution of warrants

These amendments correct a drafting oversight. The proposed amendments will simply insert 'officer or' wherever 'an employee of the Department' is mentioned.

Clause 13: Substitution of ss. 85A and 85B

Current sections 85A and 85B are to be repealed and new sections substituted for them.

85A. Exclusion of persons from correctional institution

New section 85A provides that regardless of any other provision of the principal Act—

- if the manager of a correctional institution believes on reasonable grounds that a person lawfully attending the institution in any capacity (other than a member of the staff of the institution) is interfering with or is likely to interfere with the good order or security of the institution, the manager—
  (1) may cause the person to be removed from or refused entry to the institution; and
  (2) may, in the case of a person who visits or proposes to visit a prisoner pursuant to section 34, by written order, exclude the person from the institution until further order or for a specified period; and
- if the Chief Executive Officer believes on reasonable grounds that a person who visits or proposes to visit a prisoner in a correctional institution pursuant to section 34 is interfering with or is likely to interfere with the good order or security of that or any other correctional institution, the Chief Executive Officer may, by written order, direct that the person be excluded from—
  (1) a specified correctional institution; or
  (2) all correctional institutions of a specified class; or
  (3) all correctional institutions,
  until further order or for a specified period.

The manager of a correctional institution may cause any person who is attempting to enter or is in the institution in contravention of such an order to be refused entry to or removed from the institution, using only such force as is reasonably necessary for the purpose.

85B. Power of search and arrest of non-prisoners

The manager of a correctional institution may—

- with the person's consent, require any person who enters the institution to submit to a non-contact search, and to having his or her possessions searched, for the presence of prohibited items; or
- if there are reasonable grounds for suspecting that a person entering or in the institution is in possession of a prohibited item, cause the person and his or her possessions to be detained and searched; or
- if there are reasonable grounds for suspecting that a vehicle entering or in the institution is carrying a prohibited item, cause the vehicle to be detained and searched.

If a person does not consent to being searched under proposed subsection (1)*(a)*, the manager of the correctional institution may cause the person to be refused entry to or removed from the institution, using only such force as is reasonably necessary for the purpose.

The following provisions apply to a consensual non-contact search:

- the person cannot be required to remove his or her clothing or to open his or her mouth, and nothing may be introduced into an orifice of the person's body;
- anything used for the purpose of the search must not come into contact with the person's body;
- the person may be required to adopt certain postures or to do anything else reasonably necessary for the purposes of the search;
- the search must be carried out expeditiously and undue humiliation of the person must be avoided.

The following provisions apply to the search of a person where there are reasonable grounds for suspecting the person is in possession of a prohibited item:

- the person may be required to remove his/her outer clothing, to open his/her mouth, to adopt certain postures, to submit to being frisked or to do anything else reasonably necessary for the purposes of the search;
- nothing may be introduced into an orifice of the person's body;
- at least 2 persons, apart from the person being searched, must be present at all times during the search;
- the search must be carried out expeditiously and undue humiliation of the person must be avoided.

The driver of a vehicle reasonably suspected to be carrying a prohibited item may be required to do anything reasonably necessary for the purposes of a search of the vehicle.

If, in respect of any of the searches provided for in this proposed section, the person/driver does not comply with a lawful requirement, the manager of the correctional institution may cause the person/driver and (where relevant) the vehicle to be removed from the institution, using only such force as is reasonably necessary for the purpose.

If a prohibited item is found as a result of a search, or a person fails to comply with a requirement lawfully made for the purposes of a search—

- the manager may cause the person/driver to be handed over into the custody of a police officer as soon as reasonably practicable and to be kept in detention until that happens; and
- the item may be kept as evidence of an offence or otherwise dealt with in the same manner as a prohibited item under section 33A may be dealt with.

If the officer or employee who carries out a search of a person suspects on reasonable grounds that a prohibited item may be concealed on or in the person's body, the manager may cause the person to be handed over into the custody of a police officer as soon as reasonably practicable and to be kept in detention until that happens.

The manager must, on detaining a person under this proposed section, cause a police officer to be notified immediately.

In any event, if a person or vehicle can be detained under the proposed section for the purposes of being searched, the manager may, instead, cause the person or vehicle to be refused entry to, or removed from, the institution , using only such force as is reasonably necessary for the purpose.

The annual report submitted under the principal Act by the Chief Executive Officer in respect of a financial year must include particulars about the number of persons detained pursuant to this proposed section during the year and the duration of each such detention.

This new section does not apply to a person who is a prisoner in the correctional institution.

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

ADJOURNMENT

At 9.16 p.m. the Council adjourned until Wednesday 14 November at 2.15 p.m.